

EXPLANATORY MEMORANDUM

Transport (Road Passenger Services) Bill 2018

Safe, accessible and efficient transport services are critical to the economic and social prosperity of Western Australia. The road passenger transport service industry, which involves the transport of passengers by motor vehicle for hire or reward, plays a key role in Western Australia's transport system, moving people throughout the State for business, private or social travel.

Consistent with national and international trends, the road passenger transport industry, and particularly the on-demand passenger transport sector, has faced a range of challenges in recent years. This is largely the result of the emergence of new participants in the industry, new approaches to service delivery, often connected with technological changes, and shifting consumer expectations.

The activities of the taxi and charter vehicle sectors have more in common than they did at the time of the enactment of the existing legislation that applies to them. Drivers and vehicles involved in the provision of road passenger transport services are also operating or seeking to operate with more flexibility – occupational drivers may be self-employed or employed by others. Driving may be in connection with more than one employer, and drivers may accept bookings from more than one booking service, which may or may not be their employer. Likewise, vehicles used in the provision of road passenger transport services are often used in the provision of multiple types of passenger service, and the person who owns the vehicle used to provide a passenger transport service may not be the person who is the provider of that service. It is also often the case that the person who takes the booking for, and advertises the provision of an on-demand passenger service, is not always the person who provides the service. In some cases bookings are made direct with the business, or self-employed driver, and in other cases, a third party takes the booking and passes it on to the provider of the service.

The existing legislative framework is unable to regulate the road passenger transport industry as it stands today, in a way that provides flexibility, whilst ensuring a clear chain of accountability and an equal playing field where appropriate.

In light of this, there is a need for legislative reform in this area.

This Bill follows minor reforms implemented in July 2016 in an attempt to respond to the issues facing the sector to the extent possible within the existing legislative framework. Those reforms were given effect via the *Taxi Amendment Act 2016* as well as amendments to numerous regulations governing the industry, and a range of administrative changes to licence conditions. Some of the key changes included:

- the creation of a new administrative omnibus licence sub-category for charter vehicles that facilitated the licensing of new market entrants;
- changes to fare regulation allowing omnibus licensees to set fares as they wish, along with changes to permit taxi operators to enter into arrangements with

passengers which enabled them to charge a pre-agreed contract fare as an alternative to metered fares;

- streamlining of taxi driver entry requirements to minimise entry costs and qualification time, and bringing taxi driver standards on par with those applicable to omnibus drivers;
- removal of mandatory operating hours on taxi plates to allow greater flexibility in the operation of taxis;
- removal of the requirement for the operator of a taxi to affiliate with a single dispatch service, to make it easier for operators and drivers to access jobs from different sources and encourage competition between dispatch and booking services; and
- removal of the ownership limit of five taxi plates from the *Taxi Act 1994*; and
- provision was made in the *Taxi Act 1994* for eligible plate owners to access an adjustment assistance grant.

Whilst the reforms made some improvements, in order to effectively regulate the passenger transport industry, a new legislative framework is required. This Bill will introduce a new regime for the effective regulation of the road passenger transport industry.

Road Passenger Transport Services Legislative Framework

This Bill will replace the existing laws for the regulation of Western Australia's road passenger transport service industry with a modern and consolidated framework that focuses on safety and flexibility, supports innovation and minimises regulatory burden. The Bill will regulate on-demand passenger transport services and on-demand booking services, regular passenger transport services, tourism passenger transport services, and the drivers and vehicles used in the provision of those transport services, including through the imposition of safety duties pursuant to Part 2. Targeted and appropriate penalties, along with the enforcement powers in Part 8 of the Bill will also play an important role in facilitating compliance.

Western Australia's road passenger transport industry is currently regulated by three primary Acts and numerous associated regulations. Several road laws also apply to the motor vehicles and drivers used to provide passenger transport services.

Taxis

The use of taxis in the Perth metropolitan taxi control area to carry passengers for reward is regulated by the *Taxi Act 1994* (the Taxi Act). The Taxi Act regulates the operation of vehicles as taxis within a prescribed control area. Section 15(1) of the Act provides that a vehicle may not be operated as a taxi within a control area unless that vehicle is operated using taxi plates. The only area currently prescribed for the purpose of the Taxi Act is the area colloquially known as the 'Perth metropolitan area'. As at end June 2018 there were a total of 1925 taxi plates in existence.

Pursuant to section 20(1)(a) of the Taxi Act, plates can be subject to conditions restricting the operation of the taxi to specified times or areas. These plates are generally referred to as 'area restricted' or 'peak period' plates. Plates that are not subject to these kinds of restrictions are 'conventional' plates, which are defined in section 3(1). Section 20(1) also empowers the Director General to impose conditions on the operation of taxis.

A combination of conditions and regulations is used to set out a framework for the operation of taxis. Currently, the requirements that are imposed include those relating to the standards of vehicles that may be operated as taxis and the equipment that must be fitted to them (such as taxi meters and camera surveillance units). Other requirements include signage, markings and other information that must be displayed in and on a taxi, the fares and other amounts that passengers may be charged, and the conduct of drivers.

The use of country taxi-cars to carry passengers for reward outside of the prescribed Perth metropolitan taxi control area is regulated under Part IIIB of the *Transport Co-ordination Act 1966* (the TCA). Taxi-car is defined in section 47Z(1) of the TCA as a vehicle used for the purpose of standing or plying for hire or otherwise for the carrying of passengers for reward.

As at end June 2018 there were a total of 340 country taxi-car licences in existence.

Taxi-cars cannot be operated without a taxi-car licence (section 47ZD) and the Minister is empowered to impose conditions on those licences. Like taxis regulated under the Taxi Act, country taxi-cars are regulated via a combination of regulations and licence conditions – the requirements imposed on country taxi-cars are generally similar to those imposed on taxis under the Taxi Act.

Charter vehicles

The *Transport Co-ordination Act 1966* also regulates omnibuses, which are defined in section 4(1) as 'a motor vehicle used or intended to be used as a passenger vehicle to carry passengers for hire or reward', but does not include vehicles operating as taxis under the Taxi Act or taxi-cars under Part IIIB of the TCA. Part III Division 2 of the TCA makes provision for the grant of omnibus licences, including the information to be provided by applicants (section 25), the matters the Minister may consider before deciding an application (section 26), conditions that apply to licence (section 28), and empowering the Minister to impose additional conditions on a licence in addition to those in section 28.

As at end June 2018 there were a total of 14,884 omnibus licences in existence.

Through the use of licence conditions, there are two categories of omnibus licence currently available – charter and regular passenger transport licences. Charter licences apply to services that are essentially on-demand in nature, but do not authorise use of the vehicle to stand or ply for hire, or operate on a rank or hail basis in the manner of a taxi.

There are no restrictions placed on the numbers of omnibus charter licences that may be granted.

Regular Passenger Transport

Regular passenger transport is the other kind of omnibus licence issued under Part III Division 2 of the TCA. Regular passenger transport (RPT) services are generally services that operate according to regular routes and timetables, with predefined stopping places for the picking up and setting down of passengers. These kinds of services are generally available on a non-exclusive basis to members of the public and include public bus services such as those provided by the Passenger Transport Authority, as well as some services provided by private operators.

RPT omnibus licences also authorise use of the vehicle to provide charter services, but like a charter vehicle licence, use of the vehicle to stand or ply for hire, or operate on a rank or hail basis in the manner of a taxi is prohibited. As at end June 2018 of the 14,884 omnibus licences in existence, 1,798 of these authorise the operation of the vehicle for RPT services.

There are no restrictions placed on the number of omnibus RPT licences that may be granted. However, in considering whether or not to grant an omnibus licence, pursuant to section 26 of the TCA, the Minister is entitled, but not obliged, to take into account any of the following matters:

- (a) the necessity for the service proposed to be provided and the convenience that would be afforded to the public by the provision of the proposed service; and
- (b) the existing service for the conveyance of passengers upon the routes, or within the area, proposed to be served in relation to —
 - (i) its present adequacy and possibilities for improvement to meet all reasonable public demands; and
 - (ii) the effect upon the existing service of the service proposed to be provided;
- (c) the condition of the roads to be included in any proposed route or area; and
- (d) the character, qualifications and financial stability of the applicant; and
- (e) the interest of persons requiring transport to be provided, and of the community generally.

These matters are generally most relevant to the consideration of whether or not to issue an RPT omnibus licence. The non-exclusive nature of the use of regular passenger transport services by passengers, and their potential to carry larger numbers of passengers at one time, means they can offer an affordable means of transport to the community. Given their regular nature and predefined routes, direct competition between services is more likely to have a significant impact on service provision as compared with competition in the on-demand sector. The ability to have regard to the matters in section 26 of the TCA enables the Minister, where necessary, to make decisions that ensure the viability of essential public passenger transport services.

Passenger Transport Vehicles

This Bill will repeal the Taxi Act, as well as Part III, Division 2 and Part IIIB of the TCA, and associated regulations.

The new framework will regulate all vehicles currently within the meaning of taxi, country taxi-car or omnibus, as 'passenger transport vehicles' pursuant to Part 6 of the Bill. Passenger transport vehicles will be able to be authorised for one or more specific categories of passenger transport service, and may be used in the provision of any category for which the vehicle is authorised, anywhere in the State.

In order to be authorised as a passenger transport vehicle, clause 126 of the Bill provides that the vehicle must meet the requirements specified in the regulations. Different requirements may be prescribed for different categories of vehicle. The primary focus of Part 6 and the authorisation of vehicles, is the safety of the vehicle to be used in the provision of a passenger transport service, and providers of vehicles will be subject to safety duties pursuant to Part 2 of the Bill.

On-demand vehicles

Clause 5(1) of the Bill defines 'on-demand passenger transport service'. On-demand services are services for the transport of passengers by vehicle for hire or reward, in which the passenger or hirer determines the location for the beginning and end of the journey and time of travel. This captures the domain of most taxi and charter work at present. This could occur via a booking made in advance of the journey, or in the case of some taxi travel, where the passenger hails or hires the vehicle while it is standing, plying or touting for hire.

Vehicles used to provide services of the kind that are currently carried out by taxis and country taxi-cars will be required to be subject to an 'on-demand rank or hail vehicle authorisation'. Only vehicles with an on-demand rank or hail vehicle authorisation will be able to lawfully carry out this kind of traditional rank or hail taxi service. All other on-demand vehicles will need to be authorised for the category of 'on-demand charter passenger transport service'.

The person who takes the booking for the provision of an on-demand passenger transport service, regardless of whether it is a rank or hail, or a charter service, will need to be authorised to provide an on-demand booking service, pursuant to Part 3 of the Bill and will be subject to safety duties pursuant to Part 2. Providers of on-demand passenger transport services and the drivers of vehicles used in the provision of those services will be subject to the safety duties in Part 2 of the Bill.

Regular passenger transport vehicles & service providers

Clause 6(1) of the Bill defines a regular passenger transport (RPT) service as a service for the transport of passengers by vehicle for hire or reward, which is conducted according to regular routes and timetables or according to regular routes and at regular intervals. Vehicles used to provide RPT services will need to be authorised for the category of 'regular passenger transport service'. The provider of a RPT service will be able to use any vehicle authorised for the category of regular passenger transport

service in the provision of that service, but will also need to be authorised to provide the RPT service on the routes or in the areas in which the service is provided.

Part 4 of the Bill makes provision for the authorisation of RPT service providers. Under the TCA, the omnibus licence provides for a dual kind of authorisation – authorisation of the vehicle itself and authorisation of the service the vehicle is being used to provide. Part 6 of the Bill provides for vehicle authorisation, with the primary focus being on the vehicle itself. The RPT service provider authorisation requirement in Part 4 will preserve the current arrangements in the TCA with respect RPT services. It will ensure providers and proposed providers of RPT services and the routes and areas in which they operate, can continue to be assessed, with clause 62 of the Bill enabling the Minister to consider the same matters as currently provided for in section 26 of the TCA.

The 1,798 regular passenger transport omnibus licenses in existence as at end June 2018 are held by 17 different licensees. This is the maximum number of existing omnibus (RPT) licensees that will need to obtain an RPT service provider authorisation once Part 4 of the Bill commences. However, any such licensees who are providing the service on behalf of another authorised provider will not need to be authorised - for example, persons who are providing RPT services under a contract arrangement with the Public Transport Authority (PTA) will not need to be authorised, unless they are also providing RPT services not covered by their arrangement with the PTA.

Providers of regular passenger transport services and the drivers of vehicles used in the provision of those services will also be subject to the safety duties in Part 2 of the Bill.

Tourism passenger transport vehicles

The Bill also provides for the category of tourism passenger transport service. Clause 7(1) of the Bill defines a tourism passenger transport service as a service for the transport of passengers by vehicle for hire or reward, for the purposes of tourism, and that is designed for the carriage of tourists to destinations listed on a publicly available tour itinerary.

Vehicles used to provide tourism passenger transport services will need to be authorised for the category of 'tourism passenger transport service'. Providers of tourism passenger transport services and the drivers of vehicles used in the provision of those services will also be subject to the safety duties in Part 2 of the Bill.

Booking services

Under the Taxi Act, persons who take bookings from hirers for the use of a taxi, and that provide other services to taxis in connection with that purpose are regulated as Taxi Dispatch Services (TDSs). Part 3, Division 2 of the Taxi Act provides for the registration of and imposition of conditions on TDSs. TDS is defined in section 3(1) as a service that provides:

- (a) a radio base, computer or telephone service for taxis or makes arrangements for taxis to be provided with such services; and

- (b) controlling, co-ordinating, administrative and other functions to the taxi industry, for the purpose of arranging for a person who requests a taxi to be provided with one.

TDSs are subject to obligations in connection with the operation of drivers and vehicles they dispatch to. The *Transport Co-ordination Act 1966* does not contain provisions regulating country taxi-car dispatch services, nor does it impose requirements on the persons who take bookings for the hiring of omnibuses. In many cases the vehicle licensee is also the person who takes the booking for the use of the licenced omnibus as well as the provider of the transport service. However, in recent years there has been an increase in the involvement of operators in the charter sector who take bookings for services and pass them on to other entities who provide the passenger transport.

In the interests of public safety, providers of on-demand booking services should be part of the chain of accountability in the road passenger transport system regardless of the location of the journey to be provided, and regardless of whether the on-demand passenger service is also a rank or hail service. Members of the public who book on-demand passenger services deal directly with the booking service provider – it is reasonable to require those providers to have a role in ensuring the safety of the service providers it is responsible for connecting their customers with, as well as the drivers and vehicles involved in the delivery of those services. Part 3 of this Bill requires persons who provide on-demand booking services, which includes existing TDSs under the Taxi Act, to be authorised for that purpose under this Bill.

Drivers

The *Road Traffic (Authorisation to Drive) Act 2008* (RTADA) currently regulates the authorisation of persons who drive motor vehicles for the purpose of carrying passengers for hire and reward.

The RTADA empowers the CEO to grant driver's licences and regulation 11 of the *Road Traffic (Authorisation to Drive) Regulations 2014* provides that a driver's licence does not authorise the licensee to drive a vehicle carrying passengers for reward, unless the CEO has endorsed the licence for that purpose.

Pursuant to regulation 12(3)(a) a licence may be endorsed with extension 'T' to permit driving a vehicle to carry passengers for reward but, if the driving is at a time when the licence holder has not reached 21 years of age, only in a taxi. Pursuant to regulation 12(3)(b) a licence may be endorsed with extension 'F' to permit driving for the purpose of carrying passengers for reward, except in a taxi.

Changes made in 2016 saw the eligibility criteria for an extension 'T' or 'F' aligned, with regulation 12(7) setting out the key criteria relevant to age, driving experience, character and physical and mental fitness.

Holders of driver's licences endorsed with an extension 'T' or 'F' are subject to regular assessments of medical and physical fitness, and the extension may be suspended or cancelled if the CEO has reasonable grounds to believe, or is satisfied, that the

holder is not fit or of appropriate character to drive a vehicle to carry passengers for reward.

In 2014 Parliament enacted the *Taxi Drivers Licensing Act 2014* (TDLA), which established a regime for licensing of drivers of taxis. In light of the changes to the industry that were occurring around that time, and the commencement of public consultation on reforms to the industry in the period shortly following the enactment of the TDLA, the substantive provisions of the TDLA were not proclaimed to commence. This was done to ensure industry, and in particular, drivers, were not subject to multiple regulatory changes in a short time frame.

This Bill will repeal the TDLA, along with relevant provisions of the RTADA, and will include a requirement for drivers of vehicles carrying passengers for hire or reward to be authorised as passenger transport drivers, pursuant to Part 5 of this Bill.

Drivers will be subject to safety duties pursuant to Part 2 of the Bill, will need to satisfy the CEO that they are a fit and proper person to drive a vehicle to transport passengers for hire or reward, and will be disqualified from holding or obtaining an authorisation for a prescribed period in connection with the disqualification offence regime.

Disqualification offences

Part 5 Division 4 of the Bill provides for the suspension and cancellation of passenger transport driver authorisations and, pursuant to Division 4 Subdivision 2, more serious offences may be prescribed as “disqualification offences”. Conviction of a disqualification offence will result in the immediate cancellation of a passenger transport driver authorisation, and the imposition of a period of disqualification, the duration of which will be prescribed by regulation.

For example, the offence of sexual assault may be prescribed as a disqualification offence. The regulations will prescribe differing periods of disqualification, determined in accordance with the severity of a disqualification offence and whether it is a first, second or subsequent offence of that kind. In some circumstances, a permanent disqualification may be imposed.

The disqualification provisions for passenger transport driver authorisations in Part 5 are based on the regime for disqualification of taxi drivers in the *Taxi Drivers Licensing Act 2014*.

Buy-back scheme for taxi plate owners

Part 9, Division 1 of this Bill provides for an industry funded buy-back scheme in respect of owned taxi plates issued under the Taxi Act. Section 15(1) of the Taxi Act provides that a vehicle may not be operated as a taxi within a control area unless that vehicle is operated using taxi plates. As at end June 2018 there were a total of 1925 taxi plates in existence.

Under the Taxi Act, taxi plates can be offered for sale by public tender (owned plates) or offered for lease (leased plates). Of the existing plates still in operation, 1035 are owned plates, and 890 are leased plates. Leased plates give the lessee the right to operate a vehicle using taxi plates for the duration of the lease, and require the lessee

to be the owner and principal driver of the vehicle operated as a taxi using the plates. In the case of owned plates, it is open to the plate holder to engage third parties to manage and/or operate the vehicle if they wish, or they can drive the vehicle themselves. No plates have been offered for sale by tender by the Government since the enactment of amendments to the Act in late 2003, which enabled taxi plates to be offered for lease. However, existing owned plates are able to be transferred in accordance with the requirements of section 24 of the Act. This generally occurs in the context of private sales between parties.

Taxi plate owners, in many cases, invested considerable sums of money in the purchase of taxi plates. Owned taxi plates issued pursuant to the Taxi Act have been treated as property by plate owners and, unlike lease plates and country taxi-car licences issued pursuant to the TCA, plate owners are not subject to a renewal requirement. Owned taxi plates have effectively been used as an asset through which the owners have leveraged income either by using those plates to operate a vehicle as a taxi themselves, or through leasing the plate to a third party for use on a vehicle.

Changes to the industry in recent years, particularly increased competition in the metropolitan area, have seen a substantial decrease in the value of owned taxi plates, as well as a reduction in the amount of income some plate owners have been able to generate from their plates, resulting in financial difficulty.

As part of the move from taxi plates to an annual passenger transport vehicle authorisation, buy-back payments are to be made available to owners of plates issued pursuant to the Taxi Act. The buy-back scheme will deliver a minimum payment for different plates, less any transition assistance or Hardship Fund payment already paid:

- \$100,000 for each Conventional or Multi-Purpose taxi plate;
- \$40,000 for each Area Restricted plate; and
- \$28,000 for each Peak Period plate.

Some plate owners may receive more than the minimum payment per plate, with the Bill making provision for a calculation of the payments according to factors such as the purchase price for the plates and estimated revenue generated from the plates over the period of ownership.

Pursuant to clause 230(2), any right of a person to ownership of taxi plates ceases to exist on the grant of the buyback payment in relation to the taxi-plates. Regulations will make provision for how the physical sets of taxi plates that were issued to plate holders under the Taxi Act are to be dealt with.

On-demand passenger transport levy

The proposed buy-back scheme is to be funded through a levy on leviable passenger service transactions.

Clause 244 provides that the taking of a booking for an on-demand passenger transport service that starts and finishes in the defined 'levy area', is a leviable passenger service transaction.

The levy area is the area centring on metropolitan Perth and the districts of Mandurah and Murray. In the Bill, the meaning of 'taking a booking' includes the hiring of a vehicle as a result of a rank or hail service (clause 4(1)), meaning that the levy will be payable in respect of both pre-bookings and on the spot bookings for on-demand passenger transport services. Pursuant to clause 246, the levy will only become payable, if and when the passenger transport service to which the booking relates is completed.

The levy is limited to on-demand passenger transport services in vehicles that are equipped to seat no more than 12 people (including the driver), and will not apply to regular or tourism passenger transport services that are not on-demand in nature. For example, regular and tourism passenger transport services that are available to the public according to a set timetable or publicly available itinerary determined by the provider, are not considered a key competitor of the taxi and charter industry, and are therefore not subject to the levy. It is intended that booking services who solely offer certain pre-booked services may apply for an exemption from the levy.

To reduce the impost of the levy on regional taxi-car and charter operators, the levy is only proposed to apply in the Perth metropolitan and nearby Mandurah and Murray districts. Mandurah and Murray districts are included in the levy due to their close proximity of operation with the Perth metropolitan area. Existing taxi-car licensees in these districts will be eligible for adjustment assistance grants as detailed below.

The levy is to be imposed by the *Transport (Road Passenger Services) Amendment Bill 2018* (the Levy Amendment Bill). Clause 4 of the Levy Amendment Bill will, upon commencement, amend clause 245 of Part 9 Division 2 of this Bill to impose the levy and provide for the amount of levy payable in respect of each leviable passenger service transaction to be calculated by reference to the fare paid for the on-demand passenger transport service. The levy will be 10% of the fare to a maximum of \$10 per transaction.

Part 9 Division 2 of this Bill provides for the administration of the levy. Clause 329 of this Bill will amend the *Taxation Administration Act 2003* to prescribe Part 9 Division 2 as a taxing Act for the purposes of that Act. It is proposed that the CEO for the purposes of this Bill will administer the levy pursuant to a delegation from the Commissioner of State Revenue, drawing on the Commissioner's expertise with taxation matters where required.

Adjustment assistance payments

Part 9 Division 3 of the Bill makes provision for transition assistance grants to country taxi-car licensees in the Mandurah and Murray local government districts to assist these licensees in adjusting to the new operating environment and increased competition in these regions.

The provisions will enable holders of country taxi-car licenses that authorise operation of the licensed vehicle in the local government districts of Mandurah or Murray, issued pursuant to the *Transport Co-ordination Act 1966*, to apply for an adjustment assistance grant in respect of each relevant country taxi-car licence they hold.

As at end June 2018, there were 36 country taxi-car licenses in existence in respect of the district of Mandurah, and 3 in respect of the district of Murray.

Under the relevant provisions, a person will be eligible to apply for a grant provided they are currently the licensee, and either:

- obtained the licence before 17 March 2018; or
- if they became the owner on or after 17 March 2018, provided they had applied under the *Transport (Country Taxi-car) Regulations 1982* to be transferred the licence before that date.

This date coincides with the Minister for Transport's announcement and advice to the relevant licensees, of the Government's intention to provide assistance to relevant licensees in these regions. Successful applicants will receive a grant of \$10,000 per licence.

PART 1 – PRELIMINARY

Part 1 contains the short title, commencement provisions, terms used and key definitions applicable to the Bill's scope and interpretation including definitions of on-demand passenger transport service, regular passenger transport service, tourism passenger transport service, on-demand booking service and when a person will be considered to be driving a vehicle or providing a service for the transport of passengers for hire or reward.

1. Short title

Clause 1 provides that when this Bill is passed by Parliament and receives Royal Assent, it will be known as the *Transport (Road Passenger Services) Act 2018*.

2. Commencement

Clause 2 sets out when the provisions of the Bill will commence operation.

Clause 2(a)

Under clause 2(a), Part 1 of the Bill will commence operation on the day on which the Bill receives Royal Assent and becomes an Act. Part 1 of the Bill contains confirmation of the Bill's short title, the commencement details of each Part of the Act and the key terms and definitions which underpin the provisions of the Act.

Clause 2(b)

Under clause 2(b), the substantive provisions of the Act will commence operation on the day or day(s) fixed by proclamation. Different provisions of the Act may be proclaimed to commence on different days.

A staged commencement of the Bill's provisions will be necessary to ensure that industry has time to adjust to the reforms, enable necessary supporting systems and subsidiary legislation to be put in place, and to ensure there is an appropriate transition from the buy-back of taxi plates to the requirement for vehicles used in passenger

transport services to be subject to the new passenger transport vehicle authorisation, required by Part 6 of the Bill.

As part of the buy-back, the plate owner's ownership rights in respect of the plate will cease. However, those plates may have been used, up until the point of buy-back, to authorise the operation of a vehicle as a taxi by either the plate owner, or by another person under an arrangement with the plate owner. To ensure vehicles equipped as taxis can continue to lawfully operate, and that there is clarity as to the legislative regime that applies at any given time, it is intended to commence the provisions of Part 6 of the Bill and repeal the Taxi Act, immediately following the grant of the buy-back payments.

3. Objects of the Bill

Clause 3 states the objects of the Bill.

The road passenger transport service industry, and particularly the on-demand passenger transport sector, has faced a range of challenges in recent years, including the emergence of new participants in the industry, new approaches to service delivery, often connected with technological changes and shifting consumer expectations.

This Bill introduces a new regime for the effective regulation of the road passenger transport industry by amending and repealing existing legislation and replacing it with a single, contemporary regime which provides a simpler, less prescriptive framework that will enable the continued development and operation of innovative passenger transport services.

Clause 3(a)

Clause 3(a) provides that an object of this Bill is to provide for a safe, flexible, responsible, innovative and customer-focused road passenger transport industry. This will be achieved, in part, by the inclusion of safety duties in Part 2 of the Bill that will establish a clear chain of accountability for those with a key role in the delivery of road passenger transport services, accompanied by a modern suite of enforcement and information sharing powers.

The primary focus of requirements to be set by the Bill, and its supporting regulations, is the safety of services and accountability of service providers. The types of services provided and the way those services are provided will be largely up to service providers to determine, enabling businesses to respond to customer needs and preferences in competition with other providers.

Clause 3(b)

Clause 3(b) provides that an object of this Bill is to enable the development and operation of innovative and accessible road passenger transport services that contribute to the mobility and safety of the people of Western Australia.

Access to road passenger transport services, and in particular on-demand passenger transport services, plays an important role in the mobility of Western Australians and visitors to the State, some of whom may have specific needs with respect to

accessibility that may prevent or limit their ability to access other modes of transport, or to drive a vehicle themselves in order to get from place to place.

The Bill includes powers to make regulations in relation to the accessibility of passenger transport services to different classes of passengers (clause 265(2)(b)), as well as in respect of specifications and requirements for vehicles used for the transport of passengers who have a disability and any wheelchairs or other aids required by those persons. Dealing with these matters through regulation making powers will ensure such requirements can be imposed when and where appropriate, and modified as required in order to accommodate changing requirements and ensure road passenger transport remains accessible, particularly to those who rely on it most.

Clause 3(c)

Clause 3(c) provides that an object of this Bill is to provide for an industry-funded buy-back scheme for owners of taxi plates issued under the *Taxi Act 1994*. Part 9 Division 1 provides for the buy-back scheme. Part 9 Division 2, in conjunction with the Transport (Road Passenger Services) Amendment Bill 2018, makes provision for the on-demand passenger transport levy that is to fund the scheme.

Clause 3(d)

Clause 3(d) provides that an object of the Bill is to provide for adjustment assistance grants for certain country taxi-car licensees operating in the Mandurah and Murray local government districts. Provision is made for these adjustment assistance grants in Part 9 Division 3 of the Bill.

4. Terms used

Clause 4(1)

Clause 4(1) defines various terms used in this Bill.

approved means approved in writing by the CEO.

approved medical report means a report complying with the requirements of the regulations for a medical report.

associated booking service, in relation to an authorised on-demand booking service (the **principal booking service**), means another on-demand booking service the provider of which has an association arrangement with the provider of the principal booking service in accordance with clause 27.

Clause 27(1) of the Bill requires a person who provides an on-demand booking service to be authorised to do so. However, the Bill allows for an on-demand booking service provider (associated booking service) to enter into an 'association arrangement' with an authorised on-demand booking service (principal booking service).

Clause 27(2) provides that a provider of an associated booking service does not need to be authorised to provide the service if they have an association arrangement with a principal booking service.

association arrangement means an arrangement between booking services that meets the prescribed requirements.

Clause 27(1) of the Bill requires a person who provides an on-demand booking service to be authorised to do so. However, the Bill allows for an on-demand booking service provider (associated booking service) to enter into an 'association arrangement' with an authorised on-demand booking service (principal booking service).

Pursuant to clause 27(2), a provider of an associated booking service does not need to be authorised to provide the service if they have an association arrangement with a principal booking service. A principal booking service will be responsible for the prescribed functions in respect of any booking services provided by the associated booking service under the arrangement.

Although association arrangements will largely be private agreements between booking service providers, regulations will set out the minimum requirements that an association arrangement must meet. This is intended to include requirements that the arrangement:

- be in the form of a written agreement between the two booking service providers;
- make clear which booking services provided by the associated booking service are captured by the association arrangement, so that it is clear which services the principal booking service has responsibility for; and
- include acknowledgement by the principal booking service provider that the principal booking service is responsible for the prescribed functions in respect of the on-demand booking services covered by the arrangement. This is likely to include matters such as certain reporting and record keeping requirements, and will include functions in respect to the on-demand passenger transport levy, such as lodging returns, being registered for the levy and paying the levy in respect of leviable passenger service transactions carried out by the associated booking service.

authorised officer has the meaning given in clause 166. Authorised officers will have the ability to exercise the enforcement powers of this Bill.

authorised on-demand booking service means an on-demand booking service the provider of which is authorised under Part 3 to provide the service. 'On-demand booking service' is defined in clause 10.

authorised regular passenger transport service means a regular passenger transport service the provider of which is authorised under Part 4 to provide the service. 'Regular passenger transport service' is defined in clause 6.

business of providing a prescribed passenger transport service —

- (i) includes a business of a kind that the regulations provide is a business of providing a prescribed passenger transport service; and

- (ii) does not include a business of a kind that the regulations provide is not a business of providing a prescribed passenger transport service.

This will ensure that any uncertainty as to whether or not a certain business is a business of providing a prescribed passenger transport service can be addressed through regulations.

Pursuant to the definition of 'passenger transport service' in this Bill, the passenger transport services to be regulated are:

- on-demand passenger transport services (defined in clause 5);
- regular passenger transport services (defined in clause 6);
- tourism passenger transport services (defined in clause 7); and
- prescribed passenger transport services.

'Prescribed passenger transport service' is defined by clause 4(1) to mean a service for the transport of passengers by vehicle for hire or reward that is prescribed.

category of passenger transport service means a category of passenger transport service listed in clause 125. Clause 125 lists the categories of passenger transport service regulated by this Bill that a passenger transport vehicle may be authorised for use in the provision of.

CEO means the chief executive officer of the Department.

close associate has the meaning given in clause 12.

Commissioner of Police means the person who is the Commissioner of Police under the *Police Act 1892*.

community transport service has the meaning given in clause 8.

controlled operations officer means a person authorised under clause 215.

conviction – in addition to its ordinary meaning, 'conviction' is to include where a person was found guilty of an offence, or where a person pleaded guilty to an offence and the court accepted the plea, whether or not a conviction was recorded in relation to the offence.

courtesy transport service has the meaning given in clause 9.

criminal record check means a document issued by the Police Force of Western Australia, the Australian Federal Police or another body or agency approved by the CEO that sets out details of a person's criminal conviction history, if any, for offences committed in Western Australia or another Australian jurisdiction.

Department means the department of the Public Service principally assisting the Minister in the administration of this Bill. It is intended that the provisions of this Bill will be the responsibility of the Minister for Transport and that the Minister will be assisted by the Department of Transport in its administration.

driver authorisation document means a driver authorisation document issued under clause 102.

driver's licence has the meaning given in the *Road Traffic (Authorisation to Drive) Act 2008* section 3(1).

driving authorisation means:

- (i) a driver's licence; or
- (ii) a licence or other authorisation under a law of another State or a Territory authorising the person to drive a vehicle on a road other than solely for the purpose of learning to drive a vehicle.

hire or reward has the meaning given in clause 11.

infringement notice means a notice issued to a person under a written law:

- (i) alleging the commission of an offence; and
- (ii) offering the person an opportunity, by paying an amount of money prescribed under the written law and specified in the notice, to have that matter dealt with out of court.

interstate driver authorisation means an authorisation issued under a law of another State or a Territory that:

- (i) authorises a person to drive a vehicle to transport passengers for hire or reward; and
- (ii) meets the prescribed criteria.

interstate vehicle authorisation means an authorisation issued under a law of another State or a Territory that:

- (i) authorises a vehicle to transport passengers for hire or reward; and
- (ii) meets the prescribed criteria.

learner's permit has the meaning given in the *Road Traffic (Authorisation to Drive) Act 2008* section 3(1).

levy means the on-demand passenger transport levy referred to in clause 245.

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* as being in the medical profession.

officer, in relation to a provider of an on-demand booking service, a passenger transport service or a passenger transport vehicle:

- (i) in relation to a body corporate, has the same meaning as officer has in relation to a corporation under the *Corporations Act 2001* (Commonwealth) section 9; and

- (ii) in relation to any other provider, means an individual who has the capacity to make decisions in relation to the operations of the on-demand booking service or passenger transport service or the provision of passenger transport vehicles.

on-demand booking service has the meaning given in clause 10.

on-demand booking service authorisation means an authorisation under Part 3 to provide an on-demand booking service.

on-demand charter passenger transport service means an on-demand passenger transport service that does not include a rank or hail service.

This is the kind of service provided by charter vehicles which are not permitted to operate in the manner of a taxi.

on-demand driver means a person who drives an on-demand vehicle for use in providing an on-demand passenger transport service.

on-demand passenger transport service has the meaning given in section 5.

on-demand rank or hail passenger transport service means an on-demand passenger transport service that includes a rank or hail service.

In this clause ‘rank or hail service’ is defined as a service in which a person can hail or hire an on-demand vehicle while it is standing or plying or touting for hire on a road or in another place accessible to the public.

This is the kind of service provided by taxis – it includes rank or hail services as well as pre-booked services.

on-demand vehicle means a vehicle used or intended to be used in providing an on-demand passenger transport service.

passenger includes a person acting in the capacity of controlled operations officer but does not include a person carrying out work or on duty in any of the following capacities:

- (i) a person employed in relation to the provision of a passenger transport service;
- (ii) a person carrying out work for the provider of a passenger transport service;
- (iii) an authorised officer.

passenger transport authorisation means:

- (i) an on-demand booking service authorisation; or
- (ii) a regular passenger transport service authorisation; or
- (iii) a passenger transport driver authorisation; or
- (iv) a passenger transport vehicle authorisation.

These are the key authorisations required in connection with the provision of the different passenger transport services regulated by this Bill – the type of authorisation

required will depend on the type of passenger transport service being provided and the person's role in the provision of that service.

In the case of the passenger transport driver authorisation, this is required to be held by a person who drives a vehicle to transport passengers for hire or reward regardless of whether the transport of passengers involves a passenger transport service of a kind that is regulated by this Bill. There are instances in which a person can transport passengers for hire or reward that is not in the context of an on-demand, regular or tourism passenger transport service. For example, a service within the meaning of a courtesy service as defined in clause 9, would not be an on-demand, regular or tourism passenger transport service, but the driver of the vehicle providing the courtesy service may be transporting passengers for hire or reward if they are employed specifically for that purpose.

passenger transport driver means a person who drives a vehicle for the purpose of transporting passengers for hire or reward.

passenger transport driver authorisation means a passenger transport driver authorisation under Part 5.

passenger transport service – this term captures the following:

- (i) an on-demand passenger transport service (defined in clause 5);
- (ii) a regular passenger transport service (defined in clause 6);
- (iii) a tourism passenger transport service (defined in clause 7);
- (iv) a prescribed passenger transport service (defined in clause 4(1)).

passenger transport vehicle means a vehicle used or intended to be used in providing a passenger transport service.

passenger transport vehicle authorisation means a passenger transport vehicle authorisation under Part 6.

prescribed means prescribed by the regulations.

prescribed passenger transport service means a service for the transport of passengers by vehicle for hire or reward that is prescribed.

Pursuant to the definition of 'passenger transport service' in this Bill, the passenger transport services to be regulated are:

- on-demand passenger transport services (defined in clause 5);
- regular passenger transport services (defined in clause 6);
- tourism passenger transport services (defined in clause 7); and
- prescribed passenger transport services.

On-demand, regular and tourism passenger transport services are discrete kinds of passenger transport service that involve the transport of passengers for hire or reward.

They are the key passenger transport service categories currently in operation and regulated pursuant to existing laws.

An ability to prescribe additional types of passenger transport services is intended to ensure that the regulatory framework provided by this Bill is flexible, and able to respond to and accommodate the innovative industry to which it is intended to apply.

Should a type of passenger transport service emerge that is not captured by the existing categories of on-demand, regular or tourism passenger transport service, or which is not appropriately regulated in one of those categories, regulations may be made to prescribe that service as one to which the provisions of the Bill relevant to prescribed passenger transport services will apply. A person who provides any passenger transport service that is prescribed will be subject to the safety duties in Part 2 of the Bill, and the requirements of Part 6 in respect to vehicle authorisation.

provide a prescribed passenger transport service means carry on the business of providing a prescribed passenger transport service.

‘Prescribed passenger transport service’ is defined in clause 4(1) to mean a service for the transport of passengers by vehicle for hire or reward that is prescribed.

Whether or not a person is ‘carrying on the business’ of providing a prescribed passenger transport service would generally depend on a range of factors, such as whether the service is provided in an organised way, on a repeated basis and with the aim of generating revenue through charging of a fare or for other consideration. It does not matter if the person providing the service is doing so for profit, or on a not-for-profit basis.

A person who provides a passenger transport service that is not available to members of the public may not be considered to be carrying on a business – for example, if the service is only available to members of a defined group such as a club, nursing home or school, the person providing that service is unlikely to be carrying on a business.

If the service is made available to other people, including members of the public, in addition to members of a defined group, then the provider of the service may be considered to be providing a service within the meaning of the Bill.

If a business or organisation contracts with, or engages, another person to provide passenger transport for their clients or members, that business or organisation is unlikely to be treated as the person providing the passenger transport service under this Bill. However, the person contracted or engaged to provide that service is likely to be carrying on a business of providing the service, and would therefore be subject to the provisions of this Bill.

An employee of a person who is carrying on the business of providing a prescribed passenger transport service is not intended to be treated as the provider of the service for the purposes of the Bill, even though they may have a role in its provision.

provide a regular passenger transport service has the meaning given in clause 6(2).

provide a tourism passenger transport service has the meaning given in clause 7(2).

provide an on-demand booking service has the meaning given in clause 10(2).

provide an on-demand passenger transport service has the meaning given in clause 5(2).

provider of an on-demand booking service means a person who provides an on-demand booking service.

provider of an on-demand vehicle means a person who carries on the business of providing one or more vehicles for use in providing an on-demand passenger transport service but does not include a person in a prescribed class of person.

provider of a passenger transport service means a person who provides a passenger transport service.

provider of a passenger transport vehicle means a person who carries on the business of providing one or more vehicles for use in providing a passenger transport service but does not include a person in a prescribed class of person.

provider of a regular passenger transport service means a person who provides a regular passenger transport service.

rank or hail service means an on-demand passenger transport service under which a person can hail or hire an on-demand vehicle while it is standing or plying or touting for hire on a road or in another place accessible to the public.

A rank or hail service is a kind of on-demand passenger transport service provided by taxis. A vehicle authorised to provide a rank or hail service will also be able to carry out pre-booked, on-demand services.

regular passenger transport service has the meaning given in clause 6.

regular passenger transport service authorisation means an authorisation under Part 4, to provide a regular passenger transport service.

responsible officer, in relation to the provider of an authorised on-demand booking service, means a person:

- (i) who is nominated under clause 29(4)(c) or the regulations to represent the provider in providing the on-demand booking service; and
- (ii) who meets the criteria set out in clause 30.

safety duty has the meaning given in clause 14(1).

safety standard has the meaning given in clause 14(2).

taking a booking includes the hiring of a vehicle as a result of a rank or hail service.

This means that in the Bill, taking a booking captures the taking of:

- pre-bookings, including:

- bookings taken for the provision of a service, in advance, for a specified day and time; and
- bookings taken for the immediate provision of a service; and
- 'on the spot' bookings, where the passenger has hailed or hired the vehicle as a result of vehicle standing or plying or touting for hire.

tourism passenger transport service has the meaning given in clause 7.

traffic record check means a document issued by the Police Force of Western Australia or another body or agency approved by the CEO that sets out or summarises in a manner acceptable to the CEO either or both of the following:

- (i) the convictions of an individual for driving-related offences under a law of this State, another State or a Territory; or
- (ii) the infringement notices issued to an individual for alleged driving-related offences under a law of this State, another State or a Territory.

vehicle means a motor vehicle as defined in the *Road Traffic (Administration) Act 2008* section 4.

This definition means that the provisions of this Bill for the regulation of passenger transport vehicles only apply to motorised vehicles – hire or reward passenger transport services by human powered or other forms of non-motorised vehicle are not regulated by this Bill.

vehicle licence means a vehicle licence granted under the *Road Traffic (Vehicles) Act 2012*.

Clause 4(2)

Clause 4(2) provides that a reference to a passenger or hirer of a vehicle includes a reference to a prospective passenger or prospective hirer of the vehicle.

Clause 4(3)

Various provisions of the Bill impose requirements on the person who provides a passenger transport service. Clause 5(2) of the Bill provides that the term 'provide an on-demand passenger transport service' means carry on the business of providing an on-demand passenger transport service. Similar provision is made in clauses 4(1) 6(2) and 7(2), in relation to prescribed passenger transport services, regular passenger transport services and tourism passenger transport services, respectively.

Clause 4(3) specifies that, a person is not to be taken to provide a passenger transport service solely because the person drives a vehicle for use in providing that service, operates a vehicle for use in providing that service or provides a vehicle for use in providing that service. The driver, provider or operator of a vehicle that is used in the provision of a passenger transport service may or may not be the same person who is carrying on the business of providing that service - this will depend on factors such

as the nature of the business model used in connection with the provision of the service, and the person's role in respect of that service.

Whether or not a person is 'carrying on the business' would generally depend on a range of factors, such as whether the service is provided in an organised way, on a repeated basis and with the aim of generating revenue through charging of a fare or for other consideration. It does not matter if the person providing the service is doing so for profit, or on a not for profit basis.

A person who provides passenger transport services that are not available to members of the public may not be considered to be carrying on a business – for example, if the service is only available to members of a defined group such as a club, nursing home or school the person providing that service is unlikely to be carrying on a business.

If a business or organisation contracts with, or engages, another person to provide passenger transport for their clients or members, that business or organisation is unlikely to be treated as the person providing the passenger transport service under this Bill. However, the person contracted or engaged to provide that service is likely to be carrying on a business of providing the service, and would therefore be subject to the provisions of this Bill.

If the service is made available to other people, including members of the public, in addition to members, then the provider of the service may be considered to be providing a service within the meaning of the Bill.

An employee of the provider of a passenger transport service is not intended to be treated as the provider of the service for the purposes of the Bill solely due to their employment, even though they may have a role in its provision. However, depending on the capacity in which they are employed or their role in the provision of the service, they may be subject to some duties under the Bill – for example, officers of providers of passenger transport services have a duty under Part 2 of the Bill to ensure that the provider complies with their safety duty.

Clause 4(4)

Clause 4(4) states that on or after the day on which clause 303 commences, a reference in this Bill to the *Taxi Act 1994* is a reference to that Act as in force immediately before that day. This will ensure that provisions of the Bill that operate by reference to the Taxi Act following its repeal, will still operate as intended.

5. On-demand passenger transport service

This clause defines on-demand passenger transport service. Under this Bill, providers of booking services in respect of on-demand passenger services, vehicles used in the provision of on-demand passenger transport services, and the drivers of those vehicles need to be authorised for those purposes.

Clause 5(1)

Clause 5(1)(a) provides that an on-demand passenger transport service is:

- a service for the transport by vehicle of passengers, within or partly within, the State of Western Australia, for hire or reward; and
- in which the passenger substantially determines the time and commencement and termination locations of the journey.

Clause 4(1) of the Bill defines 'vehicle' to mean a motor vehicle within the meaning of the *Road Traffic (Administration) Act 2008*.

Clause 11 provides some parameters as to when a service will or will not be considered to provide for the transport of passengers for hire or reward.

The defining feature of on-demand passenger transport services is its demand responsive nature. The passenger or hirer is the person who determines when, where and whether the service is provided and can vary or cancel the service en route. This type of passenger transport service has traditionally been provided by taxis and charter vehicles.

In some cases, services intended to be regulated as on-demand passenger transport services may not pick up the passenger from, or finish the journey in, the exact location requested. For example, in the case of some commercial 'pool' services where the passenger share's their on-demand journey with other, unrelated parties travelling in the same general direction at the same time, the passenger may be required to travel a short distance to a rendezvous or pick-up point. Local traffic conditions or safety considerations may also result in a journey commencing or finishing in a location other than the specific location requested by the hirer or passenger. The reference in clause 5(1)(a)(ii) to the hirer or passenger 'substantially' determining the time and start and finish locations of the journey ensures that such journeys are still within the meaning of on-demand passenger transport service.

On-demand passenger transport services may be on-demand charter passenger transport services or on-demand rank or hail passenger transport services – the only difference being that an on-demand charter passenger transport service is not permitted to include a 'rank or hail service'.

Clause 4(1) of the Bill defines rank or hail service to mean an on-demand passenger transport service under which a person can hail or hire an on-demand vehicle while it is standing or plying or touting for hire on a road or in another place accessible to the public.

Like charter services, on-demand rank or hail services may be pre-booked, enabling both the hirer and booking service provider to gather information, or have access to a person who can provide information about the journey and the identities of the people involved. Rank or hail services, where a vehicle is engaged on the spot by the hirer, do not result in the same kinds of information being as readily available. For this reason, there is a higher degree of risk associated with the journey for both passengers and hirer and different kinds of regulatory requirements are to be imposed on rank or hail services in order to manage these risks. This may include different requirements as to signage, and a requirement for installation of camera equipment in vehicles used to provide these services. Regulations will provide flexibility to adjust the requirements

applicable to on-demand charter and on-demand rank or hail services if their risk profiles change over time.

Clause 5(1)(b) provides that an on-demand passenger transport service is a service or other thing that the regulations provide is an on-demand passenger transport service. The rapid pace of service delivery innovation means that it is difficult for regulators to foresee all possible permutations of a service. This regulation making power will ensure the legislation provides flexibility to capture any new services that emerge that are on-demand in nature, but which may fall outside of the existing definition, capturing them in the chain of accountability and avoiding the current situation where some new industry participants are unable to be effectively regulated on a level playing field with their competitors.

A person who carries on the business of taking bookings for, or facilitating the provision of, on-demand passenger transport services, will need to be authorised to provide an on-demand booking service, pursuant to Part 3 of the Bill and will be subject to safety duties pursuant to Part 2.

Drivers and providers of vehicles used in the provision of on-demand passenger transport services will be subject to the safety duties in Part 2 of the Bill.

Clause 5(2)

Clause 5(2) states that in this Bill 'provide an on-demand passenger transport service' means carry on the business of providing an on-demand passenger transport service.

Whether or not a person is 'carrying on the business' of providing an on-demand passenger transport service would generally depend on a range of factors, such as whether the service is provided in an organised way, on a repeated basis and with the aim of generating revenue through charging of a fare or for other consideration. It does not matter if the person providing the service is doing so for profit, or on a not-for-profit basis.

A person who provides passenger transport services that are not available to members of the public may not be considered to be carrying on a business – for example, if the service is only available to members of a defined group such as a club, nursing home or school the person providing that service is unlikely to be carrying on a business. If the service is made available to other people, including members of the public, in addition to members, then the provider of the service may be considered to be providing a service within the meaning of the Bill.

If a business or organisation contracts with or engages another person to provide passenger transport for their clients or members, that business or organisation is unlikely to be treated as the person providing the passenger transport service under this Bill. However, the person contracted or engaged to provide that service is likely to be carrying on a business of providing the service, and would therefore be subject to the provisions of this Bill.

An employee of a person who is carrying on the business of providing an on-demand passenger transport service is not intended to be treated as the provider of the service for the purposes of the Bill, even though they may have a role in its provision.

Connected with this, clause 4(3) specifies that a person is not to be taken to provide a passenger transport service solely because the person drives a vehicle for use in providing that service, operates a vehicle for use in providing that service or provides a vehicle for use in providing that service. The driver, provider or operator of a vehicle that is used in the provision of a passenger transport service, including an on-demand passenger transport service, may or may not be the same person who is carrying on the business of providing that service - this will depend on factors such as the nature of the business model used in connection with the provision of the service, and the person's role in respect of that service.

Clause 5(4) also makes provision for regulations to provide that a business of a prescribed kind is or is not a business of providing an on-demand passenger transport service.

The providers of on-demand passenger transport services will be subject to the safety duties in Part 2 of the Bill.

Clause 5(3)

Clauses 5(3)(a) and (b) provide that courtesy transport services and community transport services are not on-demand passenger transport services.

This means that a passenger transport service that is on-demand in nature will be excluded from treatment as an on-demand passenger transport service under this Bill, if it also has the characteristics of a community or courtesy transport service. Community and courtesy transport services are generally low risk and do not operate in direct competition with the on-demand sector.

Community transport service' is defined by clause 8 to mean a community-based service that is not established, or principally established for profit or commercial gain and that is designed:

- to benefit individuals or groups within a local community who are in need of some form of assistance; or
- to assist individuals or groups within a local community to participate to a greater degree in the life of the community (including the wider community); or
- to achieve some other form of community, charitable, educational, benevolent, religious, recreational, sporting or philanthropic purpose at the local level.

'Courtesy transport service' is defined by clause 9 to mean a service that is that is not established, or principally established for profit or commercial gain and that is provided in connection with a service (the primary service) that is not the provision of passenger transport by vehicle, and is provided as a courtesy to the customers or patrons of the primary service.

The provision of some courtesy and community transport services may already be excluded from the meaning of 'provide an on-demand passenger transport service' in this Bill, as their provision would not be considered to be within the meaning of carrying on the business of providing such a service. However, clauses 5(3)(a) and (b) make clear that these kinds of low risk or community based services are not captured by the meaning of on-demand passenger transport service.

This means that the vehicle and booking service involved in the provision of a courtesy or community transport service that is on-demand in nature would not need to be authorised under this Bill. However, the driver of the vehicle providing the service may be transporting passengers for hire or reward if they are employed specifically for that purpose, and will therefore need to be authorised pursuant to Part 5.

Clause 5(3)(c) permits regulations to be made to provide that a service or other thing is not an on-demand passenger transport service. This will ensure any other services not intended to be captured by the legislation can be excluded from the definition.

Clause 5(4)

Clause 5(4) provides that in this Act, a business of a prescribed kind is or is not a business of providing an on-demand passenger transport service. This will ensure that any uncertainty as to whether a certain business is a business of providing an on-demand passenger transport service can be addressed through regulations.

Clause 5(2) defines 'provide an on-demand passenger transport service' to mean carry on the business of providing an-demand passenger transport service.

6. Regular passenger transport service

This clause defines regular passenger transport service. Under this Bill, providers of regular passenger transport services, vehicles used in the provision of regular passenger transport services, and the drivers of those vehicles, need to be authorised for those purposes.

Clause 6(1)

Clause 6(1)(a) defines regular passenger transport service to mean a service for the transport by vehicle of passengers, within or partly within, the State of Western Australia, for hire or reward, that is conducted according to regular routes and timetables, or according to regular routes and at regular intervals.

Clause 4(1) of the Bill defines 'vehicle' to mean a motor vehicle within the meaning of the *Road Traffic (Administration) Act 2008*.

Clause 11 provides some parameters as to when a service will or will not be considered to provide for the transport of passengers for hire or reward.

Regular passenger transport services are generally available on a non-exclusive basis to members of the public and include public bus services such as those provided by the Passenger Transport Authority, as well as some services provided by private operators.

Clause 6(1)(b) provides that a regular passenger transport service is a service or other thing that the regulations provide is a regular passenger transport service. The rapid pace of service delivery innovation means that it is difficult for regulators to foresee all possible permutations of a service. This regulation making power will ensure the legislation provides flexibility to capture any new services that emerge that are appropriately regulated as regular passenger transport services, but which may fall outside of the existing definition, capturing them in the chain of accountability and avoiding the current situation where some new industry participants are unable to be effectively regulated on a level playing field with their competitors.

Drivers and providers of vehicles used in the provision of regular passenger transport services will be subject to the safety duties in Part 2 of the Bill.

Clause 6(2)

Clause 6(2) states that in this Bill 'provide a regular passenger transport service' means carry on the business of providing a regular passenger transport service.

Whether or not a person is 'carrying on the business' of providing a regular passenger transport service would generally depend on a range of factors, such as whether the service is provided in an organised way, on a repeated basis and with the aim of generating revenue through charging of a fare or for other consideration. It does not matter if the person providing the service is doing so for profit, or on a not-for-profit basis.

A person who provides passenger transport services that are not available to members of the public may not be considered to be carrying on a business – for example, if the service is only available to members of a defined group such as a club, nursing home or school the person providing that service is unlikely to be carrying on a business.

If the service is made available to other people, including members of the public, in addition to members, then the provider of the service may be considered to be providing a service within the meaning of the Bill.

If a business or organisation contracts with or engages another person to provide passenger transport for their clients or members, that business or organisation is unlikely to be treated as the person providing the passenger transport service under this Bill. However, the person contracted or engaged to provide that service is likely to be carrying on a business of providing the service, and would therefore be subject to the provisions of this Bill.

An employee of a person who is carrying on the business of providing a regular passenger transport service is not intended to be treated as the provider of the service for the purposes of the Bill, even though they may have a role in its provision.

Connected with this, clause 4(3) specifies that a person is not to be taken to provide a passenger transport service solely because the person drives a vehicle for use in providing that service, operates a vehicle for use in providing that service or provides a vehicle for use in providing that service. The driver, provider or operator of a vehicle that is used in the provision of a passenger transport service, including a regular

passenger transport service, may or may not be the same person who is carrying on the business of providing that service - this will depend on factors such as the nature of the business model used in connection with the provision of the service, and the person's role in respect of that service.

Clause 6(4) also makes provision for regulations to provide that a business of a prescribed kind is or is not a business of providing a regular passenger transport service.

Providers of regular passenger transport services will need to be authorised to do so, pursuant to Part 4 of the Bill and will be subject to safety duties pursuant to Part 2.

Clause 6(3)

Clause 6(3)(a) provides that an on-demand passenger transport service is not a regular passenger transport service. This means that a regular passenger transport service that is on-demand nature will be regulated under this Bill as an on-demand passenger transport service.

For example, if a hirer books multiple journeys over multiple days that have a common route and common times, which may occur in connection with some long term contracts, this would fall into the meaning of regular passenger transport service. However, as the hirer determined the locations and times of the journeys the service would also be within the meaning of an on-demand passenger transport service. The intention is that such services be regulated as on-demand rather than regular passenger transport services.

Clause 6(3)(b) provides that a tourism passenger transport service is not a regular passenger transport service. This means that a regular passenger transport service that is also within the meaning of tourism passenger transport service will be regulated under this Bill as a tourism passenger transport service.

Clause 7(1) of the Bill defines a tourism passenger transport service as a service for the transport of passengers by vehicle for hire or reward, for the purposes of tourism, and that is designed for the carriage of tourists to destinations listed on a publicly available tour itinerary. Tourism services have a specific and limited purpose, and operate in areas where there is a tourism market, and those that operate according to regular routes and timetables generally do not compete with regular passenger transport services due to factors such as the different nature and pricing of the services. Accordingly, such services are to be regulated as tourism rather than regular passenger transport services, meaning the service provider will not need to be authorised to provide a regular passenger transport service.

Clauses 6(3)(c) and (d) provide that courtesy transport services and community transport services are not regular passenger transport services. This means that a passenger transport service that has the characteristics of a regular passenger transport service will be excluded from treatment as a regular passenger transport service under this Bill, if it also has the characteristics of a community or courtesy transport service. Community and courtesy transport services are generally low risk and do not operate in direct competition with the on-demand sector.

Community transport service is defined by clause 8 to mean a community-based service that is not established or principally established for profit or commercial gain and that is designed:

- to benefit individuals or groups within a local community who are in need of some form of assistance; or
- to assist individuals or groups within a local community to participate to a greater degree in the life of the community (including the wider community); or
- to achieve some other form of community, charitable, educational, benevolent, religious, recreational, sporting or philanthropic purpose at the local level.

Courtesy transport service is defined by clause 9 to mean a service that is that is not established, or principally established for profit or commercial gain and that is provided in connection with a service (the primary service) that is not the provision of passenger transport by vehicle, and is provided as a courtesy to the customers or patrons of the primary service.

The provision of some courtesy and community transport services may already be excluded from the meaning of 'provide a regular passenger transport service' as their provision would not be considered to be within the meaning of carrying on the business of providing such a service. However, clauses 6(3)(c) and (d) make clear that these kinds of low risk or community based services are not captured by the meaning of regular passenger transport service.

This means that the vehicle and service provider involved in the provision of a courtesy or community transport service that has the characteristics of a regular passenger transport service would not need to be authorised under this Bill. However, the driver of the vehicle providing the service may be transporting passengers for hire or reward if they are employed specifically for that purpose, and will therefore need to be authorised pursuant to Part 5.

Clause 6(3)(e) permits regulations to be made to provide that a service or other thing is not a regular passenger transport service. This will ensure any other services not intended to be captured by the legislation can be excluded from the definition.

Clause 6(4)

Clause 6(4) provides that in this Act, regulations may provide that a business of a prescribed kind is or is not a business of providing a regular passenger transport service. This will ensure that any uncertainty as to whether a certain business is a business of providing a regular passenger transport service can be addressed through regulations.

Clause 6(2) defines 'provide a regular passenger transport service' to mean carry on the business of providing a regular passenger transport service.

7. Tourism passenger transport service

This clause defines tourism passenger transport service. Under this Bill, vehicles used in the provision of tourism passenger transport services, and the drivers of those vehicles, need to be authorised for those purposes.

Clause 7(1)

Clause 7(1)(a) defines tourism passenger transport service to mean a service for the transport by vehicle of passengers, within or partly within, the State of Western Australia, for hire or reward for the purposes of tourism, and that is designed for the carriage of tourists to destinations listed on a publicly available tour itinerary.

Clause 4(1) of the Bill defines 'vehicle' to mean a motor vehicle within the meaning of the *Road Traffic (Administration) Act 2008*.

Clause 11 provides some parameters as to when a service will or will not be considered to provide for the transport of passengers for hire or reward.

A key element of this definition is that the passenger transport service must be for the purpose of tourism - it is not enough that the service may have been designed to accommodate the carriage of tourists, for example through its route (i.e. airport to hotel).

If a passenger is able to be picked up along the route of the tourism service (i.e. from their hotel or a transit station as the tour leaves/returns from its origin), it is still within the meaning of tourism passenger transport service provided the service is operated according to a publicly available itinerary, and passenger does not have absolute control over the locations for the beginning and the end of the journey and the time of the journey.

Clause 7(1)(b) provides that a tourism passenger transport service is a service or other thing that the regulations provide is a tourism passenger transport service. The rapid pace of service delivery innovation means that it is difficult for regulators to foresee all possible permutations of a service. This regulation making power will ensure the legislation provides flexibility to capture any new services that emerge that are appropriately regulated as tourism passenger transport services, but which may fall outside of the existing definition, capturing them in the chain of accountability and avoiding the current situation where some new industry participants are unable to be effectively regulated on a level playing field with their competitors.

Drivers and providers of vehicles used in the provision of tourism passenger transport services will be subject to the safety duties in Part 2 of the Bill.

Clause 7(2)

Clause 7(2) states that in this Bill 'provide a tourism passenger transport service' means carry on the business of providing a tourism passenger transport service.

Whether or not a person is 'carrying on the business' of providing a tourism passenger transport service would generally depend on a range of factors, such as whether the service is provided in an organised way, on a repeated basis and with the aim of generating revenue through charging of a fare or for other consideration. It does not matter if the person providing the service is doing so for profit, or on a not-for-profit basis.

A person who provides passenger transport services that are not available to members of the public may not be considered to be carrying on a business – for example, if the

service is only available to members of a defined group such as a club, nursing home or school the person providing that service is unlikely to be carrying on a business.

If the service is made available to other people, including members of the public, in addition to members, then the provider of the service may be considered to be providing a service within the meaning of the Bill.

If a business or organisation contracts with or engages another person to provide passenger transport for their clients or members, that business or organisation is unlikely to be treated as the person providing the passenger transport service under this Bill. However, the person contracted or engaged to provide that service is likely to be carrying on a business of providing the service, and would therefore be subject to the provisions of this Bill.

An employee of a person who is carrying on the business of providing a tourism passenger transport service is not intended to be treated as the provider of the service for the purposes of the Bill, even though they may have a role in its provision.

Connected with this, clause 4(3) specifies that a person is not to be taken to provide a passenger transport service solely because the person drives a vehicle for use in providing that service, operates a vehicle for use in providing that service or provides a vehicle for use in providing that service. The driver, provider or operator of a vehicle that is used in the provision of a passenger transport service, including a tourism passenger transport service, may or may not be the same person who is carrying on the business of providing that service - this will depend on factors such as the nature of the business model used in connection with the provision of the service, and the person's role in respect of that service.

Clause 7(4) also makes provision for regulations to provide that a business of a prescribed kind is or is not a business of providing a tourism passenger transport service.

Providers of tourism passenger transport services will be subject to the safety duties in Part 2 of the Bill.

Clause 7(3)

Clause 7(3)(a) makes clear that an on-demand passenger transport service is not a tourism passenger transport service. This means that a tourism passenger transport service that is on-demand in nature will be regulated under this Bill as an on-demand passenger transport service.

For example, if a hirer books a journey for the purpose of sightseeing and determines the locations and times of the journey, even though the hirer of the service may be hiring a vehicle for the purpose of tourism, the service is to be regulated as on-demand rather than a tourism passenger transport service.

Clauses 7(3)(b) and (c) provide that courtesy transport services and community transport services are not tourism passenger transport services.

This means that a passenger transport service that has the characteristics of a tourism passenger transport service will be excluded from treatment as a tourism passenger transport service under this Bill, if it also has the characteristics of a community or courtesy transport service. Community and courtesy transport services are generally low risk and do not operate in direct competition with the on-demand sector.

Community transport service is defined by clause 8 to mean a community-based service that is not established or principally established for profit or commercial gain and that is designed:

- to benefit individuals or groups within a local community who are in need of some form of assistance; or
- to assist individuals or groups within a local community to participate to a greater degree in the life of the community (including the wider community); or
- to achieve some other form of community, charitable, educational, benevolent, religious, recreational, sporting or philanthropic purpose at the local level.

Courtesy transport service is defined by clause 9 to mean a service that is that is not established, or principally established for profit or commercial gain and that is provided in connection with a service (the primary service) that is not the provision of passenger transport by vehicle, and is provided as a courtesy to the customers or patrons of the primary service.

The provision of some courtesy and community transport services may already be excluded from the meaning of 'provide a tourism passenger transport service' as their provision would not be considered to be within the meaning of carrying on the business of providing such a service. However, clauses 7(3)(b) and (c) make clear that these kinds of low risk or community based services are not captured within the meaning of tourism passenger transport service.

This means that the vehicle and involved in the provision of a courtesy or community transport service that has the characteristics of a tourism passenger transport service would not need to be authorised under this Bill. However, the driver of the vehicle providing the service may be transporting passengers for hire or reward if they are employed specifically for that purpose, and will therefore need to be authorised pursuant to Part 5.

Clause 7(3)(d) permits regulations to be made to provide that a service or other thing is not a tourism passenger transport service. This will ensure any other services not intended to be captured by the legislation can be excluded from the definition.

Clause 7(4)

Clause 7(4) provides that in this Act, a business of a prescribed kind is or is not a business of providing a tourism passenger transport service. This will ensure that any uncertainty as to whether a certain business is a business of providing a tourism passenger transport service can be addressed through regulations.

Clause 7(2) defines 'provide a tourism passenger transport service' to mean carrying on the business of providing a tourism passenger transport service.

8. Community transport service

This clause defines community transport service. Providers of community transport services and the vehicles used in the provision of those services will not need to be authorised to provide the service. The drivers of vehicles used in the provision of community transport services may need to be authorised if they are considered to be driving to transport passengers for hire or reward.

Clause 8(1)

Clause 8(1) provides that a community transport service is a community based passenger transport service that is not established, or is not principally established, with a view to profit or commercial gain, and this is designed to:

- (i) benefit individuals or groups within a local community who are in need of some form of assistance; or
- (ii) assist individuals or groups within a local community to participate to a greater degree in the life of the community (including the wider community); or
- (iii) achieve some other form of community, charitable, educational, benevolent, religious, recreational, sporting or philanthropic purpose at the local level.

Community transport services may include services such as those run by local governments to transport senior citizens to community centers, transport services provided by sporting clubs to transport members to events, services for the transport of patients to attend appointments or receive treatments. Some payment may be made for the provision of a community transport service, but to be within this definition, any payment would need to be minimal to avoid the service being considered one that was established with a view to profit or commercial gain.

Community transport services are defined primarily for the purpose of their exclusion from the definitions of the three main kinds of passenger transport service regulated by the Bill – being on-demand, regular and tourism passenger transport services. Community transport services are generally low-risk services, provided to a distinct, exclusive group of people in a local area.

The provision of some community transport services may already be excluded from the meaning of provide an on-demand, regular or tourism passenger transport service, as their provision would not be considered to be within the meaning of carrying on the business of providing such a service. However, the definition of community transport service, and clauses 5(3)(b), 6(3)(d) and 7(3)(c) make clear that such services are not captured by relevant provisions of the Bill.

Persons who take bookings for or provide community transport services do not need to be authorised to do so, and the vehicles used in the provision of the services do not require a passenger transport vehicle authorisation under the Bill (such vehicles will remain subject to requirements imposed on vehicles by the *Road Traffic (Vehicles) Act 2012*). However, drivers of vehicles used in the provision of a community transport service may require a passenger transport driver authorisation if the transport of

passengers in connection with that service is for hire or reward within the meaning of clause 11. This is consistent with existing requirements under the *Road Traffic (Authorisation to Drive) Act 2008* and associated regulations, which require a driver's licence to be endorsed in order for the holder to be authorised to drive a vehicle to carry passengers for reward.

Clause 8(2)

Clause 8(2)(a)(i) provides that a community transport service includes a service or other thing that the regulations provide is a community transport service. This will ensure that services that are more appropriately treated as community transport services can be included in the definition, and will also enable regulations to address any uncertainty as to whether or not a certain service is a community transport service

Clause 8(2)(a)(ii) provides that a community transport service includes a service declared under clause 8(3). Clause 8(3) provides that the CEO may declare by notice published in the Gazette that a specified service is a community transport service.

Clause 8(2)(b) provides that a community transport service does not include a service or other thing that the regulations provide is not a community transport service. This will ensure that services that are not appropriately treated as community transport services, due to a change in risk profile for example, can be excluded from the definition, and will also enable regulations to address any uncertainty as to whether or not a certain service is a community transport service.

Clause 8(3)

Clause 8(3) provides that the CEO may declare by notice published in the Gazette that a specified service is a community transport service. This provision will enable the CEO to provide confirmation, including in response to a query by a particular community transport service provider, that a specified service is a community transport service, thereby confirming the exclusion of that service from the provisions of the Bill relevant to the regulation of on-demand, regular and tourism passenger transport services.

This provision is intended to ensure that, where required, small scale, community based operations can continue their operations with a degree of certainty as to their status in respect of this Bill.

9. Courtesy transport service

This clause defines courtesy transport service. Providers of courtesy transport services and the vehicles used in the provision of those services will not need to be authorised to provide the service. The drivers of vehicles used in the provision of courtesy transport services may need to be authorised if they are considered to be driving to transport passengers for hire or reward.

Clause 9(1)

Clause 9(1) provides that a courtesy transport service is a passenger transport service that is not established, or is not principally established, with a view to profit or commercial gain, and that:

- is provided in connection with a service (the primary service) that is not the provision of passenger transport by vehicle; and
- is provided as a courtesy to the customers or patrons of the primary service.

The purpose of a courtesy transport service must be connected to another service and not be a key part of the primary service on offer. For example, a service provided by a mechanic to transport customers to a transit or central business district when they have left their own cars for servicing would be a courtesy transport service. A service to shuttle customers who have paid for bus travel from one location to another, from a central transit location on to their individual hotels would not be classed as a courtesy transport service, because the primary service is also the provision of passenger transport by motor vehicle.

Some payment may be made for the provision of a courtesy transport service, or it may be included in the cost of the primary service, but to be within this definition, any payment or charge would need to be minimal to avoid the service being considered one that was established with a view to profit or commercial gain.

Courtesy transport services are defined primarily for the purpose of their exclusion from the definitions of the three main kinds of passenger transport service regulated by the Bill – being on-demand, regular and tourism passenger transport services. Courtesy transport services are generally low-risk services, provided to a distinct, exclusive group of people who are accessing a specific related service.

The provision of some courtesy transport services may already be excluded from the meaning of provide an on-demand, regular or tourism passenger transport service, as their provision would not be considered to be within the meaning of carrying on the business of providing such a service. However, the definition of courtesy transport service, and clauses 5(3)(a), 6(3)(c) and 7(3)(b) make clear that such services are not captured by relevant provisions of the Bill.

Persons who take bookings for or provide courtesy transport services do not need to be authorised to do so, and the vehicles used in the provision of the services do not require a passenger transport vehicle authorisation under the Bill (such vehicles will remain subject to requirements imposed on vehicles by the *Road Traffic (Vehicles) Act 2012*). However, drivers of vehicles used in the provision of a courtesy transport service may require a passenger transport driver authorisation if the transport of passengers in connection with that service is for hire or reward within the meaning of clause 11. This is consistent with existing requirements under the *Road Traffic (Authorisation to Drive) Act 2008* and associated regulations, which require a driver's licence to be endorsed in order for the holder to be authorised to drive a vehicle to carry passengers for reward.

Clause 9(2)

Clause 9(2)(a)(i) provides that a courtesy transport service includes a service or other thing that the regulations provide is a courtesy transport service. This will ensure that services that are more appropriately treated as courtesy transport services can be included in the definition, and will also enable regulations to address any uncertainty as to whether or not a certain service is a courtesy transport service.

Clause 9(2)(a)(ii) provides that a courtesy transport service includes a service declared under clause 9(3). Clause 9(3) provides that the CEO may declare by notice published in the Gazette that a specified service is a courtesy transport service.

Clause 9(2)(b) provides that a courtesy transport service does not include a service or other thing that the regulations provide is not a courtesy transport service. This will ensure that services that are not appropriately treated as courtesy transport services, due to a change in risk profile for example, can be excluded from the definition, and will also enable regulations to address any uncertainty as to whether or not a certain service is a courtesy transport service.

Clause 9(3)

Clause 9(3) provides that the CEO may declare by notice published in the Gazette that a specified service is a courtesy transport service. This provision will enable the CEO to provide confirmation, including in response to a query by a particular courtesy transport service provider, that a specified service is a courtesy transport service, thereby confirming the exclusion of that service from the provisions of the Bill relevant to the regulation of on-demand, regular and tourism passenger transport services. This provision is intended to ensure that, where required, businesses that include courtesy services can continue their operations with a degree of certainty as to their status of those services respect of this Bill.

10. On-demand booking service

This clause defines 'on-demand booking service'.

Clauses 27(1) and (2) of the Bill provide that any person who provides an on-demand booking service will be required to be authorised for that purpose, unless they have an association arrangement with the provider of an authorised booking service that meets the prescribed requirements. Part 3 of the Bill makes provision for the authorisation of providers of on-demand booking services.

Clause 10(1)

Clause 10(1)(a) provides that an on-demand booking service is a service that involves:

- (i) taking or facilitating bookings for on-demand vehicles to be used in providing on-demand passenger transport services (whether immediately or at a later time); and
- (ii) communicating the bookings to on-demand drivers or to providers of on-demand passenger transport services.

This captures circumstances where the person who takes or facilitates the booking is not the provider of the on-demand passenger transport service but passes it on to a driver or provider of the on-demand passenger transport service, as well as where the person who takes the booking is also the person who provides the on-demand passenger transport service, and passes the booking on to drivers or vehicles used to provide the service.

Clause 10(1)(b) provides that an on-demand booking service is a service that involves taking or facilitating bookings for on-demand vehicles to be used in providing on-demand passenger transport services (whether immediately or at a later time), where the person who takes or facilitates the bookings is the on-demand driver or the provider of the on-demand vehicle.

This clause captures circumstances where the booking is not necessarily passed on to a third party in order for the service to be provided – such as where the person who takes or facilitates the booking is the driver of the vehicle that is to be used to provide the service, or is the provider of the vehicle.

With respect to clauses 10(1)(a) and (b), clause 4(1) of the Bill defines ‘taking a booking’ to include the hiring of a vehicle as a result of a rank or hail service. This means that a service may be:

- pre-booked (whether with a third party booking service or the provider of the on-demand passenger transport service itself), via a phone call, e-communications tool such as a smart phone application or some other method. This would include:
 - where it is booked in advance for a specified time; and
 - booked for immediate provision; or
- a result of an on-the-spot booking where the passenger has hailed or hired the vehicle as a result of vehicle standing or plying or touting for hire.

Clause 10(1)(c) provides that an on-demand booking service is a service that facilitates the provision of on-demand passenger transport services by providing any of the following services:

- i. communication services for on-demand drivers and on-demand vehicles;
- ii. controlling, co-ordination or administrative or other services for on-demand passenger transport services;
- iii. safety management systems or regulatory compliance services for on-demand passenger transport services, on-demand drivers and other on-demand booking services.

This clause captures a service that may not directly take bookings for on-demand passenger transport services, but which provides services that directly facilitate the provision of an on-demand booking service by another person. It draws on the definition of taxi dispatch service (TDS) in section 3(1) of the Taxi Act and will ensure that a person who plays a direct role in facilitating on-demand passenger services, and who will therefore impact the nature of service delivery and safety outcomes, will be regulated as a booking service and be subject to the safety duties in Part 2 of the Bill.

In many cases, a service captured by clause 10(1)(c), will also be captured by clause 10(1)(a) (or (b)) through taking direct bookings for an on-demand passenger services. For example, services currently regulated as TDSs generally dispatch bookings directly to taxi drivers, as well as facilitate the provision of rank or hail taxi services through the provision of services such as fare schedules, communication networks, or complaint or safety management procedures in respect of those services.

A person who provides a service that has not been designed with intention of facilitating on-demand passenger services is not intended to be captured by clause 10(1)(c). For example, a general communication service for members of the public that is provided by a mobile phone company and which happens to be utilised by persons involved in the provision of on-demand passenger transport services would not be captured, but a radio base available exclusively to on-demand passenger service providers and / or drivers in respect of the provision of on-demand passenger services would be a service of a kind that is captured by this clause.

Clause 10(1)(d) provides that an on-demand booking service is a service or other thing that the regulations provide is an on-demand booking service. The rapid pace of service delivery innovation means that it is difficult for regulators to foresee all possible permutations of a service. This regulation making power will ensure the legislation provides flexibility to capture any new services that emerge that are appropriately regulated as on-demand booking services, but which may fall outside of the existing definition, capturing them in the chain of accountability and avoiding the current situation where some new industry participants are unable to be effectively regulated on a level playing field with their competitors.

Clause 10(2)

Clause 10(2) states that in this Bill ‘provide an on-demand booking service’ means carry on the business of providing an on-demand booking service.

Whether or not a person is ‘carrying on the business’ of providing an on-demand booking service would generally depend on a range of factors, such as whether the service is provided in an organised way, on a repeated basis and with the aim of generating revenue through charging of fees, commission or for other consideration. It does not matter if the person providing the service is doing so for profit, or on a not-for-profit basis.

A person who provides a booking service that is not available to members of the public may not be considered to be carrying on a business – for example, if the service is only available to members of a defined group such as a club, nursing home or school, the person providing that service is unlikely to be carrying on a business.

If the service is made available to other people, including members of the public, in addition to members, then the provider of the service may be considered to be providing a service within the meaning of the Bill.

If a business or organisation contracts with or engages another person to provide a booking service for their clients or members, that business or organisation is unlikely to be treated as the person providing the booking service under this Bill. However, the person contracted or engaged to provide that service is likely to be carrying on a business of providing the service, and would therefore be subject to the provisions of this Bill.

An employee of a person who is carrying on the business of providing an on-demand booking service is not intended to be treated as the provider of the service for the purposes of the Bill, even though they may have a role in its provision.

Through the meaning of on-demand booking service, this Bill will capture a wider range of businesses as on-demand booking service providers, as compared with existing legislation applicable to taxi dispatch services. For example, businesses that provide phone, internet and other booking facilities to the country taxi-car and charter sectors are not regulated by the existing passenger transport framework unless they happen to be the same entity who provides the vehicle required to be licenced for use in the provision of the service.

Many taxi and charter vehicle drivers, in particular self-employed drivers, will also be covered by the definition of a booking service provider, because it is common for them to take bookings directly from customers, and also to pass them on to other drivers. However, drivers (as well as other providers) will not have to be authorised as a provider of an on-demand booking service, if they enter into an arrangement with an authorised on-demand booking service known as an 'association arrangement'. Pursuant to clause 27(3), the authorised on-demand booking service that a booking service provider (the associated provider) enters into an association arrangement with, will then be responsible for the prescribed functions in respect of on-demand booking services provided by the associated provider, in accordance with the association arrangement.

Clause 10(4) also makes provision for regulations to provide that a business of a prescribed kind is or is not a business of providing an on-demand booking service.

Clause 10(5) makes clear that the location of the person and the means by which bookings are obtained or communicated by the person do not affect whether or not a person will be considered to provide an on-demand booking service.

Providers of on-demand booking services will be subject to the safety duties in Part 2 of the Bill.

Clause 10(3)

Clause 10(3) provides that an on-demand booking service does not include a service or other thing that the regulations provide is not an on-demand booking service. This will ensure any services not intended to be regulated as booking services can be excluded from the definition.

Clause 10(4)

Clause 10(4) provides that in this Bill, a business of a prescribed kind is or is not a business of providing an on-demand booking service. This will ensure that any uncertainty as to whether a certain business is a business of providing an on-demand booking service can be addressed through regulations.

Clause 10(2) defines 'provide on-demand booking service' to mean carrying on the business of providing an on-demand booking service.

Clause 10(5)

Clause 10(5) provides that for the purpose of determining whether a person provides an on-demand booking service it does not matter that:

- (a) that a booking is obtained or communicated remotely by means of an electronic device or other means not directly provided by the person who provides the on-demand booking service; or
- (b) that the provider of the on-demand booking service is located outside the State if the on-demand passenger transport service is provided wholly, or partly, within the State.

This clause ensures that providers of services that facilitate bookings through electronic or other indirect means, such as an e-communications smart phone application, as well as providers that are not located in Western Australia, can still be captured by the meaning of provider of an on-demand booking service.

11. Hire or reward

The definitions of the key passenger transport services regulated under this Bill (on-demand, regular and tourism passenger transport) require the transport of passengers provided by the service to be for hire or reward.

Similarly, the requirement for a person to hold a passenger transport driver authorisation in order to drive a vehicle to transport passengers only applies if the transport of passengers is for hire or reward.

Clause 11 makes clear certain circumstances in which the transport of passengers will or will not be considered to be for hire or reward. However, the clause is not intended to limit the normal meaning of hire or reward or the factors that may be relevant to whether the transport of passengers in a particular case is for hire or reward.

Clause 11(1)

Clause 11(1) provides that a person will be considered to be providing a service for the transport of passengers by vehicle for hire or reward, or to be driving a vehicle for the purpose of transporting passengers for hire or reward —

(a) if —

- (i) the amount received or intended to be received for transporting the passengers exceeds, or is intended to exceed, the prescribed amount; or
- (ii) the transport is provided or intended to be provided gratuitously, but with a view to gaining or maintaining custom or other commercial advantage;

or

(b) in the prescribed circumstances.

Clause 11(1)(a)(i) is similar to existing provision made in the *Road Traffic (Authorisation to Drive) Regulations 2014* and will enable regulations to prescribe an amount or amounts reasonable to cover the running costs of a vehicle that, if exceeded, would result in the transport of passengers being considered to be for hire or reward.

This subclause is necessary to ensure that if, in the course of driving the vehicle for private purposes, a person receives a payment from another person of an amount that is, for example, intended to cover fuel costs only, the vehicle, and the person driving the vehicle, is not required to be authorised under this Bill.

For example, people who carry out voluntary work that involves driving ill or infirm members of the community to do their shopping or to attend medical appointments, may receive a small allowance for this, which is intended to cover their fuel costs and wear and tear on the vehicle. This is not intended to be treated as hire or reward by this Bill.

Pursuant to clause 11(1)(a)(ii), the transport of passengers that is provided for no cost, but with the intention of gaining customers or commercial advantage will be regulated pursuant to the Bill, ensuring requirements such as driver authorisation, and safety duties applicable to the persons involved in providing the service, still apply.

Clause 11(6) provides that nothing in subsection 11(1) or (2) limits the circumstances in which a person will be considered to be providing a service for the transport of passengers by vehicle for hire or reward, or to be driving a vehicle for the purpose of transporting passengers for hire or reward. For example, other factors may result in the transport of passengers for an amount less than the amount prescribed pursuant to clause 11(1)(a)(i) nevertheless being considered to be for hire or reward.

Clause 11(1)(b) will enable regulations to be made that make clear that a certain activity or circumstance is considered to be for hire or reward, and is therefore to be subject to relevant provisions of this Bill.

Clause 11(2)

Clause 11(2) provides that a person will be considered to be providing a service for the transport of passengers by vehicle for hire or reward or driving a vehicle for the purpose of transporting passengers for hire or reward, when using the vehicle for standing or plying or touting for hire for that purpose.

This ensures that the driver of a vehicle that is not carrying passengers at a given time, but which is being used in order to procure passengers is still subject to the requirement to hold a passenger transport driver authorisation pursuant to Part 5, and the provider of the vehicle and the passenger transport service is also subject to the requirements of the Bill in respect of the use of the vehicle and the service.

Clause 11(6) provides that nothing in subsection 11(1) or (2) limits the circumstances in which a person will be considered to be providing a service for the transport of passengers by vehicle for hire or reward, or to be driving a vehicle for the purpose of transporting passengers for hire or reward. For example, other factors may result in the transport of passengers for an amount less than the amount prescribed pursuant to clause 11(1)(a)(i), nevertheless being considered to be for hire or reward.

Clause 11(3)

Clause 11(3) provides that a person will not be considered to be driving a vehicle for the purpose of transporting passengers for hire or reward if —

- (a) the person is driving the vehicle in the course of the person's general employment; and
- (b) carrying passengers in that vehicle is an incidental part of the person's other employment duties.

This provision aligns with the exception currently provided for in the *Road Traffic (Authorisation to Drive) Regulations 2014*.

Clause 11(4)

Clause 11(4)(a) provides that a person will not be considered to be providing a service for the transport of passengers by vehicle for hire or reward, or to be driving a vehicle for the purpose of transporting passengers for hire or reward, if the passengers are transported under a vehicle pooling arrangement. Clause 11(5) sets out when passengers are transported under a vehicle pooling arrangement.

Clause 11(4) and (5) are similar to existing provision made by subsections 4(3) and (4) of the *Transport Co-ordination Act 1966* (TCA). Subsection 4(4) of the TCA defines motor vehicle pooling arrangement for the purpose of providing that use of a vehicle pursuant to such an arrangement is not considered to involve use of the vehicle to carry passengers for hire or reward - thereby ensuring such vehicles are not required to be licensed as an omnibus under the TCA by virtue of their use for that purpose.

From the commencement of Part 6 of this Bill, omnibuses will be regulated as passenger transport vehicles – accordingly, provision similar to that in the TCA for the

exclusion of vehicle pooling arrangements from the meaning of hire or reward is made in this clause.

Clause 11(4)(b) provides that a person will not be considered to be providing a service for the transport of passengers by vehicle for hire or reward, or to be driving a vehicle for the purpose of transporting passengers for hire or reward, in the prescribed circumstances. This will ensure that where there is uncertainty as to status of certain activities that are not considered commercial in nature, they can be excluded from the meaning of hire or reward, and therefore from regulation pursuant to this Bill.

Clause 11(5)

Clause 11(4)(a) provides that a person will not be considered to be providing a service for the transport of passengers by vehicle for hire or reward or to be driving a vehicle for the purpose of transporting passengers for hire or reward, if the passengers are transported under a vehicle pooling arrangement. Clause 11(5) sets out when passengers are transported under a vehicle pooling arrangement, as follows:

- (a) the motor vehicle is provided by the driver; and
- (b) the driver would be undertaking the relevant journey in any event; and
- (c) the carriage is not the result of plying or touting for hire by the driver or another person; and
- (d) the maximum number of persons in the motor vehicle, including the driver, is 9; and
- (e) a payment by a passenger is limited to making a contribution to the costs incurred in making the journey and does not involve profit for the driver or any other person.

This definition is on similar terms to that currently included in the TCA, with the key changes being that the vehicle must be provided by the driver, and the number of passengers that may be carried at one time as part of the arrangement is 9. There is no cap imposed under existing provisions. If a person is carrying more than the number of people that can be seated in a vehicle such as a mini-van, it is reasonable that this no longer be deemed to be a vehicle pooling arrangement.

Clause 11(6)

Clause 11(6) provides that nothing in subsection 11(1) or (2) limits the circumstances in which a person will be considered to be providing a service for the transport of passengers by vehicle for hire or reward, or to be driving a vehicle for the purpose of transporting passengers for hire or reward.

12. Close associate

Clause 12 specifies the persons who are considered to be a 'close associate' of an applicant for authorisation to provide an on-demand booking service or the authorised provider of an on-demand booking service.

A close associate's previous involvement in the provision of on-demand booking services and any disqualification offences, prescribed pursuant to Part 3, that they have been convicted of may be considered in the context of an any decision of the CEO as to whether or not to grant an application for, or to suspend or cancel, an on-demand booking service provider authorisation.

Clause 12(1) provides for the meaning of *relevant financial interest*, *relevant position* and *relevant power* in the Bill. Clause 12(2) operates in connection with these meanings and provides that a person is a close associate if person:

- (a) holds or will hold any relevant financial interest in the on-demand booking service or will be entitled to exercise any relevant power (whether in the person's own right or on behalf of any other person), in relation to the on-demand booking service;
- (b) holds or will hold any relevant position, whether in the person's own right or on behalf of any other person, in the on-demand booking service; or
- (c) is or will be engaged as a contractor under a contract of service or employed in the on-demand booking service.

Clause 32(1)(d), (e) and (f) provide that the CEO may refuse to grant an on-demand booking service provider authorisation to a person if:

- a close associate of the applicant has previously held an on-demand booking service authorisation, or an equivalent authorisation in another State or a Territory, and that authorisation has been cancelled; or
- a close associate of the applicant, has been charged with or convicted of a disqualification offence.

Clause 42(1)(h) similarly provides that the CEO may make an order suspending or cancelling an on demand booking service authorisation if a close associate of the provider of the authorised service has held an on-demand booking service authorisation, or an equivalent authorisation in another State or a Territory, and that authorisation has been cancelled.

Clause 43(4) provides the CEO may make an order suspending or cancelling an on-demand booking service authorisation if a close associate of the provider of the service is convicted of a disqualification offence.

Where a person other than the provider of, or an applicant for authorisation as the provider of, an on-demand booking service may exercise a significant influence over that service or affect its operations, these provisions ensure the CEO may take this into account.

13. Crown bound

Clause 13 binds the State and so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

PART 2 – SAFETY OF SERVICES

Part 2 of the Bill establishes the framework and safety duties for persons involved in the provision of road passenger transport services, including the principles, duties and categories of offences for breaching safety duties.

This safety framework, which forms part of the chain of accountability, will underpin the new regime for the regulation of the road passenger transport service industry. The Bill defines each of the persons with a key role in the road passenger transport industry and this Part sets out their safety duties.

The intention is that all persons with a key role in the provision of road passenger transport services are subject to safety duties, and can be held accountable for their acts and omissions in relation to safety. Ultimately, the framework will encourage positive safety practices to the benefit of the industry and the public.

The chain of accountability framework is based on the concept of duty of care and establishes different safety duties for different people, depending on their role in the industry. This framework is similar to that included in other legislation, such as Part III Division 2 of the *Occupational Safety and Health Act 1984*. The New South Wales Parliament recently enacted a similar safety duty framework as part of their road transport industry reform (*Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW)).

Passenger transport services can involve some risk to the providers, users of the services and the general public – for example, risks exist in connection with the use of motor vehicles on roads, in respect to both the vehicle’s safety and the driver’s ability to safely operate a vehicle, and in connection with a degree of anonymity between parties and/or exclusivity of some types of passenger transport services. These services generally involve persons who are otherwise unknown to each other, travelling together in a vehicle for a period of time.

Community expectation is that providers of on-demand booking services, passenger transport services, and passenger transport vehicles, as well as people who drive vehicles to transport passengers for hire or reward, as the people who stand to make a profit from the provision of these services, play a pro-active role in managing and minimising those risks to the extent possible.

Division 1 – Safety duties: principles

14. Safety duties and standards

Clause 14(1) sets out those persons who are subject to the safety duties in Division 2 of this. The persons subject to safety duties are:

- (a) providers of on-demand booking services;
- (b) providers of passenger transport services;
- (c) providers of passenger transport vehicles;
- (d) officers of providers of on-demand booking services or passenger transport vehicles; and

(e) drivers of vehicles used to transport passengers for hire or reward.

Regulations made pursuant to Part 11 Division 2 will set out the safety standards that must be met by certain persons. Clause 14(2) lists the persons to whom the safety standards specified in those regulations will apply. These are providers of on-demand booking services, providers of passenger transport services, providers of passenger transport vehicles and drivers of vehicles used for the purpose of transporting passengers for hire or reward.

15. Principles applying to safety duties

Clause 15 sets out the principles applicable to the application of safety duties for the persons listed in clause 14(1).

A key principle of the chain of accountability framework is that duties assigned to one person shall not be transferrable to another person (clause 15(1)).

It is also possible for a person to fall into more than one class of duty holder at any given time and, therefore, be subject to more than one duty (clause 15(2)). For example, a person who is a provider of an on-demand booking service may also be a driver of a vehicle used to transport passengers for hire or reward and, as such, will be responsible for the safety duties applicable to both.

More than one person can also be subject to the same safety duty at the same time (clause 15(3)). If this occurs, clause 15(4) provides that each person retains responsibility for their duty and must discharge it to the extent to which they have the capacity to influence and control the matter or would have had that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

Division 2 – Primary duty of care

Division 2 sets out the duties of care for each class of duty holders outlined in clause 14(1) and the offences connected with non-compliance with these safety duties.

16. Primary duty of care of providers of on-demand booking services

Clause 16 imposes a duty on persons who provide on-demand booking services to ensure:

- the health and safety of on-demand drivers and other persons while they are engaged in providing the on-demand passenger transport service; and
- the health and safety of passengers and other persons in connection with the on-demand passenger transport service.

‘On-demand booking service’ is defined by clause 10.

Pursuant to clause 10(2), a person who provides an on-demand booking service is person who carries on the business of providing an on demand booking service.

Whether or not a person is ‘carrying on the business’ of providing an on-demand booking service would generally depend on a range of factors, such as whether the service is provided in an organised way, on a repeated basis and with the aim of generating revenue through charging of fees, commission or for other consideration.

It does not matter if the person providing the service is doing so for profit, or on a not-for-profit basis.

A person who provides a booking service that is not available to members of the public may not be considered to be carrying on a business – for example, if the service is only available to members of a defined group such as a club, nursing home or school, the person providing that service is unlikely to be carrying on a business. If the service is made available to other people, including members of the public, in addition to members, then the provider of the service may be considered to be providing a service within the meaning of the Bill.

If a business or organisation contracts with or engages another person to provide a booking service for their clients or members, that business or organisation is unlikely to be treated as the person providing the booking service under this Bill. However, the person contracted or engaged to provide that service is likely to be carrying on a business of providing the service, and would therefore be subject to the provisions of this Bill.

An employee of a person who is carrying on the business of providing an on-demand booking service is not intended to be treated as the provider of the service for the purposes of the Bill, even though they may have a role in its provision.

17. Primary duty of care of providers of passenger transport services

Clause 17 imposes a duty on persons who provide passenger transport services to ensure:

- the health and safety of passenger transport drivers and other persons while they are engaged in providing the passenger transport service; and
- the health and safety of passengers and other persons in connection with the passenger transport service.

‘Passenger transport service’ is defined in clause 4(1) to mean:

- an on-demand passenger transport service (defined by clause 5);
- a regular passenger transport service (defined by clause 6)
- a tourism passenger transport service (defined by clause 7); or
- a prescribed passenger transport service (defined by clause 4(1)).

Pursuant to clauses 4(1), 5(2), 6(2) and 7(2), a person who provides one of the above kinds of passenger transport service is person who carries on the business of providing that kind of service.

Whether or not a person is ‘carrying on the business’ of providing a passenger transport service would generally depend on a range of factors, such as whether the service is provided in an organised way, on a repeated basis and with the aim of generating revenue through charging of fees, commission or for other consideration.

It does not matter if the person providing the service is doing so for profit, or on a not-for-profit basis.

A person who provides a passenger transport service that is not available to members of the public may not be considered to be carrying on a business – for example, if the service is only available to members of a defined group such as a club, nursing home or school, the person providing that service is unlikely to be carrying on a business.

If a business or organisation contracts with or engages another person to provide passenger transport for their clients or members, that business or organisation is unlikely to be treated as the person providing the passenger transport service under this Bill. However, the person contracted or engaged to provide that service is likely to be carrying on a business of providing the service, and would therefore be subject to the provisions of this Bill.

If the service is made available to other people, including members of the public, in addition to members, then the provider of the service may be considered to be providing a passenger transport service within the meaning of the Bill.

An employee of a person who is carrying on the business of providing a passenger transport service is not intended to be treated as the provider of the service for the purposes of the Bill, even though they may have a role in its provision.

18. Primary duty of care of providers of passenger transport vehicles

Clause 18 imposes a duty on a person who provides a passenger transport vehicle used or to be used in providing a passenger transport service to ensure the vehicle is safe and will not cause harm or injury to any person.

The duty applies whether the person provides of a single vehicle or an entire fleet.

‘Passenger transport vehicle’ is defined in clause 4(1) to mean a vehicle used or intended to be used in providing a passenger transport service.

‘Passenger transport service’ is defined in clause 4(1) to mean:

- an on-demand passenger transport service (defined by clause 5);
- a regular passenger transport service (defined by clause 6)
- a tourism passenger transport service defined by clause 7); or
- a prescribed passenger transport service (defined by clause 4(1)).

Pursuant to clause 4(1) a person who provides a passenger transport vehicle is a person who carries on the business of providing one or more vehicles for use in providing a passenger transport service, but does not include a person in a prescribed class of person.

Whether or not a person is ‘carrying on the business’ of providing a passenger transport vehicle for use in providing a passenger transport service would generally depend on a range of factors, such as whether the vehicle is made available on a

repeated basis and with the aim of generating revenue through charging of fees, commission or for other consideration.

Even if a vehicle is only made available to a select group of people, for example, where the provider only permits a particular service provider or a select group of passenger transport drivers to use the vehicle, the provider of the service may be considered to be providing a vehicle within the meaning of the Bill.

An employee of a person who is carrying on the business of providing a passenger transport vehicle is not intended to be treated as the provider of the vehicle for the purposes of the Bill, even though they may have a role in its provision.

19. Primary duty of care of drivers of vehicles used to transport passengers for hire or reward

Clause 19 imposes a duty on the driver of a vehicle, whilst the vehicle is being used for the purpose of transporting passengers for hire or reward to:

- ensure their own health and safety;
- ensure that their acts or omissions do not or may not adversely affect the health and safety of others;
- if the vehicle is being used to provide an on-demand passenger transport service, comply with any reasonable instruction given by the person providing the on-demand booking service to enable that person to comply with this Bill; and
- if the vehicle is being used to provide a passenger transport service, comply with any reasonable instruction given by the person providing the passenger transport service or passenger transport vehicle, to enable that person to comply with this Bill.

Providers of on-demand booking services, passenger transport vehicles and passenger transport services have certain obligations under this Act with respect to safety and other matters. It is therefore appropriate these persons are able to give a driver involved in providing a passenger transport service, reasonable instructions relevant to the provision of the service.

20. Duty of officers

Clause 14(1)(d) provides that the officers of providers of on-demand booking services, passenger transport service and passenger vehicles have safety duties under this Part.

Pursuant to clause 20, an officer of one of these kinds of providers (duty holders) has a safety duty to ensure that the duty holder complies with the safety duty that is applicable to them under clause 16, 17 or 18.

Clause 4(1) defines 'officer' in relation to the provider of an on-demand booking service, passenger transport service, or a passenger transport vehicle. In relation to a body corporate, 'officer' has the same meaning as officer has in relation to a

corporation under section 9 of the *Corporations Act 2001* (Commonwealth). In relation to a provider other than a body corporate, it means an individual who has the capacity to make decisions in relation to the operations of the on-demand booking service, passenger transport service or the provision of passenger transport vehicles.

Officers of providers of on-demand booking services, passenger transport services, or passenger transport vehicles may have a key role in the management or delivery of the service, and may therefore have the capacity to influence safety. This provision ensures that all persons with the capacity to influence the safety of a service have a duty to do so.

21. Safety duty offence: Category 1

Clause 21 provides that a person commits a Category 1 safety duty offence if the person with a safety duty (which includes the duty of an officer of a duty holder) knowingly engages in conduct that breaches that duty and:

- exposes an individual to whom the duty is owed to a risk of death, serious injury or illness; or
- in the case of a breach of an officer's duty pursuant to clause 20, the breach exposes an individual to whom the duty holder of the officer owes a duty, to a risk of death, serious injury or illness.

A Category 1 offence is the most serious offence category of breach of safety duties and is a crime. Crimes must be tried in a superior court of the State of Western Australia. The District Court will have jurisdiction over this offence. The maximum penalty for an individual is \$300,000 and imprisonment for two years.

This penalty is similar to the penalty in the *Occupational Safety and Health Act 1984* for the breach of a workplace duty by an employer, involving gross negligence. In addition, the NSW *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* provides for two years imprisonment for a breach of a Category 1 offence.

The maximum penalty for a body corporate is \$3,000,000.

A person charged with a Category 1 safety duty offence will have a defence to the charge if they can prove that they took reasonable steps to prevent the commission of the offence, as set out in clause 24.

22. Safety duty offence: Category 2

Clause 22 provides that a person commits a Category 2 safety duty offence if the person with the safety duty (which includes the duty of an officer of a duty holder) fails to comply with that duty and:

- exposes an individual to whom the duty is owed to a risk of death, serious injury or illness; or
- in the case of a breach of an officer's duty pursuant to clause 20, the breach exposes an individual to whom the duty holder of the officer owes a duty, to a risk of death, serious injury or illness.

A Category 2 offence is a serious offence category and is a crime. Crimes must be tried in a superior court of the State of Western Australia. The District Court will have jurisdiction over this offence. The maximum penalty for an individual is \$150,000.

This penalty is similar to the penalty in the *Occupational Safety and Health Act 1984* for the breach of a workplace duty by an employer and is the same as a Category 2 offence in the NSW *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

The maximum penalty for a body corporate is \$1,500,000.

A person charged with a Category 2 safety duty offence will have a defence to the charge if they can prove that they took reasonable steps to prevent the commission of the offence, as set out in clause 24.

23. Safety duty offence: Category 3

Clause 23 provides that a person commits a Category 3 safety duty offence if the person with a safety duty (which includes the duty of an officer of a duty holder) fails to comply with that duty.

A Category 3 offence is the least serious safety duty offence. The maximum penalty for an individual is \$50,000. This penalty is the same as that for Category 3 offence in the NSW *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

The maximum penalty for a body corporate is \$500,000.

A person charged with a Category 3 safety duty offence will have a defence to the charge if they can prove that they took reasonable steps to prevent the commission of the offence, as set out in clause 24.

24. Reasonable steps defence

If a person has a safety duty under this Bill, and that duty is breached, the duty holder will have committed an offence.

As provided for by clause 15, everyone involved in the provision of a passenger transport service has a responsibility to ensure safety with respect to their role in the providing the service. A person who has more than one role in the provision of a service will have safety duties for each of those roles.

Clause 24 provides for a 'reasonable steps' defence in respect of Category 1, 2 and 3 safety duty offences provided for in clauses 21, 22 and 23.

Clause 24(1) sets out the matters that a person needs to prove, in order to receive the benefit of the reasonable steps defence, as follows:

- they did not know and could not reasonably be expected to have known that an offence was committed; and
- they had taken all reasonable steps to prevent a breach; or
- there were no reasonable steps they could have been expected to have taken to prevent the breach.

Clause 24(2) sets out some of the matters that a court may have regard to in determining whether a person has established a reasonable steps defence. This includes:

- the circumstances of the alleged offence;
- the measures available and the measures taken to eliminate or minimize the risk of death or serious injury or illness of persons to whom the safety duty was owed;
- the personal expertise or experience that the person or employee or agent of the person had or ought to have had.

This defence will apply to a person charged with a safety duty offence, if they did not know, and could not reasonably be expected to know, that a safety duty was being breached, and they can show that:

- they took all reasonable steps to prevent the breach, or
- there were no reasonable steps they could have taken to prevent the breach.

For the defence to be successful, all reasonable steps must have been taken – not just some.

However, pursuant to this clause, a person charged will have an opportunity to demonstrate that they had implemented business practices that include methods to identify, assess, control, monitor and review situations that put safety at risk.

For example, if an accident involving dangerous driving by the driver of a vehicle used to provide an on-demand passenger service occurred, and resulted in a serious injury to a passenger of the vehicle, the on-demand booking service provider charged with an offence for breaching the duty in clause 16(b) to ensure passenger safety, may have defence if they had effective safety management systems in place to monitor matters such as driver fatigue and the driving history, qualifications and fitness of drivers it dispatches to.

Section 113 of *Road Traffic (Vehicles) Act 2012* includes a similar defence for a person charged with a breach of mass, dimension and loading requirements of vehicles.

25. Conviction of alternative offence

Clause 25 specifies that if someone is charged with a Category 1 offence, they may be convicted of a lesser offence (i.e. Category 2 or Category 3). A person charged with a Category 2 offence may be convicted of a Category 3 offence.

This ensures that if a court is not satisfied that the evidence in a case is sufficient for a conviction of the category 1 or 2 offence with which a person has been charged, but is satisfied that the evidence supports a conviction of a lesser offence, the person may be convicted of the lesser offence without a new prosecution action having to be taken.

PART 3 - ON-DEMAND BOOKING SERVICES

Part 3 provides for the authorisation of on-demand booking service providers, including offences, and the suspension and cancellation of on-demand booking service authorisations, and disqualification of providers.

Division 1 – Interpretation

26. Disqualification offence

Clause 26 provides that in Part 3, ‘disqualification offence’ means an offence under this Act or another written law, a law of the Commonwealth or of another State or a Territory that is prescribed as a disqualification offence.

It is proposed to make regulations prescribing certain offences of a serious nature, as disqualification offences. For example, a breach of a Category 1 safety duty offence may be prescribed as a disqualification offence.

In Part 3, clause 32 provides that if an applicant for authorisation as an on-demand booking service provider (or a close association or responsible officer of the applicant) is charged with or convicted of a disqualification offence, the CEO may (or must) refuse to grant the application according to the circumstances.

Clause 43 similarly provides that if the authorised on-demand booking service provider (or a close association or responsible officer of the provider) is charged with or convicted of a disqualification offence, the CEO may (or must) suspend or cancel the authorisation, according to the circumstances.

Cancellation of an authorisation on the grounds of a disqualification offence will result in the provider being disqualified from holding or obtaining an authorisation for the prescribed period of time relevant to the offence.

Division 2 – Offences

27. Provider of an on-demand booking service must be authorised

Clause 27(1) provides that any person providing an on-demand booking service in the State must be authorised to do so.

Failure to comply with this provision is an offence, the maximum penalty for which is \$40,000 for an individual, and \$200,000 for a body corporate. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

‘On-demand booking service’ is defined in clause 10. In summary, a service that takes bookings for, or facilitates the provision of, on-demand passenger transport services is an on-demand booking service. The meaning of ‘taking a booking’ in clause 4(1), includes the hiring of a vehicle as a result of a rank or hail service, meaning that a person who takes what can be characterised as ‘on the spot’ bookings for on-demand passenger transport services in a rank or hail context may need to be authorised to provide an on-demand booking service, if they are the person who is carrying on the

business of providing the booking service (clause 10(2) states that ‘provide an on-demand booking service’ means carry on the business of providing an on-demand booking service).

Pursuant to clause 27(2), a provider of an on-demand booking service (*associated booking service*) does not need to be authorised to provide the service if they have an ‘association arrangement’ with the provider of another authorised on-demand booking service in relation to that service (the principal booking service).

Clause 27(3) specifies that the provider of the principal booking service will be responsible for the prescribed functions in respect of any booking services provided by the associated booking service under the arrangement.

‘Association arrangement’ is defined in clause 4(1) to mean an arrangement between booking services that meets the prescribed requirements. Association arrangements will largely be private agreements between booking service providers, however, regulations will set out the minimum requirements that they must meet. This is intended to include requirements that the arrangement:

- be in the form of a written agreement between the two booking service providers;
- make clear which booking services provided by the associated booking service are captured by the association arrangement, so that it is clear which services the principal booking service has responsibility for should the associated booking service have an association arrangement with more than one principal booking service; and
- include acknowledgement by the principal booking service provider that the principal booking service is responsible for the prescribed functions in respect of the on-demand booking services covered by the arrangement, such as certain reporting and record keeping requirements, as well as, where relevant during the levy period, according to the location of the services provided, functions in respect to the on-demand passenger transport levy, such as lodging returns, being registered for the levy and paying the levy in respect of leviable passenger service transactions carried out by the associated booking service.

The ability to enter into association arrangements in lieu of becoming authorised to provide an on-demand booking service will likely be most relevant to self-employed drivers of on-demand vehicles authorised to provide rank or hail services – i.e. taxi drivers. Similar to existing arrangements under the Taxi Act where drivers and taxi operators affiliate with different booking services, the association arrangements provided for by the Bill will allow drivers who take bookings directly from hirers for on-demand passenger transport services, to do so without being authorised to provide an on-demand booking service.

28. Provider of on-demand booking service must comply with authorisation conditions

Clause 28 provides that the provider of an on-demand booking service must comply with the conditions of the provider's authorisation. Conditions may be imposed under this Bill or its regulations, or by the CEO pursuant to clause 33(b).

The penalty for failing to comply with any conditions is a fine of \$40,000 for an individual and \$200,000 for a body corporate. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

Division 3 – Authorisation

29. Application for authorisation to provide an on-demand booking service

Clause 29(1) provides who may apply to be authorised to provide an on-demand booking service. This is:

- an individual;
- two or more persons jointly under a partnership or other agreement;
- a body corporate incorporated under a law of this or any other jurisdiction; or
- a prescribed entity.

Clause 29(2) provides that a person who is disqualified from holding or obtaining an on-demand booking service authorisation cannot apply to provide an authorised on-demand booking service. Division 4 of this Part makes provision in respect of disqualification.

The application for the authorisation is to be made to the CEO (clause 29(3)).

Clause 29(4) sets out the requirements for an application. It is to be in the approved form, comply with the requirements of the regulations, be accompanied by the prescribed fee and contain the information required by the CEO. The application must also nominate one or more persons who meet the criteria of 'responsible officer' as set out in clause 30, to represent the applicant in providing the on-demand booking service. A 'responsible officer' of an on-demand booking service provider is defined by clause 4(1) to mean a person nominated by the provider to represent the provider, and who meets the criteria set out in clause 30.

The nomination of a person as a 'responsible officer' must be accompanied by a declaration stating that the nominated person is authorised to represent the provider of the on-demand booking service in providing that service and has access to and is authorised to provide any information relating to the on-demand booking service that is required under this Bill (clause 29(4)(d)(i)). In addition, the declaration must acknowledge that documents given to a responsible officer on behalf of the provider of the on-demand booking service under this Bill are taken to be given to the provider of the service (clause 29(4)(d)(ii)) – this is a result of clause 282(3) of this Bill, which

stipulates that a document which is required to be given by the CEO to the provider of an on-demand booking service is taken to have been given to the provider if it has been given to a responsible officer of the provider of the booking service.

Clause 29(5) requires at least one of the responsible officers for an on-demand booking service provider to be a resident of the State of Western Australia. This is intended to ensure that even if the on-demand booking service provider is not located in, or does not have their principal place of business in this State, there is still a person in the State who can oversee, identify and address safety matters relevant to the operation of the on-demand booking service. This also ensures that there is a person in the State that the regulator can deal with in respect of the on-demand booking service provider, including to serve documents on the provider where required.

Clause 29(6) provides that if the applicant is a body corporate, at least one of the persons nominated to be a responsible officer must be a director or manager of the body corporate.

Clause 29(7) provides that the CEO may request, by written notice, further information to relevant to the application. The written notice must specify the time that the information must be provided to the CEO to continue the application process, which will be at least 30 days.

30. Responsible officers

Clause 30 sets out the criteria a person must meet in order to be a responsible officer of the provider of an on-demand booking service provider.

Clause 29(4) requires an applicant for authorisation as on-demand booking service to nominate one or more persons who meet the criteria in clause 30, to represent the applicant in providing the on-demand booking service. A 'responsible officer' of an on-demand booking service provider is defined by clause 4(1) to mean a person nominated by the provider to represent the provider, and who meets the criteria set out in clause 30.

A responsible officer is intended to provide a clear and accountable point of contact for the regulator in dealing with an authorised on-demand booking service provider, and who is directly involved in the operations of the booking service and can influence the provision of the services. Responsible officers are expected to play a key role in a provider of an on-demand booking service meeting its safety duties in Part 2.

To be a 'responsible officer' a person must:

- be directly involved in the day-to-day management of the on-demand booking service;
- be authorised to represent the provider of the on-demand booking service in providing that service;
- have access to and be authorised to provide any information relating to the on-demand booking service that is required by the Bill;
- be a fit and proper person to be a responsible officer;

- have the capacity to influence the safety of the drivers and vehicles used in providing the on-demand passenger transport services to which the on-demand booking service relates; and
- meet any prescribed requirements.

31. Grant of authorisation

Clause 31(1) provides that if the CEO is satisfied of the following, then the CEO may grant an authorisation to the applicant to provide an on-demand booking service:

- that each person nominated as a responsible officer by the applicant meets the criteria in clause 30 for a responsible officer – pursuant to clause 31(2), in assessing this, the CEO may have regard to any relevant matters;
- that the applicant has provided the required information with the application;
- that the applicant complies with any prescribed criteria; and
- that the applicant has paid the prescribed application fee and prescribed authorisation fee relevant to the application.

32. Refusal of authorisation

Clause 32(1) provides for when, in addition to the grounds in clause 31, the CEO may refuse to grant a person an authorisation to provide an on-demand booking service, as follows:

- the CEO is not satisfied that the applicant is a fit and proper person to be authorised to provide an on-demand booking service;
- the applicant, the responsible officer or a close associate of the applicant, have previously held an on-demand booking service authorisation (or an equivalent authorisation in another State or a Territory) which was cancelled;
- the applicant, the responsible officer or a close associate is charged with a disqualification offence – disqualification offences are provided for in Division 4 of this Part. If a person has been charged but the matter has not yet been dealt with by a court, it is appropriate to enable the CEO to refuse an application for authorisation until the matter has been dealt with; or
- a close associate of the applicant has been convicted of a disqualification offence. Close associates of booking services are defined by clause 12. That definition captures people who may have a significant influence on the operations of the on-demand booking service provider to whom they are associated with, but the extent of their influence will be dependent on their exact role in respect of the service. Accordingly, where a close associate has been convicted of a disqualification offence the CEO will have discretion to consider the circumstances of the case before making a decision as to whether or not it would be appropriate to grant the on-demand booking service authorisation applied for.

Clause 32(2) provides that the CEO must not grant an on-demand booking service authorisation if the applicant, or a person nominated as a responsible officer by the applicant, has been convicted of a disqualification offence, the conviction has not been quashed or set aside, and the disqualification period prescribed in relation to the disqualification offence has not passed since the conviction. Pursuant to clause 4(1), a conviction includes a finding of guilty, or the acceptance of a guilty plea, whether or not a conviction is recorded.

In these circumstances the CEO has no discretion and is required by the Bill to refuse the application. This is appropriate given the key roles of the applicant and responsible officer in ensuring safety.

33. Conditions of authorisation

Clause 33 provides that the CEO can impose any conditions on an authorisation that are considered appropriate and are specified either on the authorisation document or in writing (clause 33(b)). The grant of an authorisation is also subject to any conditions imposed under this Bill or the regulations to be made pursuant to it (clause 33(a)).

34. Application for variation of conditions

Clause 34(1) requires that the provider of an authorised on-demand booking service, who wishes to vary the conditions imposed on the on-demand booking service authorisation, may apply to the CEO.

Clause 34(2) requires the application to be in the approved form, attach any specified documentation and accompanied by the prescribed application fee.

35. Variation of conditions

Clause 35(1) provides that the CEO may vary the conditions imposed on an on-demand booking service authorisation if the variation is considered appropriate in the circumstances. The variation may be at the request of the provider of the on-demand booking service pursuant to clause 34, or on the initiative of the CEO (clause 35(2)).

Clause 35(3)(a) requires that any variation must be in writing. Clause 35(3)(b) states that the variation may add new conditions, remove conditions or vary the existing conditions.

36. Notice of decision to refuse or vary

Clause 36(1) requires the CEO to notify an applicant in writing, if the CEO decides under clause 31 or 32, to refuse to grant an on-demand booking service authorisation.

Clause 36(2) requires the CEO to notify the provider of an authorised on-demand booking service in writing if the CEO decides to:

- refuse the provider's application to vary the conditions imposed on the on-demand booking service authorisation; or
- vary the conditions imposed on the on-demand booking service authorisation on the CEO's own initiative.

In the case of a 'relevant decision', clause 36(3) provides that the written notice from the CEO must state the reasons for the decision and that, pursuant to Part 10, the provider of the on-demand booking service may request a review of the CEO's decision.

Pursuant to clause 36(4), the following are relevant decisions:

- the refusal to grant an on-demand booking service authorisation because the CEO is not satisfied to a matter mentioned in clause 31(1)(a), (b) or (c) or under clause 32(1);
- a decision to impose conditions on an on-demand booking service authorisation under clause 33(b);
- a decision by the CEO to vary the conditions of an on-demand booking service authorisation on their own initiative (clause 36(4)(c)) or to refuse to grant an application for the variation of conditions of an on-demand booking service authorisation (clause 36(4)(d)).

37. Authorisation document

Clause 37(1) specifies that if the CEO grants the provider of an on-demand booking service an authorisation, the CEO must issue the provider of the service with an authorisation document.

Clause 37(2)(a), (b) and (c) stipulate that the authorisation document must be in the approved form, identify the provider of the authorised on-demand booking service and specify the authorisation number.

38. Effect of authorisation

Clause 38 provides that an on-demand booking service authorisation permits the provider to provide an on-demand booking service anywhere in the State.

39. Duration of authorisation

Clause 39(1) provides that the period of an on-demand booking service authorisation is granted for the period prescribed in the regulations. It is intended that an authorisation will be granted for a period of 1 year.

The on-demand booking service authorisation may be renewed in accordance with the regulations, as per clause 39(2).

Clause 39(3) requires that an on-demand booking service authorisation remains in force until it expires, or is cancelled, whichever occurs first.

Clause 39(4) specifies that an on-demand booking service authorisation is not in force during any period that it is suspended.

40. Authorisation not transferable

This clause provides that an on-demand booking service authorisation is not transferable.

41. Publication of list of providers of authorised on-demand booking services

This clause specifies that the CEO must publish a list of all providers of authorised on-demand booking services on the Department's website, in accordance with the regulations.

This will enable drivers, on-demand passenger transport service providers, on-demand vehicle providers and members of the public to check whether or not a booking service which they propose to use is authorised. Regulations will set out the details that may be made available. For example, this may include the provider's trading name.

Division 4 – Suspension, cancellation and disqualification

Subdivision 1 - Suspension or cancellation by order

42. Suspension or cancellation order

Clause 42(1) empowers the CEO to make an order suspending or cancelling an on-demand booking service authorisation in the following circumstances:

- the CEO is no longer satisfied that the provider of the service meets the requirements for the grant of an authorisation (clause 42(1)(a));
- the provider of the service has failed to comply with any requirements under this Bill, including a condition of the authorisation and any duty or obligations imposed under the Bill (clause 42(1)(b));
- the authorisation was obtained by fraud or misrepresentation (clause 42(1)(c));
- the CEO is no longer satisfied that the provider is a fit and proper person to hold the authorisation (clause 42(1)(d));
- the CEO is no longer satisfied that a responsible officer of the provider of the on-demand booking service is a fit and proper person to be a responsible officer (clause 42(1)(e));
- the provider of the service has failed to lodge a return for the on-demand passenger transport levy with the CEO in accordance, or pay the levy in accordance with Part 9 Division 2 (clause 42(1)(f));
- a responsible officer of the provider of the authorised on-demand booking service has held an on-demand booking service authorisation (whether for the same or a different service), or an equivalent authorisation in another State or a Territory, and that authorisation has been cancelled (clause 42(1)(g)); or
- a close associate of the provider of the authorised on-demand booking service has held an on-demand booking service authorisation (whether for the same or a different service), or an equivalent authorisation in another State or a Territory, and that authorisation has been cancelled (clause 42(1)(h)).

With respect to close associates, clause 12 defines the term 'close associate' to mean a person who:

- (a) holds or will hold any relevant financial interest in the on-demand booking service or will be entitled to exercise any relevant power (whether in the person's own right or on behalf of any other person), in relation to the on-demand booking service;
- (b) holds or will hold any relevant position, whether in the person's own right or on behalf of any other person, in the on-demand booking service; or
- (c) is or will be engaged as a contractor under a contract of service or employed in the on-demand booking service.

Where a person other than the applicant for authorisation as the provider of an on-demand booking service, or a responsible officer for that service, is in a position to exercise a significant influence over that service or affect its operations, it is appropriate that the CEO be able to take into account whether such a person has previously held an on-demand booking service authorisation that has been cancelled.

Clause 42(2) stipulates that the CEO, when making a suspension order made under clause 42(1)(a), (b), (d), (e) or (f) may include a requirement that the provider of the on-demand booking service undertake remedial action.

Clause 42(3) provides that the CEO may, by written notice, subsequently vary or waive any remedial actions imposed under clause 42(2).

43. Suspension or cancellation order for disqualification offence

Clause 43 makes specific provision for suspension or cancellation of an on-demand booking service provider authorisation in connection with a disqualification offence.

It is proposed to make regulations, pursuant to clause 46, prescribing certain offences of a serious nature, as disqualification offences. For example, a breach of a category 1 safety duty offence may be prescribed as a disqualification offence.

Clause 43(1) empowers the CEO to make an order suspending an on-demand booking service authorisation if the provider of the on-demand booking service, a responsible officer of the provider or a close associate of the provider is charged with a disqualification offence. If a person has been charged but the matter has not yet been dealt with by a court, it is appropriate to enable the CEO to suspend an authorisation until the matter has been dealt with if considered necessary.

Clauses 43(2) and (3) provide that if a provider of the on-demand booking service or a responsible officer of the provider of the service has been convicted of a disqualification offence the CEO must make an order cancelling the on-demand booking service authorisation. However, pursuant to clause 43(5), this is only if the conviction for the offence has not been quashed or set aside, and the disqualification period prescribed for the offence under clause 46 has not passed.

In the case of the provider, the CEO has no discretion and is required by the Bill to cancel the authorisation. This is appropriate given the key roles of the provider in ensuring safety. However, in the case of a disqualification offence by a responsible officer, the CEO is not obliged to cancel the authorisation if satisfied that the continued

operation of the on-demand booking service is appropriate in the circumstances. For example, if the on-demand booking service provider had suspended the responsible officer from duties while the charge for the offence was being heard, had terminated the person's role upon conviction and was seeking to find a suitable replacement nominee, the CEO may consider it appropriate not to cancel the authorisation.

Clause 43(4) specifies that the CEO may make an order suspending or cancelling an on-demand booking service authorisation if a close associate of the provider of the service is convicted of a disqualification offence. However, pursuant to clause 43(5), this is only where the conviction for the offence has not been quashed or set aside, and the disqualification period prescribed for the offence under clause 46 has not passed.

Close associates of booking services are defined by clause 12. That definition captures people who may have a significant influence on the operations of the on-demand booking service provider to whom they are associated with, but the extent of their influence will be dependent on their exact role in respect of the service. Accordingly, where a close associate has been convicted of a disqualification offence the CEO will have discretion to consider the circumstances of the case before making a decision as to whether or not it would be appropriate to cancel the on-demand booking service authorisation of the provider of the close associate.

Clause 43(5) provides that a suspension or cancellation order cannot be made in respect of an on-demand booking service authorisation on the grounds of a disqualification offence if the conviction for the offence has been quashed or set aside, or the disqualification period prescribed for the offence, pursuant to clause 46(1), has passed since the conviction.

Clause 43(6) provides that this clause applies whether the conviction by a court of a disqualification offence occurred before the commencement of the clause, and if the disqualification period has not expired before that commencement.

44. Disqualification if authorisation cancelled for disqualification offence

If the provider of an on-demand booking service, or a responsible officer or close associate of the provider of the service, is convicted of a disqualification offence and the CEO makes an order cancelling the on-demand booking service authorisation pursuant to clause 43(2), (3) or (4), this clause stipulates that the provider is disqualified from holding or obtaining an on-demand booking service authorisation from the day the authorisation is cancelled, for the period of disqualification prescribed in respect of the relevant disqualification offence.

If the conviction for a disqualification offence is quashed or set aside, then the disqualification period ends at this time (clause 44(3)).

45. Cumulative effect of disqualification

This clause provides that if a person who is disqualified, was already disqualified at the time, the commencement of the new disqualification period is postponed, and the disqualification does not have effect until the existing period of disqualification, and

any period of disqualification that commences subsequently, has ended. The postponement of the commencement of the new disqualification period does not reduce the length of the new disqualification period.

46. Disqualification period and reinstatement

Clause 46(1) provides that a period of disqualification (which may be permanent) must be prescribed in relation to each disqualification offence. It is proposed to make regulations prescribing certain offences of a serious nature, as disqualification offences. For example, a breach of a Category 1 safety duty offence may be prescribed as a disqualification offence.

If a person becomes disqualified permanently, the person will never be eligible to hold or obtain an on-demand booking service provider authorisation. For example, regulations might prescribe that a person will be subject to a permanent disqualification because of the number of previous occasions on which the person has been subject to a disqualification for the same reasons.

Clause 46(2) provides that different periods of disqualification may be prescribed in respect of a disqualification offence depending on whether the offence is the first or a subsequent offence, the circumstances under which the offence was committed, the length of time the provider has continuously held an on-demand booking service authorisation and whether the provider has been previously disqualified under clause 44(1).

Clause 46(3) provides that regulations may provide for the reinstatement of authorisations or make any other provision necessary or convenient to be made, to deal with consequences of a conviction for a disqualification offence being quashed or set aside in a case in which an authorisation has been cancelled because of the conviction.

47. Order may be made even if authorisation is suspended

Clause 47 provides that a suspension or cancellation order may be made under clause 42(1) or clause 43(1) to (4), even if the on-demand booking service authorisation is already suspended when the authorisation is made.

48. Show cause process

Clause 48(1) requires the CEO not to make an order suspending or cancelling an authorisation under clauses 42(1) or 43(1), (3) or (4) unless the CEO serves a notice on the provider of the on-demand booking service to show cause within 30 days why the on-demand booking service authorisation should not be suspended or cancelled (clause 48(2)).

The CEO can make the order to cancel or suspend the authorisation at the end of the 30-day notice, if the CEO is not satisfied with the show cause response from the provider (clause 48(3)).

Clause 48(4) empowers the CEO to make an order suspending an on-demand booking service authorisation within the 30-day notice period if the CEO considers that

the suspension is necessary in the circumstances. For example, this may be appropriate where the CEO has evidence of a safety issue or other serious non-compliance.

The CEO is not required to comply with this clause if the authorisation may be suspended or cancelled with immediate effect as permitted by clause 49, which provides for immediate suspension or cancellation in response to serious safety considerations.

49. Immediate suspension or cancellation

Clause 49 authorises the CEO to make an order under clause 42(1) or 43(1), (3) or (4) without complying with clause 48, if the CEO has reason to believe that the on-demand booking service has been or is being conducted in a manner that causes or may cause danger to the public.

50. Notice of suspension order

Clause 50 requires the CEO to give written notice of a suspension order made under clause 42(1), 43(1) or (4) or 48(4) to the provider of the on-demand booking service. The written notice must state the following information:

- (a) that the on-demand booking service authorisation is suspended;
- (b) the day on which the period of suspension commences;
- (c) the grounds on which the order is made;
- (d) if the order is made under clause 42(1), any remedial action that the provider is required to take under clause 42(2); and
- (e) if the order is made under clause 42(1)(a), (b), (d) or (e) (failure to comply with conditions of the authorisation, or any duty or obligation imposed on the provider; or the provider or responsible officer is no longer considered a fit and proper person to operate the service) or clause 48(4), that the provider has a right to a review under Part 10.

51. Period of suspension

Clause 51(1) provides that an on-demand booking service authorisation subject to a suspension order under clause 42(1) or 43(1) or (4) is suspended under the order for a period commencing on the day stated in the notice under clause 50(b), and ending on the day stated in the notice of revocation of the suspension order under clause 52(4)(b), or the day on which the authorisation expires or is cancelled, whichever comes first.

Clause 51(2) stipulates that an on-demand booking service authorisation subject to a suspension order under clause 48(4), during the show cause period, is suspended under the order for a period commencing on the day stated in the notice under clause 50(b) and ending on the day on which the authorisation is suspended or cancelled after the first of the following to occur:

- the end of the 30-day period referred to in clause 48; or

- the day stated in a notice of revocation of the order under clause 51(4)(b); or
- the day on which the authorisation is cancelled or expires.

52. Revocation of suspension order

Clause 52 set outs when the CEO may revoke a suspension order, and when the CEO must revoke a suspension order.

Clause 52 provides the CEO may revoke a suspension order made under clause 42(1), 43(1) or (4) or 48(4) at any time.

The CEO must revoke a suspension order made under clause 48(4) during the show cause period, as soon as is reasonably practicable after the end of the 30-day notice period referred to in clause 48, if the CEO decides not to make an order under clause 42 and 43.

The CEO must revoke a suspension order made under clause 42(1), as soon as is reasonably practicable after the CEO is satisfied that any remedial action required under clause 42(2) in respect of the suspension order has been undertaken and the grounds for making the suspension order no longer exist (clause 52(3)).

Clause 52(4) requires the CEO to give a written notice of the revocation of a suspension order to the provider of the on-demand booking service stating:

- (a) that the suspension of the on-demand booking service authorisation has been revoked;
- (b) the day on which the suspension of the on-demand booking service authorisation under the order ends; and
- (c) the reasons for the revocation.

53. Notice of cancellation order

Clause 53 requires the CEO to give written notice of a cancellation order, made under clause section 42(1) or 43(2), (3) or (4) to the provider of the on-demand booking service. The written notice must state the following:

- (a) that the on-demand booking service authorisation is cancelled;
- (b) the day on which the cancellation commences;
- (c) the grounds on which the order is made;
- (d) if the order is made under clause 43(2), (3) or (4), that the provider is disqualified from holding or obtaining an on-demand booking service authorisation and the prescribed period for which the provider is disqualified; and
- (e) if the order is made under clause 42(1)(a), (b), (d) or (e) (failure to comply with conditions of the authorisation or any duty or obligation imposed on the provider; or that provider or responsible officer is no longer considered a fit and proper person), that the provider has a right to a review under Part 10.

Clause 53(2) provides that an on-demand booking service authorisation subject to a cancellation order is cancelled on the day stated in the order.

Subdivision 2 – Automatic suspension or cancellation

54. Automatic suspension: joint authorisation

Clause 54 provides that if two or more persons jointly hold an on-demand booking service authorisation and any one of them dies or ceases to jointly provide the service, then the authorisation is suspended by force of this clause.

The cancellation will take effect 21 days after the death or cessation of joint provision if the CEO has not been formally notified before that time.

Clause 54 also stipulates that the authorisation may be suspended, cancelled or varied because of the death or cessation of joint provision of the service.

55. Automatic suspension: no responsible officer

As stipulated in clause 29(6), if the applicant for an on-demand booking service authorisation is a body corporate, at least one of the responsible officers of the provider must be a director or manager of the body corporate.

Accordingly, clause 55 requires that if the provider of the authorised on-demand booking service is a body corporate and the provider ceases to have any directors or managers who are responsible officers, then the on-demand booking service authorisation is suspended by force from that time and until:

- (a) a new director or manager of the service is nominated in accordance with the regulations; and
- (b) the CEO advises the provider of the service that the CEO is satisfied that the nominated director or manager is a responsible officer.

PART 4 – REGULAR PASSENGER TRANSPORT SERVICES

Part 4 provides for the authorisation of regular passenger transport service providers, including offences, and the suspension and cancellation of regular passenger transport authorisations.

Clause 6(1) of the Bill defines a regular passenger transport service as a service for the transport of passengers by vehicle for hire or reward, which is conducted according to regular routes and timetables or according to regular routes and at regular intervals. Vehicles used to provide such services will need to be authorised for the category of 'regular passenger transport service'. The provider of a regular passenger transport service will be able to use any vehicle authorised for the category of regular passenger transport service in the provision of that service, and will also need to be authorised to provide the service on the routes or in the areas in which the service is provided. This gives the service operator the flexibility to bring vehicles in and out of their service as needed.

The RPT service provider authorisation requirement in this Part preserves the current arrangements in the *Transport Co-ordination Act 1966*, with respect to regular passenger transport services.

The 1,798 regular passenger transport omnibus licenses in existence as at end June 2018 are held by 17 different licensees. This is the maximum number of existing omnibus regular passenger transport licensees that will need to obtain a regular passenger transport service provider authorisation under this Part.

However, any licensees who are providing the service on behalf of another authorised provider will not need to be authorised - for example, persons who are providing RPT services under a contract arrangement with the Public Transport Authority (PTA) will not need to be authorised, unless they are also providing RPT services not covered by their arrangement with the PTA.

Division 1: Offences

56. Provider of regular passenger transport service must be authorised

Clause 56 provides that any person that provides a regular passenger transport service must be authorised to do so.

Clause 6(1) of the Bill defines a regular passenger transport service as a service for the transport of passengers by vehicle for hire or reward, which is conducted according to regular routes and timetables or according to regular routes and at regular intervals. Clause 6(2) states that 'provide a regular passenger transport service' means carry on the business of providing a regular passenger transport service).

Failure to comply with this provision is an offence, the maximum penalty for which is \$40,000 for an individual, and \$200,000 for a body corporate. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

Clause 56(2) provides that a person providing a regular passenger transport service on behalf of another person who is authorised to carry on the business of providing a regular passenger transport service does not need to be authorised. For example, persons who are providing RPT services under a contract arrangement with the Public Transport Authority (PTA), including school bus contracts, will not need to be authorised, unless they are also providing RPT services not covered by their arrangement with the PTA.

57. Provider of regular passenger transport service must comply with authorisation conditions

Clause 57 provides that the provider of a regular passenger transport service must comply with the conditions of the provider's authorisation. Conditions may be imposed under this Bill or its regulations, or by the CEO pursuant to clause 66(b).

The penalty for failing to comply with any conditions is a fine of \$40,000 for an individual and \$200,000 for a body corporate. In the case of an offence by a body

corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

58. Provider of regular passenger transport service must notify CEO if no longer providing service

Clause 58 requires a provider of an authorised regular passenger transport service to give written notice to the CEO, as soon as practicable, if the provider ceases to provide a regular passenger transport service on any route or routes, or in any area or areas, specified in the authorisation.

The penalty for non-compliance with this requirement is a fine of \$5,000 for an individual, or \$25,000 for a body corporate. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

As regular passenger transport services are operated on regular routes, direct competition between services is more likely to have an impact on service provision as compared with competition in the on-demand sector. Accordingly, in considering whether or not to grant a regular passenger transport service authorisation or to vary the routes or areas approved under an existing authorisation, the Minister may consider a number of matters pursuant to clause 62, including any existing service for the transport of passengers on the route or routes, or within the area or areas, proposed to be served.

Should an authorised provider no longer operate on a route or in an area for which they are authorised, this will be relevant to any decisions of the Minister in respect of subsequent applications for authorisation to provide a regular passenger transport service, or applications to vary the approved routes or areas of an existing authorisation.

Division 2 – Authorisation

59. Application for authorisation to provide a regular passenger transport service

Clause 59(1) provides who may apply to be authorised to provide a regular passenger transport service. This is:

- an individual;
- two or more persons jointly under a partnership or other agreement;
- a body corporate incorporated under a law of this or any other jurisdiction; or
- a prescribed entity.

The application for the authorisation should be made to the CEO (clause 59(2)). Although the Minister is to be decision maker in respect of the grant of regular

passenger transport service authorisations, provision is made for the application to be made to the CEO, who will handle the administration of the receipt of applications.

Clause 59(3) sets out the requirements for an application. It is to be in the approved form, comply with the requirements of the regulations, be accompanied by the prescribed fee and contain the information required by the CEO. In addition, clause 59(3)(b) stipulates that the application must contain the following information:

- (i) the route or routes on which, or the area or areas in which, the applicant proposes to provide the service;
- (ii) an estimate of the number of vehicles to be used in providing the service;
- (iii) a description of the kinds of vehicles to be used in providing the service;
- (iv) an estimate of the maximum number of passengers to be carried by the vehicles proposed to be used; and
- (v) the fares proposed to be charged.

This information will assist the Minister in considering whether or not to grant the application, including in any of the matters that she or he is entitled to consider pursuant to clause 62.

Clause 59(4) provides that the CEO may request, by written notice, further information to relevant to the application. The written notice must specify the time that the information must be provided to the CEO to continue the application process, which will be at least 30 days.

60. Minister is decision-maker

Clause 60 provides that the Minister is to make the decision under Part 4 to grant or to refuse to grant a regular passenger transport service authorisation.

Pursuant to clause 62, in deciding an application for authorisation to provide a regular passenger transport service, regard may be had to matters such as any existing service for the transport of passengers on the route or routes, or within the area or areas, covered by the application, including its present adequacy and possibilities for improvement to meet all reasonable public demands, and the effect on the existing service of the service proposed to be provided, as well as the interests of persons requiring transport to be provided and of the community generally.

These are matters that are appropriately considered by an elected representative, or their delegate.

61. Minister may delegate

Clause 61(1) provides that the Minister may delegate to the CEO, or any person employed in or engaged for the purposes of the Department, any power or duty of the Minister under Part 4.

Clause 61(2) requires any delegation to be in writing signed by the Minister, for that delegation to be valid. A delegation may set out specific circumstances in which a delegated power or duty may be exercised or performed.

This power will enable the Minister to delegate relevant powers and duties to appropriate persons.

Clause 61(3) provides that a person to whom the Minister has delegated a power or duty is not permitted to delegate that power or duty to another person. This provision will ensure that the Minister retains control over who may perform a duty or exercise a power of the Minister.

Clause 61(4) addresses where the Minister has made a delegation subject to terms that the Minister considers appropriate or necessary. The clause creates a legal presumption that, unless proven otherwise, the delegate is taken to have exercised the delegated power or performed the delegated duty in accordance with the terms of the delegation.

Should a delegate's actions require consideration, for example, in the course of the review of a reviewable decision by the State Administrative Tribunal or in other proceedings, this ensures that a delegate does not have to prove that their actions occurred in accordance with the terms of the delegation. However, an aggrieved party may give evidence that may prove that the delegate's actions were not in accordance with the terms of the delegation.

Clause 61(5) provides that this clause does not limit the Minister's ability to perform a function through an officer or agent. This would include where the Minister authorises an officer of the Department of Transport to perform a function on the Minister's behalf.

62. Matters Minister may take into account in making decision

Clause 62(1) sets out matters that the Minister may take into consideration in making a decision to grant a regular passenger transport service authorisation. All, or any, of the following matters may be taken into account by the Minister:

- (a) the necessity for the service proposed to be provided and the convenience that would be given to the public by the provision of the proposed service;
- (b) the existing service for the transport of passengers on the route or routes, or within the area or areas, proposed to be served, in relation to:
 - (i) its present adequacy and possibilities for improvement to meet all reasonable public demands; and
 - (ii) the effect on the existing service of the service proposed to be provided;
- (c) the condition of the roads to be included in the proposed route(s) or area(s);
- (d) the qualifications and financial stability of the applicant; and

- (e) the interests of persons requiring transport to be provided and of the community generally.

The non-exclusive nature of the use of regular passenger transport services by passengers, and their potential to carry larger numbers of passengers at one time, means they can offer an affordable means of transport to the community. Given their regular nature and predefined routes, direct competition between services is more likely to have a significant impact on service provision as compared with competition in the on-demand sector. The matters the Minister may consider pursuant to this clause align with the existing powers of the Minister in section 26 of the *Transport Coordination Act 1966* and will continue to enable the Minister, where necessary, to make decisions that ensure the viability of essential public passenger transport services.

63. Grant of authorisation

Clause 63 provides that the Minister may grant a regular passenger transport service authorisation if the Minister is satisfied that the applicant:

- (a) has provided the required information with the application;
- (b) complies with any prescribed criteria;
- (c) has the capacity to provide the service for the term of the authorisation;
- (d) has paid the prescribed application fee; and
- (e) has paid the prescribed authorisation fee (if any).

Clause 73 provides for the effect of an authorisation granted under this clause. An authorisation permits the holder of the authorisation to provide a regular passenger transport service, using regular passenger transport vehicles on the routes or areas approved by the Minister and specified in the authorisation document.

The Public Transport Authority (PTA) has, pursuant to section 12 of the *Public Transport Authority Act 2003*, the main function to provide and operate safe and reliable public passenger transport services, either directly or through persons with whom it contracts across the State. These services include regular passenger transport services such as Transperth buses, school bus services and other road public transport services across the State. These provisions will facilitate the PTA to perform this function anywhere in the State.

64. Grant of temporary authorisation

In order to ensure reliable regular passenger transport services, especially in times of un-anticipated need, clause 64(1) empowers the Minister to grant a regular passenger transport service authorisation without prior lodgement of a written application pursuant to clause 59, if:

- (a) the application is for an authorisation for a particular purpose of limited duration; and
- (b) the Minister is satisfied that sufficient information has been made available to enable the Minister to do so.

Clause 64(2)(a) specifies that a temporary regular passenger transport service authorisation granted under this clause takes effect when verbal notice has been given to the applicant that the authorisation has been granted.

The temporary authorisation is given not to have taken effect if the written application required under clause 59 is not submitted to the CEO within 14 days of the Minister's decision, or if the information in the written application differs in a material respect from the information provided to the Minister before the Minister's decision (clause 64(2)(b)).

This clause aligns with existing provision made in section 25 of the *Transport Co-ordination Act 1966* in respect of omnibus licences required for a particular purpose of limited duration.

65. Refusal of authorisation

Clause 65 provides for when the Minister may refuse to grant a regular passenger transport service authorisation. Without limiting clauses 63 or 64, the Minister may refuse to grant a person an authorisation to provide a regular passenger transport service if the Minister is satisfied that:

- the authorisation should not be granted on the basis of any matter to which the Minister has had regard under clause 62(1); or
- the applicant is not a fit and proper person to be authorised to provide a regular passenger transport service.

With respect to the latter, the Minister may have regard to any relevant matters in determining whether an applicant is a fit and proper person (clause 65(2)).

66. Conditions of authorisation

Clause 66 provides that the Minister can impose any conditions on an authorisation that are considered appropriate and are specified either on the authorisation document or in writing (clause 66(b)). The grant of an authorisation is also subject to any conditions imposed under this Bill (clause 66(a)).

67. Application for variation in conditions

Clause 67(1) requires that the provider of a regular passenger transport service who wishes to vary the conditions imposed on the regular passenger transport service authorisation, may apply to the Minister.

Clause 67(2) requires the application to be in the approved form, attach any specified documentation and accompanied by the prescribed application fee.

68. Variation of conditions

Clause 68(1) provides that the Minister may vary the conditions imposed on a regular passenger transport service authorisation if the variation is considered appropriate in the circumstances. The variation may be at the request of the provider of the regular passenger transport service pursuant to clause 67, or on the initiative of the Minister (clause 68(2)).

Clause 68(3)(a) requires that any variation must be in writing. Clause 68(3)(b) states that the variation may add new conditions, remove conditions or vary the existing conditions.

69. Application for variation of approved routes and areas

Clause 69 permits the provider of an authorised regular passenger transport service to apply to the Minister to approve a variation to the route or routes or the area or areas approved under the authorisation.

The application must be in the approved form, be accompanied by any documents or other information specified in the approved form and be accompanied by the prescribed application fee (clause 69(2)).

Clause 70 provides for the consideration of an application under clause 69.

70. Variation of approved routes and areas

Pursuant to clause 69, the provider of an authorised regular passenger transport service may apply to the Minister to approve a variation to the route or routes or the area or areas approved under the person's authorisation. Clause 70 provides that the Minister may approve the variation if the Minister is satisfied that the variation is appropriate in the circumstances.

Clause 70(2) provides that the Minister may, in accordance with the regulations, approve a temporary variation to the route or routes or area or areas approved under a regular passenger transport service authorisation if the Minister is satisfied that the variation is appropriate in the circumstances

Clause 70(3) provides that the Minister may take into account the matters specified in clause 62(1) when deciding whether to approve a variation to route or area in clause 70(1) or (2). Clause 62(1) sets out a range of matters the Minister may consider including factors such as the need for the service, impact on other providers and the interests of the community generally.

Clause 70(4) provides that a variation must be in writing.

71. Notice of decision to refuse or vary

Clause 71(1) requires the Minister to notify an applicant in writing, if the Minister has made a decision to refuse to grant a regular passenger transport service authorisation under clauses 63, 64 or 65.

Clause 71(2)(a) requires the Minister to notify the provider of an authorised regular passenger transport service in writing if the Minister refuses the provider's application under clause 67 to vary the conditions imposed on the regular passenger transport service authorisation.

Clause 71(2)(b) requires the Minister to provide a written notice to the provider of an authorised regular passenger transport service if the Minister has decided to vary the conditions imposed on the regular passenger transport service authorisation, under clause 68.

Clause 71(3) provides that the Minister must give the provider of an authorised regular passenger transport service written notice of a decision to refuse an application under clause 69, or the regulations, for the variation of the route or routes or area or areas approved under the regular passenger transport service authorisation.

In the case of a decision to vary the conditions of a regular passenger transport service authorisation, clause 71(4) provides that the written notice from the CEO must state the reasons for the decision and that the provider of the regular passenger transport service has a right to review of the decision under Part 10.

72. Authorisation document

Clause 72(1) specifies that if the Minister grants a regular passenger transport service authorisation, the CEO must issue the provider of the service with an authorisation document. This enables the CEO to carry out the administrative task of issuing the authorisation document.

Clauses 72(2) provides that the authorisation document must be in the approved form, identify the provider of the service and specify the authorisation number.

73. Effect of authorisation

Clause 73(1) defines a 'regular passenger transport vehicle', for the purposes of the clause, as a vehicle that is authorised or otherwise permitted under this Bill to be operated to provide a regular passenger transport service. This would include a vehicle authorised pursuant to Part 6 to be used in the provision of regular passenger transport services, as well as a temporary replacement vehicle permitted by the Bill if the authorised vehicle is undergoing repair.

Clause 73(2) provides that a regular passenger transport authorisation permits the holder of the authorisation to provide a regular passenger transport service, using regular passenger transport vehicles on the routes or areas approved by the Minister and specified in the authorisation document.

Pursuant to clause 73(3), a regular passenger transport authorisation is declared not to be personal property for the purposes of the *Personal Properties Securities Act 2009* (Commonwealth) (PPSA). Statutory licences or authorities that are transferable, whether or not the transfer requires consent of the Minister, are treated as personal property pursuant to the PPSA, unless the law which provides for the licence or authority declares otherwise.

The transfer of a regular passenger transport service provider authorisation will be subject to the consideration and approval of the Minister. These authorisations are not intended to be treated as an asset or used as collateral by the authorised provider.

74. Duration of authorisation

Clauses 74(1) and (2) provide that a regular passenger transport service authorisation is granted for the period prescribed in the regulations and may be renewed in accordance with the regulations. It is intended that in most cases an authorisation will be granted for a period of up to 5 years.

Clause 74(3) provides that a regular passenger transport service authorisation remains in force until it expires or is cancelled, whichever occurs first.

Finally, clause 74(4) specifies that a regular passenger transport service authorisation is not in force during any period that it is suspended.

75. Application for transfer of authorisation

Clause 75(1) provides that a person or entity who is eligible under clause 59(1) to apply for a regular passenger transport service authorisation, may apply to the CEO for approval of the transfer of a regular passenger transport authorisation to the person or entity.

An application to the CEO to transfer the authorisation can only be made if the current holder of the regular passenger transport service authorisation consents to the transfer (clause 75(2)).

The application to the CEO must be in the approved form, contain the information required by the CEO, comply with the requirements of the regulations and be accompanied by the prescribed fee (clause 75(4)).

Clause 75(5) provides that the CEO may request, by written notice, further information to relevant to the application. The written notice must specify the time that the information must be provided to the CEO to continue the application process, which must be at least 30 days.

Although the application is made to the CEO, who will handle the administration of the receipt of applications, the decision on the application is to be made by the Minister pursuant to clause 77.

76. Matters Minister may take into account in making decision

Clause 76 empowers the Minister in making a decision as to whether to approve the transfer of a regular passenger transport service authorisation to take into account some of the matters that may be considered in respect of the initial issue of, or an application to vary the approved routes or areas of an existing, regular passenger transport service provider authorisation. These are:

- the qualifications and financial stability of the applicant; and
- the interests of persons requiring the provision of a regular transport service and of the broader community.

Despite this, the Minister is not obligated to take into account the aforementioned factors in making a decision to transfer a regular passenger transport service authorisation (clause 76(2)). This will ensure the Minister may, where necessary, make decisions that take into account matters relevant to the viability of essential public passenger transport services.

77. Grant of approval

Clause 77(1) provides that the Minister may grant an approval for the transfer of a regular passenger transport authorisation if the applicant has provided the information

required by clause 75 to the satisfaction of the CEO and the Minister is satisfied that the application complies with the requirements of the regulations, has paid the prescribed application fee, and the applicant has the capacity to provide the service for the term of the authorisation.

Clause 77(2) requires that the Minister must not approve the transfer of a regular passenger transport authorisation if the applicant also seeks a change to the routes or areas authorised under the authorisation.

Approval of the transfer of an authorisation by the Minister is to be limited to the transfer of the authorisation as it stands, and the matters the Minister may consider in deciding whether or not approve the transfer reflect this in their limited nature (as compared with the matters that may be considered in respect of a new application or a variation to routes or areas). If the transferee wishes to change the approved routes or areas subsequent to the transfer, a separate application would need to be made under clause 69.

78. Refusal to approve transfer of authorisation

Clause 78(1) provides that the Minister may refuse to approve the transfer of a regular passenger transport authorisation if the Minister is satisfied that approval should not be granted, based on any matter to which the Minister has regard under clause 76, or that the applicant is not a fit and proper person to hold an authorisation.

Clause 78(2) provides that the Minister may have regard to any matters deemed relevant in determining whether an applicant is a fit and proper person to hold the authorisation.

Division 3 – Suspension and cancellation

Subdivision 1 - Suspension or cancellation by order

79. Suspension or cancellation order

Clause 79(1) empowers the Minister to make an order suspending or cancelling a regular passenger transport service authorisation if the Minister is no longer satisfied that the provider of the regular passenger transport service meets the requirements for the grant of an authorisation in clause 63(b) or (c), or for the transfer of the authorisation in clause 77(1)(b) or (c).

Other circumstances where the CEO can make an order to suspend or cancel a regular passenger transport service authorisation are:

- the Minister is no longer satisfied that the provider of the service is providing an effective regular passenger transport service on the routes or in the areas approved under the grant of the authorisation (clause 79(1)(b));
- the provider of the service has failed to comply with any requirements under this Bill, including a condition of the authorisation or any duty or obligations imposed on the provider under the Bill (clause 79(c));

- the authorisation was obtained by fraud or misrepresentation (clause 79(1)(d)); or
- the Minister is no longer satisfied that the provider of the service is a fit and proper person to hold the authorisation (clause 79(1)(e)).

Clause 79(2) stipulates that the Minister, when determining a suspension order made under clauses 79(1)(a), (c) or (e), may include a requirement that the provider of the regular passenger transport service undertake remedial action.

Clause 79(3) provides that the Minister may, by written notice to the provider of the regular passenger transport service, vary or waive any remedial actions imposed under clause 77(2).

80. Order may be made even if authorisation suspended

Clause 80 provides that a suspension or cancellation order may be made under clause 79(1), even if the regular passenger transport service authorisation is already suspended when the authorisation is made.

81. Show cause process

Except in the case of an immediate suspension or cancellation under clause 82, clause 81(1) provides the Minister may not make an order suspending or cancelling a regular passenger transport service provider authorisation under clause 79(1), unless the show cause process in this clause is complied with.

Clause 81(2) obligates the Minister to serve a notice on the provider of the regular passenger transport service to show cause within 30 days why the regular passenger transport service authorisation should not be suspended or cancelled (clause 81(2)). The Minister may make the order to cancel or suspend the authorisation at the end of the 30-day notice, if the Minister is not satisfied with the show cause response from the provider (clause 81(3)).

Clause 81(4) empowers the Minister to make an order suspending a regular passenger transport service authorisation within the 30-day notice period if the Minister considers that the suspension is necessary in the circumstances. For example, this may be appropriate where the Minister has evidence of a safety issue or other serious non-compliance.

The Minister is not required to comply with this clause if the authorisation may be suspended or cancelled with immediate effect as permitted by clause 82, which provides for immediate suspension or cancellation in response to serious safety considerations.

82. Immediate suspension or cancellation

Clause 82 empowers the Minister to make an order under clause 79(1), without complying with the show cause process in clause 81, if the Minister has reason to believe that the regular passenger transport service has been or is being conducted in a manner that causes, or may cause, danger to the public.

83. Notice of suspension order

Clause 83 obligates the CEO to give written notice of a suspension order, made under clause 79(1) or clause 81(4), to the provider of the regular passenger transport service. The written notice must state:

- (a) that the regular passenger transport service authorisation is suspended;
- (b) the day on which the period of suspension commences;
- (c) the grounds on which the order is made;
- (d) if the order is made under clause 79(1), any remedial action that the provider is required to take under clause 79(2);
- (e) if the order is made under clause 79(1)(a), (c) or (e) (failure to comply with conditions of the authorisation or any duty or obligation imposed on the provider, or that the provider of the service is no longer deemed a fit and proper person to operate the service), or clause 81(4), that the provider has a right to a review under Part 10.

84. Period of suspension

Clause 84 provides that a regular passenger transport authorisation subject to a suspension order under clause 79(1) is suspended for the period commencing on the day stated in the written notice, pursuant to clause 83(b), and ending on the day stated in a notice of revocation under clause 85(4)(b) or the day on which the authorisation is cancelled or expires, whichever occurs first.

A regular passenger transport authorisation suspended by order under clause 81(4) is suspended for the period commencing on the day stated in the notice, pursuant to clause 83(b), and ending on the first of the following to occur:

- the day on which the authorisation is suspended or cancelled after the end of the 30-day period referred to in clause 81;
- the day stated in a notice of revocation under clause 85(4)(b); or,
- the day on which the authorisation expires or cancelled.

85. Revocation of suspension order

Clause 85 provides that the Minister may, at any time, revoke a suspension order made under clause 79(1) or 81(4).

Clause 85(2) requires that the Minister must revoke a suspension order made under clause 81(4) as soon as is practicable after the end of the 30-day notice period referred to in clause 81 if the Minister decides not to make an order under clause 79(1).

Clause 85(3) stipulates that the CEO must revoke a suspension order made under clause 79(1), as soon as is reasonably practicable after the CEO is satisfied that any remedial action required under clause 79(2) in the suspension order has been undertaken and the grounds for the making the suspension order no longer exist.

Clause 85(4) requires the CEO to give a written notice of the revocation to the provider of the regular passenger transport service stating:

- (a) that the suspension of the regular passenger transport service authorisation has been revoked;
- (b) the day on which the suspension of the regular passenger transport service authorisation under the order ends; and
- (c) the reasons for the revocation.

86. Notice of cancellation order

Clause 86(1) requires the Minister to give written notice of a cancellation order to the provider of the regular passenger transport service. The written notice must state the following:

- (a) that the regular passenger transport service authorisation is cancelled;
- (b) the day on which the cancellation takes effect;
- (c) the grounds on which the order is made; and
- (d) if the order is made under clause 79(1)(a), (c) or (e) (failure to comply with conditions of the authorisation or any duty or obligation imposed on the provider, or that the provider is no longer deemed a fit and proper person to operate the service), that the provider has a right to a review under Part 10.

Clause 86(2) provides that a regular passenger transport service authorisation subject to a cancellation order is cancelled on the day stated in the order.

Subdivision 2 – Automatic suspension or cancellation

87. Automatic suspension: joint authorisation

Clause 87 provides for the automatic suspension of a regular passenger transport authorisation if the authorisation was provided to two or more persons jointly and any one of them dies or ceases to jointly provide the service. The suspension of the authorisation automatically takes effect 21 days after the death or cessation to jointly provide the service, if the CEO has not been notified before that time.

Clause 87(2) provides the authorisation may be suspended, cancelled or varied because of the death or cessation of joint provision.

Subdivision 3 – Cancellation on ceasing to provide service

88. Cancellation on ceasing to provide service

Clause 88 obligates the Minister to cancel a regular passenger transport service authorisation if the holder of the authorisation informs the Minister that the holder is no longer providing that service.

PART 5 – PASSENGER TRANSPORT DRIVERS

Part 5 addresses the authorisation of persons who drive vehicles to transport passengers for hire or reward, including offences, and the suspension, cancellation and disqualification of passenger transport driver authorisations.

Driving a vehicle to transport passengers for hire or reward generally captures the following circumstances:

- where the passengers have paid some form of consideration for the service, such as where a passenger pays for a taxi or charter service; and
- where the person driving the vehicle is doing so for reward, regardless of whether or not the passengers being transported have paid for the service, such as a paid driver of a free public transport shuttle-bus, or a person employed by a business as a professional driver, to drive customers or staff to required locations.

Clause 11 provides some parameters as to when a person will or will not be considered to be driving a vehicle to transport passengers for hire or reward.

Clause 11(3) of the Bill provides that in this Bill a person will not be considered to be driving a vehicle for the purpose of transporting passengers for hire or reward if the person is driving the vehicle in the course of the person's general employment, and carrying passengers in that vehicle is an incidental part of the person's other employment duties.

Division 1 — Interpretation

89. Term used: disqualification offence

Clause 89 provides that in Part 5, 'disqualification offence' means an offence under this Act or another written law, a law of the Commonwealth or of another State or a Territory that is prescribed as a disqualification offence. It is intended that more serious offences, particularly those relevant to passenger and public safety, will be prescribed as disqualification offences. For example, a sexual assault offence may be prescribed as a disqualification offence.

In Part 5, clause 97(1) provides that if an applicant for authorisation as a passenger transport driver is charged with a disqualification offence, the CEO may refuse to grant the application according to the circumstances. Clause 97(2) provides that if an applicant for authorisation as a passenger transport driver has been convicted of a disqualification offence, the CEO must refuse to grant the application if the offence has not been quashed or set aside, and the disqualification period prescribed for the offence has not passed.

Clause 107 similarly provides that if an authorised passenger transport driver is charged with, or suspecting of committing a disqualification offence, the CEO may suspend the authorisation. Clause 115 provides for a passenger transport driver's authorisation to be cancelled by force of law, upon conviction of a prescribed

disqualification offence, and for the holder to be disqualified from holding or obtaining an authorisation for a prescribed period of time.

The disqualification provisions in this Part of the Bill are based on those in the *Taxi Drivers Licensing Act 2014*.

Division 2 — Offences

90. Driving a vehicle without driver authorisation

Clause 90 provides that any person driving a vehicle for the purpose of transporting passengers for hire or reward must be authorised.

If a person drives a vehicle for the purposes of transporting passengers for hire or reward and does not hold a passenger transport driver authorisation, then that person commits an offence, the maximum penalty for which is \$12,000.

Clause 11 provides some parameters as to when a person will or will not be considered to be driving a vehicle to transport passengers for hire or reward. Pursuant to that clause, a person will be considered to be driving a vehicle to transport passengers for reward if:

- the amount received or intended to be received for the transport exceeds, or is intended to exceed, the prescribed amount (this aligns with provision made in the *Road Traffic (Authorisation to Drive) Regulations 2014* with respect to when a person's driver's licence needs to be authorised to carry passengers for reward);
- the transport is provided or intended to be provided gratuitously, but with a view to gaining or maintaining custom or other commercial advantage; or
- the person is using the vehicle for standing or plying or touting for hire for that purpose.

Clause 11 provides that a person will not be considered to be driving a vehicle for the purpose of transporting passengers for hire or reward if:

- the person is driving the vehicle in the course of the person's general employment, and carrying passengers in that vehicle is an incidental part of the person's other employment duties (this aligns with the exception currently provided for in the *Road Traffic (Authorisation to Drive) Regulations 2014* with respect to when a person's driver's licence needs to be authorised to carry passengers for reward) or
- if the passengers are transported under a private vehicle pooling arrangement (similar to the existing exception from the meaning of hire or reward made in the *Transport Co-ordination Act 1966* in relation to vehicles required to be licensed as omnibuses).

A vehicle may be driven for hire or reward within the meaning of this Bill, even though the service it is providing is not a 'passenger transport service', or if the vehicle being used to provide the service is not required to be subject to a passenger transport

vehicle authorisation under this Bill. Pursuant to clause 4(1), a passenger transport service is:

- an on-demand passenger transport service (defined in clause 5);
- a regular passenger transport service (defined in clause 6);
- a tourism passenger transport service (defined in clause 7); or
- a prescribed passenger transport service (defined in clause 4(1)).

A vehicle used to provide a community transport service, for example, would not be within the meaning of passenger transport service in this Bill, meaning the persons providing the service, any booking service in connection with the service, and the vehicle used to provide the service would not need to be authorised under this Bill. This is appropriate given that such services are generally low risk and not operating in competition with providers who are in the business of providing passenger transport services.

However, if the person who is driving the vehicle used to provide the service is employed specifically for the purpose of driving passengers for hire or reward, they will be subject to the requirement to hold a passenger transport driver authorisation in this Part (as well as to the safety duties applicable to drivers in Part 2). This is consistent with the scope of the driver authorisation requirements under the *Road Traffic (Authorisation to Drive) Act 2008*, which currently apply to any person who drives a vehicle for hire or reward, subject to some exceptions.

In accordance with clause 90(1) if a person drives a vehicle to transport passengers for hire or reward and does not hold a passenger transport driver authorisation that is in force the maximum penalty that be imposed is \$12,000. However, clause 90(1) provides that if the authorisation is not in force for any of the following reasons (set out in clause 90(2)), a minimum fine of \$2,000 must be imposed by the court:

- the person is disqualified from holding a passenger transport driver authorisation under Part 5;
- the person holds a passenger transport driver authorisation that is suspended; or
- because of the effect of clause 104(5), which provides that a passenger transport driver authorisation is not in force to permit the driving of a vehicle during any period that the holder of the authorisation is not authorised under the *Road Traffic (Authorisation to Drive) Act 2008* to drive the vehicle.

The above involve a person driving without an authorisation in circumstances that are considered more serious, as the circumstances of the offence will involve the offender driving a vehicle when their authority to do so has been removed by:

- the operation of provisions of this Bill, in the case of a disqualification;
- the CEO in the case of a suspension; or

- virtue of the fact the person's driver's licence is not in force – this includes where the offender's driver's licence has been suspended or cancelled as provided for by the *Road Traffic (Authorisation to Drive) Act 2008*.

Clause 90(3) provides that a person does not commit an offence for not being authorised to drive passengers for hire or reward if the person is a holder of an interstate driver authorisation, and complies with the conditions of that authorisation and with the regulations in driving the vehicle for the purpose of transporting passengers for hire or reward in this State, and the driving occurs within the relevant period prescribed by the regulations for that kind of authorisation. It is intended to allow persons who are not ordinarily resident in the State of Western Australia to drive a vehicle to transport passengers for hire or reward pursuant to an interstate authorisation for up to 3 months.

Clause 4(1) defines 'interstate driver authorisation' to mean an authorisation issued under a law of another State or a Territory that authorises a person to drive a vehicle to transport passengers for hire or reward, and which meets the prescribed criteria.

In some circumstances, a person may not be authorised to drive under the *Road Traffic (Authorisation to Drive) Act 2008* because the person has failed to pay a fine and that non-payment has resulted in the person's driver's licence being suspended under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) (FPINE Act) or under a similar law of another jurisdiction.

Clause 90(4) provides that it is a defence for a person charged for not being authorised to drive passengers for hire and reward, to prove that they were not aware that their driver's licence was suspended because of the non-payment of a fine.

This defence is provided given that, although a licence suspension order under the FPINE Act can only be made after a person has been given a notice of intention to enforce, the power of the Fines Enforcement Registrar to make such an order is discretionary. If the Registrar chooses to make an order, the suspension takes effect by force of regulation 53C of the *Road Traffic (Authorisation to Drive) Regulations 2014*, so in some instances the driver may not be immediately aware of the suspension.

91. Causing or permitting person to drive vehicle without driver authorisation

Clause 91 creates offences applying to a person who causes or permits another person to drive a vehicle for hire or reward in circumstances in which the driver is not authorised to do so.

In the passenger transport industry, a number of third parties may facilitate the means by which another person can drive a vehicle to carry passengers for hire or reward. For example, the provider of an on-demand booking service that passes on bookings to a driver, and persons who operate authorised passenger transport vehicles and permit a driver to use an authorised vehicle in the provision of a passenger transport service, on a short-term or long-term basis.

Clause 91(1)(a)(i) provides that a person commits an offence if they cause or permit another person to drive a vehicle for the purpose of transporting passengers for hire or reward, if that person does not hold a current passenger transport driver authorisation.

Clause 91(1)(a)(ii) provides that a person commits an offence if they provide an on-demand booking service to a person in order for them to drive a vehicle to provide an on-demand passenger transport service and the driver does not hold a passenger transport driver authorisation that is in force.

The maximum penalties for these offences are, for the first offence, \$12,000 for an individual and \$60,000 for a body corporate. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

For a subsequent or second offence, the maximum penalty is \$12,000 for an individual with a minimum penalty of \$2,000, and \$60,000 for a body corporate with a minimum penalty of \$10,000.

Similar to clause 90(3), clause 91(2) provides that a person does not commit an offence for causing or permitting a person to drive passengers for hire and reward without the appropriate authorisation, if the driver is the holder of an interstate authorisation, complies with the conditions of that authorisation and with the regulations in transporting passengers for hire or reward in this State, and the driving occurs within the period prescribed under the regulations for that kind of authorisation. It is intended to allow persons who are not ordinarily resident in the State of Western Australia to drive a vehicle to transport passengers for hire or reward pursuant to an interstate authorisation for up to 3 months.

It is a defence for an individual or a body corporate to the charge of causing or permitting a person to drive passengers for hire or reward without a passenger transport driver authorisation, if it can be proved that all reasonable steps were taken to ensure that at the time of the offence the driver did hold a passenger transport driver authorisation that was in force.

For example, a person might be considered to have taken reasonable steps if they implemented a system under which the authorisation status of the driver with whom they have a relationship, is checked at regular intervals. This will be supported by clause 153 of the Bill, which will enable the CEO to disclose the authorisation status of a passenger transport driver in accordance with the regulations.

92. Requirement to comply with driver authorisation conditions

Clause 92 provides that a person who is the holder of a passenger transport driver authorisation must comply with the conditions of that authorisation. The maximum penalty for non-compliance is \$12,000.

An example of a condition that may be imposed is a requirement to wear aids to vision while driving for hire or reward, noting that the eyesight standards for commercial driving are higher than those that would otherwise apply.

The maximum penalty for not complying with the conditions of the passenger transport driver authorisation is equivalent to the maximum penalty for driving without a passenger transport driver authorisation. This is appropriate given that some conditions on a driver's authorisation may be critical to ensuring public safety. Judicial discretion will remain with the court to impose a lesser penalty according to the circumstances in each case.

93. Causing or permitting driving of vehicle contrary to conditions of driver authorisation

In the passenger transport industry, a number of third parties may facilitate the means by which another person can drive a vehicle to carry passengers for hire or reward. For example, the provider of an on-demand booking service that passes on bookings to a driver, and persons who operate authorised passenger transport vehicles and permit a driver to use an authorised vehicle in the provision of a passenger transport service, on a short-term or long-term basis.

Clause 93 provides that a person commits an offence if they cause or permit another person to drive a vehicle for the purpose of transporting passengers for hire or reward in contravention of the conditions imposed on the driver's passenger transport driver authorisation.

It is also an offence to provide an on-demand booking service to another person for the purpose of engaging them to drive a vehicle to provide an on-demand passenger transport service (i.e. transport passengers for hire and reward) in contravention of the conditions imposed on the driver's passenger transport driver authorisation.

The maximum penalty for an offence under this clause is \$12,000 for an individual, and for a body corporate \$60,000. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

Pursuant to clause 153, the CEO will be empowered to disclose the authorisation status of a passenger transport driver in accordance with the regulations. It is intended that this will include whether or not an authorisation is subject to conditions. If an authorisation is subject to conditions, the person making the request will be able to liaise with the driver to ascertain the details of those conditions.

94. Forgery and improper use of identifying details

If the CEO grants an application for a passenger transport driver authorisation, clause 102(1) requires the CEO to issue the successful applicant a passenger transport driver authorisation document. Clause 272(2)(m) also provides for the making of regulations relevant to the issue or replacement of authorisation documents or any additional documents identifying the holders of authorisations such as passenger transport

drivers, or the specification of criteria for identification documents to be held or displayed in vehicles.

Being able to identify the passenger transport driver will provide passengers with assurance that the passenger transport driver is appropriately authorised by the regulatory body. It may also aid a passenger to identify the passenger transport driver by name or by authorisation number, in the event that the passenger has a subsequent query or complaint.

In addition, a passenger transport driver authorisation document may assist in the enforcement of the provisions of the Bill. It may be tendered by a passenger transport driver to an enforcement officer or to an on-demand booking service provider in the endeavour to establish the driver's authorisation to transport passengers for hire or reward.

As specified in clause 94(1), the identifying details of a passenger transport driver include the driver authorisation document issued to the driver, any additional identification documentation issued to the driver, or that the driver is required to hold or display, in accordance with the regulations and/or information that identifies the driver in communications with the provider of an on-demand booking service.

Clause 94(2) provides that it is an offence for a person to forge or fraudulently alter a passenger transport driver authorisation or to use a passenger transport driver authorisation that has been forged or fraudulently altered. The maximum penalty that a court may impose for this offence is \$5,000.

Under clause 94(3), a passenger transport driver commits an offence if the driver uses the driver authorisation document, or any additional identification document issued to the driver, or that the driver is required to hold or display, to pretend that the driver is authorised to drive a vehicle for the purpose of transporting passengers for hire or reward, if the document has ceased to have effect or is not the current document issued to or held by the driver. For example, this would be relevant where the driver uses an older version of their authorisation document that does not show any conditions recently imposed, or an older form of identification with a photograph that is not sufficiently recent. The maximum penalty for this offence is a fine of \$5,000.

Under clause 94(4), a passenger transport driver commits an offence if the driver causes or permits another person to use the driver's identifying details and the other person uses the identifying details for the purpose of impersonating the driver or holding out that the other person is authorised to drive a vehicle for the purpose of transporting passengers for hire or reward. The maximum penalty under this clause is a fine of \$5,000.

Under clause 94(5), a person commits an offence if the person uses a passenger transport driver's identifying details for the purpose of impersonating the driver or holding out that the person is authorised to drive a vehicle for the purpose of transporting passengers for hire or reward. The maximum penalty under this clause is a fine of \$5,000.

Division 3 — Authorisation

95. Application for passenger transport driver authorisation

This clause sets out the means by which a person may apply for the grant of a passenger transport driver authorisation. Clause 95(1) makes it clear that only a natural person may apply for a passenger transport driver authorisation.

Pursuant to clause 95(2) a person who has been disqualified under Part 5 from holding or obtaining a passenger transport driver authorisation, is not permitted to apply for the grant of a passenger transport driver authorisation. Clause 115(1) provides that if a person is convicted of a disqualification offence, their passenger transport driver authorisation is cancelled and they are disqualified from holding or obtaining a passenger transport driver authorisation for the prescribed period.

Clause 95(3) requires an application to be made in the approved form, contain the information required by the CEO to process the application, and be accompanied by the prescribed application fee.

Under clause 95(4), the CEO may request the applicant provide further information, the content of which is detailed in the written notice given to the applicant, within a timeframe also specified in the notice. The applicant will have not less than 30 days to supply the request information to the CEO.

96. Grant of authorisation

Clause 96 provides that the CEO may grant a passenger transport driver authorisation if the CEO is satisfied that the applicant has complied with the requirements for making an application, complies with any prescribed criteria, and has paid the prescribed authorisation fee within the time for payment required by the CEO.

The prescribed criteria for a passenger transport driver are intended to be the same as existing requirements prescribed under the *Road Traffic (Authorisation to Drive) Act 2008* for the endorsement of a person's driver's licence to carry passengers for reward, and will include requirements that the driver:

- be a fit and proper person to transport passengers for hire or reward;
- meet the commercial standard for medical fitness to drive, and provide a criminal records check;
- be at least 20 years of age; and
- have at least 3 years driving experience.

Commercial drivers typically spend more time driving than private drivers do and are therefore at an increased crash risk. They may also be monitoring various in-vehicle communication and work-related systems, a further factor that increases the likelihood of a crash. In the case of commercial drivers who are responsible for carrying passengers, the consequences of a crash are significant. Therefore, a driver's age and experience is relevant, and they are therefore subject to higher medical standards

than private drivers, in order to reduce to a minimum the risk of a crash due to long-term injuries or illnesses. Passenger transport drivers are commercial drivers.

97. Refusal of authorisation

Clause 97 outlines the matters regarding which the CEO has discretion or is compelled to refuse to grant a passenger transport authorisation.

Without limiting clause 96, the CEO may refuse to grant a passenger transport driver authorisation if the applicant is charged with a disqualification offence or the CEO is satisfied that the applicant is not a fit and proper person to hold the authorisation.

Pursuant to the regulation making power in clause 272(2)(a)(v), and clause 95(3)(b), the CEO will be able to require an applicant to provide, and may therefore have regard to, an approved medical report in determining whether an applicant is mentally and physically fit to drive a vehicle to transport passengers for hire or reward.

Clause 4(1) defines an approved medical report as a report complying with the requirements of the regulations for a medical report.

Clause 272(2)(a)(vi) will empower the making of regulations requiring an applicant to provide the CEO with documentation, including any traffic or criminal conviction history, to assist the CEO in determining whether the applicant is a fit and proper person.

Clause 97(2) requires that the CEO must refuse to grant an authorisation if the applicant has been convicted of a disqualification offence and that conviction has not been quashed or set aside, or the disqualification period prescribed for the purposes of section 118(1) in relation to the disqualification offence has not passed since the conviction. Pursuant to clause 4(1), a conviction includes a finding of guilty, or the acceptance of a guilty plea, whether or not a conviction is recorded. The CEO has no discretion as to whether or not to refuse to grant an authorisation in this circumstance.

Clause 97(3) stipulates that, without limiting the matters that may be considered, in considering whether a person is a fit and proper person to hold a passenger transport driver authorisation, the CEO may have regard to the physical and mental fitness of the person, any approved medical report on the person required by the regulations, and any other relevant matters.

98. Conditions of passenger transport driver authorisation

Clause 98(1) requires that a passenger transport driver authorisation is granted subject to any conditions imposed under this Bill and any conditions that the CEO thinks fit and specifies on the authorisation document or otherwise in writing.

Clause 98(2) specifies that in determining the conditions to be imposed on a passenger transport driver authorisation, the CEO may have regard to the opinion of the medical practitioner who prepared any approved medical report on the applicant as to the need for and frequency of medical reassessments over a period not exceeding five years, and any driving restrictions that should be placed on the applicant.

This clause will ensure that a person's fitness to drive can be re-assessed at an interval that is appropriate to their state of physical or mental fitness at a given time, and that any potential issues are monitored if required.

99. Application for variation of conditions

Clause 99(1) provides that a passenger transport driver who wishes to vary the conditions imposed on their authorisation, may apply to the CEO.

Clause 99(2) requires the application to be in the approved form, attach any specified documentation and accompanied by the prescribed application fee.

100. Variation of conditions

Clause 100(1) provides that the CEO may vary the conditions of a passenger transport driver authorisation if the variation is appropriate in the circumstances. The variation may be at the request of the authorised driver pursuant to clause 99, or on the initiative of the CEO (clause 100(2)).

Clause 100(3)(a) requires that any variation must be in writing. Clause 100(3)(b) states that the variation may add new conditions, remove conditions or vary the existing conditions.

101. Notice of decision to refuse or vary

Clause 101(1) requires the CEO to give written notice of a decision to refuse to grant a passenger transport driver authorisation under clause 96 or 97(1) or (2).

Clause 101(2) requires the CEO to give a passenger transport driver written notice of a decision to refuse an application under clause 99 to vary the conditions of the authorisation or to vary the conditions on the authorisation on the CEO's own initiative pursuant to clause 100.

In the case of a 'relevant decision', clause 101(3) provides that the written notice from the CEO must state the reasons for the decision and that the person has a right to a review under Part 10.

Pursuant to clause 101(4), the following are relevant decisions:

- a decision to refuse to grant a passenger transport driver authorisation because the CEO is not satisfied as to a matter in clause 96(a) or (b) (application requirements and prescribed criteria), or clause 97(1)(b) (whether the applicant is a fit and proper person to hold the authorisation);
- a decision to impose conditions on a passenger transport driver authorisation under section 98(1)(b);
- a decision to vary the conditions of a driver's authorisation on the CEO's own initiative;
- a decision to refuse to grant an application for the variation of the conditions of a passenger transport driver authorisation.

102. Driver authorisation document

If the CEO grants an application for a passenger transport driver authorisation, clause 102(1) requires the CEO to give the successful applicant a passenger transport driver authorisation document.

The driver authorisation document must be in the approved form, which may be in electronic or paper form, identify the passenger transport driver to whom it is issued and specify the authorisation number.

Clause 102(3) permits that the CEO may, at any time, issue a new driver authorisation document to a passenger transport driver and give the passenger transport driver a written notice requiring the driver not to use the superseded document and, if applicable, to surrender to the CEO the previous authorisation document issued to the driver.

The power in clause 102(3) may be used where new or varied conditions are imposed on a passenger transport driver that CEO considers are appropriately reflected on the authorisation document.

103. Effect of authorisation

A passenger transport driver authorisation permits the holder of the authorisation to drive a vehicle for the purpose of transporting passengers for hire or reward anywhere in the State.

104. Duration of authorisation

Clause 104(1) and (2) provide that a passenger transport driver authorisation is granted for prescribed period, and may be renewed in accordance with the regulations. It is intended that an authorisation will be granted for a period of 1 year.

Clause 104(3) provides that a passenger transport driver authorisation remains in force until it expires or is cancelled, whichever occurs first.

Pursuant to clause 104(4), a passenger transport driver authorisation is not in force during any time that it is suspended.

Clause 104(5) provides that a passenger transport driver authorisation is not in force to authorise the driving of a vehicle for hire or reward if the holder of the authorisation is not authorised under the *Road Traffic (Authorisation to Drive) Act 2008 (RTADA)* to drive the vehicle. This ensures that if a person's driver's licence under the RTADA is suspended or cancelled, for example as a result of demerit points or a decision of the CEO under that Act, the person's passenger transport driver authorisation will not be in force.

Further, if a passenger transport driver is transporting passengers for hire or reward while driving a class of vehicle for which they are not authorised to drive pursuant to the RTADA, their passenger transport driver authorisation would also be of no effect at that time.

If a person's driver's licence does not authorise the person to drive a vehicle at a particular time, or a particular type of vehicle, it is reasonable and appropriate in the interests of safety, that the person's passenger transport driver authorisation not have force during any such time, or in relation to the driving of that particular kind of vehicle.

105. Authorisation not transferable

A passenger transport driver authorisation is not transferable.

Division 4 — Suspension, cancellation and disqualification

Subdivision 1 — Suspension or cancellation by order

106. Suspension or cancellation order

Clause 106(1) empowers the CEO to suspend or cancel a passenger transport driver authorisation in the following circumstances:

- the CEO is no longer satisfied that the driver meets the requirements for the grant of an authorisation that are prescribed in the regulations;
- the driver has failed to comply with any requirements under this Bill, including a condition of the authorisation or any duty or obligation imposed on the driver under this Bill;
- the authorisation was obtained by fraud or misrepresentation; or
- the CEO is no longer satisfied that the driver is a fit and proper person to hold the authorisation.

With respect to the latter, without limiting the circumstances in which the CEO might form this view, the CEO might have reasonable grounds to believe that the driver is not medically fit to hold the authorisation on the basis of information contained in an approved medical report provided to the CEO by the person in compliance with a requirement to do so.

Clause 106(2) provides that other than where the driver authorisation was suspended on the grounds of being obtained by fraud or misrepresentation, the suspension order may include a requirement that the driver undertake remedial action. Clause 106(3) provides that the CEO, by written notice to the driver, may vary or waive a requirement for remedial action imposed by the suspension order.

Clause 115 makes provision in respect of the cancellation of a passenger transport driver authorisation as a result of a conviction of the authorised driver of a disqualification offence.

107. Suspension order for disqualification offence

Clause 107(a) empowers the CEO to suspend a passenger transport driver authorisation if the driver is charged with a disqualification offence. Regulations made pursuant to clause 273 of this Bill will prescribe disqualification offences. It is intended that more serious offences, particularly those relevant to passenger and public safety,

will be prescribed as disqualification offences. For example, a sexual assault committed against a passenger may be prescribed as a disqualification offence.

Under clause 107(b), the CEO may suspend a passenger transport driver authorisation if the CEO suspects, on reasonable grounds, that the driver has committed a disqualification offence.

This differs from the ground the subject of clause 107(a), which permits action to be taken because the driver has been charged with a disqualification offence. Under clause 107(b), the driver will not, or will not yet, have been charged with the disqualification offence. This will enable the CEO to take immediate action in the interests of public safety, where necessary. For example, reasonable grounds to believe that a driver has committed a disqualification offence may exist where the CEO has been provided with footage from passenger transport vehicle security camera that shows a serious assault involving the driver.

108. Order may be made even if authorisation suspended

Clause 108 makes clear that a suspension or cancellation order may be made under clauses 106 or 107 even if the passenger transport driver authorisation is already suspended when the order is made.

This situation may arise if the CEO has additional grounds on which to suspend a passenger transport driver authorisation. For example, the CEO might make a suspension order under clause 107(a) because the driver is charged with a disqualification offence. Shortly following this action, the CEO might also cease to be satisfied that the driver is medically fit to drive a vehicle to transport passengers for hire or reward, because of information contained in an approved medical report provided to the CEO. As a result, the CEO might make a further suspension order under clause 106(1)(d).

Further, if the CEO decides to make a cancellation order in respect of a passenger transport driver authorisation that is already subject to a suspension, it is not necessary for the suspension order to be revoked before the cancellation order may be made.

109. Show cause process

Clause 109(1) provides that the CEO must not make a suspension or cancellation order under clauses 106(1) or 107 unless a show cause process have been undertaken.

Clause 109(2) provides that the CEO must serve notice on the holder of the passenger transport driver authorisation to show cause within 30 days why the driver authorisation should not be cancelled or suspended. The CEO is empowered under clause 109(3) to suspend or cancel the passenger transport driver authorisation if the CEO is not satisfied at the end of the 30-day show cause period.

If necessary in the circumstances, clause 109(4) provides that the CEO may make an order suspending a passenger transport driver authorisation within the 30-day notice

period. For example, this may be appropriate where the CEO has evidence of a safety issue or other serious non-compliance.

The CEO is not required to comply with this clause if the driver authorisation may be suspended or cancelled with immediate effect as permitted by clause 110, which provides for immediate suspension or cancellation in response to serious safety considerations.

110. Immediate suspension or cancellation

Clause 110 provides that the CEO may make an order to suspend or cancel the driver authorisation under clause 106(1) or 107, without following the show cause process under clause 109, if the CEO has reason to believe that the driver has operated or is operating a vehicle to transport passengers for hire or reward in a manner that has caused, or may cause, danger to the public.

111. Notice of suspension order

Clause 111(1) requires the CEO to give written notice to the holder of a passenger transport driver authorisation regarding a suspension order under 106(1), 107 or 109(4). The written notice must state:

- (a) that the passenger transport driver authorisation is suspended;
- (b) the day on which the suspension period commences;
- (c) the grounds on which the order is made;
- (d) if the order is made under clause 106(1), any remedial action that the holder of the passenger transport driver authorisation is required to take under clause 106(2); and,
- (e) if the suspension order is made under clause 106(1)(a), (b) or (d), 107(b) or 109(4) during a show cause period, that the driver has a right to a review under Part 10.

112. Period of suspension

Clause 112(1) provides that a passenger transport driver authorisation subject to a suspension order under clause 106(1) or 107 is suspended for the period commencing on the day stated in the notice under clause 111(b) and ending on the day stated in the notice of revocation of the suspension order under clause 113(4)(b), or the day on which the authorisation expires or is cancelled, whichever occurs first.

Clause 112(2) specifies that a passenger transport driver authorisation subject to a suspension order under 109(4) is suspended for the period commencing on the day stated in the notice under clause 111(b) and ending on the first of:

- the day on which the authorisation is suspended or cancelled after the end of the 30-day period referred to in clause 109;
- the day stated in a notice of revocation of the order under clause 113(4)(b);
- the day on which the authorisation is otherwise cancelled under this Bill; or

- the day on which the authorisation expires.

113. Revocation of suspension order

Clause 113(1) provides that the CEO may, at any time, revoke a suspension order made under clause 106(1), 107 or 109(4).

Clause 113(2) requires that the CEO must revoke a suspension order made under clause 109(4) as soon as is practicable after the end of the 30-day notice period if the CEO decides not to make an order under clause 106(1).

Clause 113(3) stipulates that the CEO must revoke a suspension order made under clause 106(1), as soon as is reasonably practicable, if the CEO is satisfied that the driver has undertaken the remedial action required under clause 106(2) and the grounds for making the suspension order no longer exist.

For example, the grounds for making the suspension order will no longer exist if the driver provides an approved medical report indicating that the driver has had successful treatment that has addressed the medical issue that gave rise to the CEO making the suspension order.

If the CEO is obliged to revoke the suspension order, clause 113(4) requires that the CEO must give written notice of the revocation of the suspension order to the driver, stating that the suspension has been revoked, the day on which the suspension ends and the reasons for the revocation.

114. Notice of cancellation order

Clause 114(1) requires the CEO to give written notice of a cancellation order to the driver, stating:

- (a) that the passenger transport driver authorisation is cancelled
- (b) the day on which the cancellation takes effect;
- (c) the grounds on which the order is made; and
- (d) if the cancellation order is made under clause 106(1)(a), (b) or (d), that the driver has a right to a review of the CEO's decision under Part 10. An order under 106(1)(a), (b) or (d) would be made on one of the following grounds:
 - the CEO is no longer satisfied that the driver meets the requirements for the grant of an authorisation that are prescribed in the regulations;
 - the driver has failed to comply with any requirements under this Bill, including a condition of the authorisation or any duty or obligation imposed on the driver under this Bill; or
 - the CEO is no longer satisfied that the driver is a fit and proper person to hold the authorisation.

Clause 114(2) specifies that a passenger transport driver authorisation subject to a cancellation order is cancelled on the day stated in the order.

Subdivision 2 — Cancellation and disqualification: conviction of disqualification offence

115. Cancellation and disqualification when convicted of disqualification offence

This clause sets out circumstances in which a passenger transport driver authorisation will be cancelled upon the driver's conviction of an offence that is a disqualification offence.

Clause 89 provides that in Part 5, 'disqualification offence' means an offence under this Act or another written law, a law of the Commonwealth or of another State or a Territory that is prescribed as a disqualification offence. Disqualification offences are intended to be offences of a serious nature.

Clause 115(1) provides for a passenger transport driver's authorisation to be cancelled by force of law, immediately upon conviction of a prescribed disqualification offence, and for the holder to be disqualified from holding or obtaining an authorisation for a prescribed period of time. Regulations made pursuant to clause 273 of this Bill will prescribe disqualification offences, and clause 118 makes provision for the periods of disqualification for each offence.

Clause 115(2) provides that the period of disqualification from holding or obtaining a passenger transport driver authorisation, commences on the date that the passenger transport driver authorisation is cancelled and ends when the disqualification period prescribed in respect of the disqualification offence has expired.

Clause 115(3) provides that the person was convicted of the disqualification offence is taken to be the commencement of the period of disqualification. This is necessary to clarify how the expiration of a disqualification period is to be calculated.

Because a disqualification will commence under this clause immediately upon a person's conviction of a disqualification offence, clause 115(3) makes it clear that the day on which the person is convicted is to count as a whole day, even though the person's conviction occurs part-way through that day.

Clause 115(4) states that the cancellation of a passenger transport driver authorisation has effect even if the passenger transport driver authorisation is suspended when the driver is convicted of the disqualification offence.

Clause 115(5) provides that even though the disqualification period might be scheduled to end once the disqualification period prescribed for the offence has expired, if the conviction is quashed or set aside prior to this, then the period of disqualification ends on this day.

Clause 115(6) stipulates that the commencement of the disqualification period may be postponed until a current period of disqualification has ended, pursuant to clause 116.

Clause 115(7) provides that the clause extends to a conviction by a court of a disqualification offence whether or not the conviction occurred before the

commencement of this clause, if the disqualification period had not expired before that commencement.

116. Cumulative effect of disqualification

A person who is convicted of a disqualification offence may already be subject to a period of disqualification under clause 115(1)(b), at the time at which the person is convicted of the disqualification offence and becomes subject to a further disqualification (the new disqualification period).

Clause 116(2) makes it clear that the commencement of the new disqualification period may be postponed until the earlier disqualification period has ended.

The postponement of the new disqualification period does not reduce the length of the new disqualification period.

117. Notice of cancellation

Clause 117 provides that the CEO must give a person a written notice regarding the cancellation of their passenger transport driver authorisation under clause 115(1)(a), due to being convicted of a disqualification offence, stating:

- (a) that the passenger transport driver authorisation is cancelled;
- (b) that the person is disqualified from holding or obtaining a passenger transport driver authorisation;
- (c) the prescribed period for which the person is disqualified;
- (d) that the cancellation took effect and the period of disqualification commenced when the person was convicted of the disqualification offence; and
- (e) the grounds for the cancellation and disqualification.

118. Disqualification period

Clause 118(1) proposes that a period of disqualification, which may be permanent, must be prescribed in relation to each disqualification offence.

Clause 118(2) allows disqualification periods of differing duration to be prescribed in relation to a disqualification offence, depending upon:

- whether the disqualification offence is a first offence or a subsequent offence;
- the circumstances in which the offence is committed;
- how long the driver has been continuously authorised as a passenger transport driver; and
- whether or not the driver has previously been disqualified under Part 5.

Clause 118(3) will empower the making of regulations that will set out what is to occur if:

- a person is convicted of a disqualification offence; and

- the person becomes subject to a disqualification, as a consequence; and
- the conviction is subsequently quashed or set aside.

The regulations made pursuant to this clause will provide for the circumstances in which, and how the person's passenger transport driver authorisation will be reinstated.

Subdivision 3 — Automatic cancellation of authorisation

119. Cancellation of authorisation if authorisation to drive cancelled

This clause provides for the automatic cancellation of a passenger transport driver authorisation if the holder's authorisation to drive under the *Road Traffic (Authorisation to Drive) Act 2008* is cancelled.

If a person's authority to drive a motor vehicle is withdrawn, it would no longer be appropriate for the person to be authorised to drive a vehicle to transport passengers for hire or reward.

PART 6 — PASSENGER TRANSPORT VEHICLES

This Bill will repeal the *Taxi Act 1994*, as well as the parts of the *Transport Co-ordination Act 1966* which provide for the regulation of country taxi-cars and omnibuses.

This Part of the Bill provides for the regulation of all vehicles currently within the meaning of taxi, country taxi-car or omnibus, as 'passenger transport vehicles'. Part 6 addresses the authorisation of and conditions applicable to vehicles used in the provision of passenger transport services, including offences, and the suspension and cancellation of passenger transport vehicle authorisations.

Passenger transport vehicles will be able to be authorised for one or more specific categories of passenger transport service, and may be used in the provision of any category for which the vehicle is authorised, anywhere in the State.

In order to be authorised as a passenger transport vehicle, clause 126 of the Bill provides that the vehicle must meet the requirements specified in the regulations.

Different requirements may be prescribed for different categories of vehicle.

The primary focus of Part 6 and the authorisation of vehicles, is the safety of the vehicle to be used in the provision of a passenger transport service, and providers of vehicles will subject to safety duties pursuant to Part 2 of the Bill.

Division 1 — Interpretation

120. Terms used

Clause 120 defines terms used for the purposes of Part 6.

Operate, in relation to a vehicle, includes making a vehicle available for use in transporting passengers for hire or reward.

This is intended to ensure that a person who makes a vehicle available for use in the provision of passenger transport services, which would include any time the vehicle is provided to another person for that purpose, is subject to the requirement in clause 122 for the vehicle to be authorised in such circumstances.

Owner has the same meaning as it has in section 5 of the *Road Traffic (Administration) Act 2008*. In that Act, in a road law, owner in relation to a vehicle means ‘the person who is entitled to the immediate possession of the vehicle or, if there are several persons entitled to its immediate possession, the person whose entitlement is paramount’. If one of two or more persons fitting that description has been nominated to be taken as the owner of the vehicle, however, ‘owner’ means only the person nominated.

With respect to the nomination procedure, this occurs if a vehicle is owned by more than one person and one of these people is nominated by all the others and which is formalised by a notice in writing given to the CEO. Upon the validation of the nomination, for the purposes of a road law, the nominated person is taken to be the owner of the vehicle.

The meaning of ‘owner’ is relevant to various clauses of this Part, including who may apply to be authorised to provide a passenger transport vehicle.

Division 2 — Offences

121. Driving a vehicle without a valid vehicle authorisation

Clause 121(1) provides that a person commits an offence if the person drives a vehicle for the use in providing a passenger transport service and the vehicle is not authorised under the provisions of this Part to be operated to provide that category of passenger transport service.

The categories of passenger transport services in this Bill are on-demand (rank or hail, or charter), regular, tourism and prescribed passenger transport services. The maximum penalty for driving an unauthorised vehicle in the provision of a passenger transport service is a fine of \$12,000.

Clauses 137(4) and (5) of this Part provide that a passenger transport vehicle authorisation is not in force during any period for which it is suspended, or during any period that the vehicle licence for the vehicle under the *Road Traffic (Vehicles) Act 2012* is not in force.

Clause 121(2) provides that a person does not commit an offence of driving an unauthorised vehicle if an interstate vehicle authorisation is in force in relation to the vehicle, the person complies with the conditions of that authorisation and with the regulations in driving the vehicle for use in providing the passenger transport service and the driving occurs within the relevant prescribed period for that authorisation.

Clause 4(1) defines interstate vehicle authorisation to mean an authorisation issued under a law of another State or a Territory that authorises a vehicle to transport passengers for hire or reward, and meets the prescribed criteria. It is intended to allow vehicles that are subject to an interstate vehicle authorisation to operate in Western

Australia without a passenger transport vehicle authorisation for up to 3 months. For example, this will enable operators to use interstate vehicles in times of higher demand, with minimal regulatory burden.

Clause 121(3) provides that a person does not commit an offence of driving an unauthorised passenger transport vehicle, if:

- the vehicle is being driven in place of an authorised passenger transport vehicle while the authorised vehicle is being repaired and is not in operation;
- the vehicle licence for the vehicle under the *Road Traffic (Vehicles) Act 2012* is in force, or a vehicle licence is not required for the vehicle because of section 4(5) of that Act (section 4(5) provides for temporary use in the State of vehicles that authorised for use on roads, under the law of another jurisdiction); and
- the vehicle is driven within the period and in accordance with the requirements specified in the regulations.

This will reduce regulatory burden on vehicle providers by permitting temporary use of a substitute vehicle, provided that vehicle meets minimum safety standards.

Clause 121(4) provides that it is a defence to a charge of driving an unauthorised vehicle to prove that the person took all reasonable steps to ensure that the vehicle was authorised under this Bill to be operated use in providing the category of passenger transport service provided.

For example, a person might be considered to have taken reasonable steps if they implemented a system under which the authorisation status of a vehicle they regularly drive is checked at regular intervals. This will be supported by clause 154, which will enable the CEO to disclose the authorisation status of a passenger transport vehicle on the Department's website or to any member of the public or other person.

Clause 137(5) provides that a passenger transport vehicle authorisation is not in force in relation to a vehicle during any period that the vehicle licence for the vehicle under the *Road Traffic (Vehicles) Act 2012* (RTVA) is not in force. In some circumstances, a vehicle licence may not have effect under the RTVA because the owner of the vehicle has failed to pay a fine and that non-payment has resulted in the vehicle licence being suspended under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) (FPINE Act), or under a similar law of another jurisdiction.

Clause 121(5) provides a defence to a driver charged with an offence of driving an authorised vehicle, if they can show that they were not aware that the vehicle licence was suspended because of the non-payment of a fine.

This defence is provided given that, although a licence suspension order under the FPINE Act can only be made after a person has been given a notice of intention to enforce, the power of the Fines Enforcement Registrar to make such an order is discretionary. If the Registrar chooses to make an order, the suspension takes effect by force of section 16(1) of the RTVA, so in some instances the vehicle licensee may not be immediately aware of the suspension. Further, the driver of the vehicle may

not be the vehicle licensee so may not immediately be made aware of any suspension under the FPINE Act.

122. Operating a vehicle without a valid vehicle authorisation

Clause 122 specifies that a person commits an offence if the person operates a vehicle for use in providing a passenger transport service and the vehicle is not authorised under this Part to be operated for use in providing that category of passenger transport service.

‘Operate’ is defined in clause 120 to include making a vehicle available for use in transporting passengers for hire or reward. Operate is not limited to driving a vehicle. Permitting another person, such as a passenger transport driver or a passenger transport service provider under a lease arrangement for example, to use a vehicle for the purposes of the provision of passenger transport services, would involve operation of the vehicle as a passenger transport vehicle.

A person who provides a vehicle for use in the provision of passenger transport services, whether those services are provided by that person or a third party, is to be responsible under this Bill for the safety of the vehicles and the authorisation of the vehicle.

The maximum penalty for this offence is \$12,000 for an individual and \$60,000 for a body corporate. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

In the passenger transport industry, a number of third parties may facilitate the operation of a vehicle for use in the provision of a passenger transport service. For example, the owner of the vehicle may authorise another person to use their vehicle in the provision of passenger transport services, or an on-demand booking service that dispatches bookings to the driver or service provider that drives or operates the vehicle.

Clause 122(2) that a person commits an offence if they cause or permit another person to operate a vehicle for the purpose of providing a passenger transport service, or they are the provider of an on-demand booking service in relation to the operation of the vehicle for the purpose of providing a passenger transport service, and the vehicle is not authorised to be operated to provide that category of passenger transport service. The maximum penalty for this offence is \$12,000 for an individual and \$60,000 for a body corporate. An officer of a body corporate may also be liable if the body corporate is guilty of this offence. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate

Clause 122(5) provides that it is a defence to a charge of an offence under 122(1) or (2), that the person charged took all reasonable steps to ensure that the vehicle was authorised under this Bill to be operated for the purpose of providing the category of passenger transport service provided.

For example, a person might be considered to have taken reasonable steps if they implemented a system under which the authorisation status of the vehicle they operate, or pass on bookings in respect of, is checked at regular intervals. This will be supported by clause 154, which will enable the CEO to disclose the authorisation status of a passenger transport vehicle on the Department's website or to any member of the public or other person.

In line with clause 121, clause 122(3) provides that a person does not commit an offence under clause 122(1) or (2) if an interstate vehicle authorisation is in force in relation to the vehicle, the person complies with the conditions of that authorisation and with the regulations in providing the passenger transport service, and the driving occurs within the relevant prescribed period for that authorisation.

Clause 4(1) defines interstate vehicle authorisation to mean an authorisation issued under a law of another State or a Territory that authorises a vehicle to transport passengers for hire or reward, and meets the prescribed criteria. It is intended to allow vehicles that are subject to an interstate vehicle authorisation to operate in Western Australia without a passenger transport vehicle authorisation for up to 3 months. For example, this will enable operators to use interstate vehicles in times of higher demand, with minimal regulatory burden.

Clause 122(4) provides that a person does not commit an offence under clause 122(1) or (2) if:

- the vehicle is being driven in place of an authorised passenger transport vehicle while the authorised vehicle is being repaired and is not in operation;
- the vehicle licence for the vehicle under the *Road Traffic (Vehicles) Act 2012* is in force, or a vehicle licence is not required for the vehicle because of section 4(5) of that Act (which provides for temporary use in the State of vehicles that are authorised for use on roads, under the law of another jurisdiction); and
- the vehicle is driven within the period, and in accordance with the requirements, specified in the regulations.

This will reduce regulatory burden on vehicle providers, by permitting temporary use of a substitute vehicle provided that vehicle meets minimum safety standards for vehicles.

Clause 137(5) provides that a passenger transport vehicle authorisation is not in force in relation to a vehicle during any period that the vehicle licence for the vehicle under the *Road Traffic (Vehicles) Act 2012* (RTVA) is not in force. In some circumstances, a vehicle licence may not have effect under the RTVA because the owner of the vehicle has failed to pay a fine and that non-payment has resulted in the vehicle licence being suspended under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) (FPINE Act), or under a similar law of another jurisdiction.

Clause 121(5) provides a defence to a driver charged with an offence of driving an authorised vehicle, if they can show that they were not aware that the vehicle licence was suspended because of the non-payment of a fine.

This defence is provided given that, although a licence suspension order under the FPINE Act can only be made after a person has been given a notice of intention to enforce, the power of the Fines Enforcement Registrar to make such an order is discretionary. If the Registrar chooses to make an order, the suspension takes effect by force of section 16(1) of the RTVA, so in some instances the vehicle licensee may not be immediately aware of the suspension. Further, the driver of the vehicle may not be the vehicle licensee so may not immediately be made aware of any suspension under the FPINE Act.

123. Person must comply with authorisation conditions

Clause 123 provides that a person must not operate an authorised passenger transport vehicle or allow the operation of the vehicle in contravention of the conditions of the passenger transport vehicle authorisation.

The maximum penalty for this offence is \$12,000 for an individual and \$60,000 for a body corporate. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

For example, a person might be considered to have taken reasonable steps if they implemented a system under which the authorisation status of the vehicle or vehicles they operate, or pass on bookings in respect of, is checked at regular intervals. This will be supported by clause 154, which will enable the CEO to disclose the authorisation status of a passenger transport vehicle on the Department's website or to any member of the public or other person, which may include the conditions imposed on the authorisation by the CEO under section 129.

The maximum penalty for operating, or allow the operation of, a vehicle in contravention of the conditions of the passenger transport vehicle authorisation is equivalent to the maximum penalty for operating or allowing operation of a vehicle without an in-force passenger transport vehicle authorisation. This is appropriate given that some conditions on a vehicle authorisation may be critical to ensuring public safety. Judicial discretion will remain with the court to impose a lesser penalty according to the circumstances of each case.

Division 3 — Authorisation of vehicles

124. Application for authorisation

Clause 124(1) provides for who may apply for a passenger transport vehicle authorisation. This is the owner of the vehicle, or a person authorised by the owner of the vehicle to apply for the authorisation of the vehicle. A person who has made their vehicle available for another person to use, pursuant to a long-term lease arrangement for example, may authorise the lessee to apply for authorisation of the vehicle.

If a person other than the vehicle owner is authorised, the owner of the vehicle retains the ability to withdraw their consent and request that the CEO cancel the authorisation pursuant to clause 149. This will ensure the owner of the vehicle retains the ability to use their asset as they see fit.

The application to authorise a passenger transport vehicle must be made to the CEO, in the approved form, contain the information required by the CEO, state the category or categories of passenger transport vehicle for which the vehicle is to be operated and be accompanied by the prescribed application fee. The category or categories of service that a vehicle is authorised to provide will also have a bearing on the requirements that vehicle must meet pursuant to the regulations to be made pursuant to this Bill.

Clause 124(4) provides that the CEO may request, by written notice, further information to relevant to the application. The written notice must specify the time that the information must be provided to the CEO to continue the application process, which will be at least 30 days.

125. Categories of passenger transport service

The categories of passenger transport service for a passenger transport vehicle authorisation are:

- on-demand rank or hail passenger transport service (defined in clause 4(1));
- on-demand charter passenger transport service (defined in clause 4(1));
- regular passenger transport service (defined in clause 6);
- tourism passenger transport service (defined in clause 7); and
- prescribed passenger transport service (defined in clause 4(1)).

These categories are the types of passenger transport services regulated by this Bill and will capture vehicles currently within the meaning of taxi, country taxi-car or omnibus under the *Taxi Act 1994* and the *Transport Co-ordination Act 1966*.

126. Requirements for authorisation of vehicle

Clause 126 stipulates that the CEO must not authorise a vehicle under this Division unless the vehicle meets the requirements specified in the regulations. It is intended to prescribe requirements for vehicles that must be met prior to being authorised.

Such requirements will be based on existing requirements for taxis, country taxi-cars and omnibuses under the *Taxi Act 1994* and the *Transport Co-ordination Act 1966* and will include requirements relevant to vehicle and passenger safety, and accessibility. Compliance with the *Road Traffic (Vehicles) Act 2012* will be a minimum requirement, as will regular inspections pursuant to that Act.

The category or categories of service that a vehicle is authorised to provide will also have a bearing on the requirements that vehicle must meet pursuant to the regulations to be made pursuant to this Bill. For example, a vehicle being operated to provide an on-demand rank or hail service is intended to be subject to different requirements as to the signage on the vehicle, security camera installation and the need to be fitted with a meter for fares, as compared with other categories of passenger transport service, for which these additional requirements and any other security features, such

as driver screens, will be optional. The regulations will ensure all on-demand vehicles can be adequately identified while they are operating.

127. Grant of authorisation

Clause 127 provides that the CEO may grant a passenger transport vehicle authorisation if the applicant has complied with the requirements of clause 124(3) and (4), the CEO is satisfied that the requirements of clause 126 have been met and the applicant has paid the relevant fee for the authorisation within the time required for payment by the CEO.

Clause 136 makes provision in respect of the duration of the authorisation.

128. Refusal of authorisation

Clause 128(1) provides that the CEO must refuse an application for authorisation of a vehicle if another person already holds an authorisation in relation to that vehicle. This is to ensure it is clear who is responsible for the operation of the vehicle in the chain of accountability.

Clause 128(2) provides that the CEO may refuse an application for a vehicle authorisation if the CEO is satisfied that the applicant is not a fit and proper person to hold the authorisation. Pursuant to clause 128(3), the CEO may have regard to any relevant matters in considering whether an applicant is a fit and proper person.

For example, multiple convictions for non-compliance with prescribed standards for vehicles, or a conviction for breach of a safety duty as a provider of a passenger transport vehicle, would be relevant when considering if an applicant is fit and proper to hold a passenger transport vehicle authorisation.

129. Conditions of vehicle authorisation

Clause 129 provides that the grant of a passenger transport vehicle authorisation is subject to any conditions imposed under this Bill and any conditions the CEO thinks fit and specifies this on the authorisation document, or otherwise in writing.

130. Application for variation of conditions

Clause 130(1) provides that a passenger transport vehicle authorisation holder may apply to the CEO to vary the conditions of the person's passenger transport vehicle authorisation imposed by the CEO.

Clause 130(2) requires such an application to be made in the approved form, accompanied by any required documents or other information, and as the prescribed application fee.

131. Variation of conditions

Clause 131(1) permits the CEO to vary the conditions of a passenger transport vehicle authorisation imposed by the CEO if the CEO is satisfied that the variation is appropriate in the circumstances.

Clause 131(2) provides that the variation may be in a response to an application made by the applicant under clause 130 or on the CEO's own initiative. In either case, a variation must be in writing and may vary or remove existing conditions, or add new conditions.

132. Application for variation of categories of passenger transport service

Clause 132(1) provides that the holder of a passenger transport vehicle authorisation may apply to the CEO to vary the categories of passenger transport service that the vehicle is to be authorised to provide, by adding or removing a category of service.

The category or categories of service that a vehicle is authorised to provide will have a bearing on the requirements that vehicle must meet pursuant to the regulations to be made pursuant to this Bill. For example, a vehicle being operated to provide an on-demand rank or hail service is intended to be subject to different requirements as to the signage on the vehicle, security camera installation and the need to be fitted with a meter for fares, as compared with other categories of passenger transport service. It is important for safety and compliance purposes that the regulator knows what services a vehicle is being used to provide. Given the differing requirements imposed, it is also necessary to enable an authorised provider to apply to vary the authorised categories applicable to a vehicle to facilitate flexibility.

Clause 132(2) provides that the application must be in the approved form, be accompanied by any documents or other information specified in the approved form and be associated with the prescribed application fee (if any).

133. Variation of categories of passenger transport service

Clause 133 provides that, in response to an application under clause 132, the CEO may vary the categories of passenger transport service that the vehicle is to be authorised to provide, by adding or removing a category of service.

Clause 133(2) requires that the variation be in writing.

Pursuant to clause 133(1)(b), in order to add a category of passenger transport service that the vehicle may be used in the provision of, the CEO must be satisfied that the application requirements of clause 132(2) are met, and that the vehicle meets the requirements specified in the regulations.

The category or categories of service that a vehicle is authorised to provide will have a bearing on the requirements that vehicle must meet pursuant to the regulations to be made pursuant to this Bill. For example, a vehicle being operated to provide an on-demand rank or hail service is intended to be subject to different requirements as to the signage on the vehicle, security camera installation and the need to be fitted with a meter for fares, as compared with other categories of passenger transport service.

134. Notice of decision to refuse or vary

Clause 134(1) requires the CEO to give written notice of a decision to refuse to grant a passenger transport vehicle authorisation under clause 127 or 128(1) or (2).

Clause 134(2) provides that the CEO must give a holder of a passenger transport vehicle authorisation written notice of a decision to:

- refuse an application under clause 130 to vary the conditions of the passenger transport vehicle authorisation;
- vary the conditions of the passenger transport vehicle authorisation under clause 131;
- refuse an application under clause 132 to vary the passenger transport vehicle authorisation to add or remove a category or categories of passenger transport service.

Clause 134(3) stipulates that a notice may be given in relation to two or more vehicles if the decision is made for the same reasons for each vehicle.

In the case of a 'relevant decision', the notice must state the reasons for the decision and that the person has a right to a review of the CEO's decision under Part 10.

Clause 134(5) provides that 'relevant decision' means a decision:

- (a) to refuse to grant a passenger transport vehicle authorisation because the CEO is not satisfied as to a matter mentioned in clause 127(a) or (b), or clause 128(2);
- (b) to impose conditions on a passenger transport vehicle authorisation under section 129(b);
- (c) to vary the conditions of a passenger transport vehicle authorisation on the CEO's own initiative;
- (d) to refuse to grant an application to vary the conditions of a passenger transport vehicle authorisation; or
- (e) to refuse to grant an application to vary a passenger transport vehicle authorisation to add or remove a category of passenger transport service.

135. Authorisation document

If the CEO grants a passenger transport vehicle authorisation, this clause requires the CEO to issue an authorisation document to the holder.

Clause 135(2) provides that the authorisation document must be in the approved form and:

- identify the holder of the passenger transport vehicle authorisation;
- specify the authorisation number;
- identify the vehicle authorised; and
- specify the category or categories of passenger transport service for which the vehicle is authorised to be operated.

136. Effect of authorisation

Clause 136 provides for the effect of a passenger transport vehicle authorisation according to the category of passenger transport service authorised.

Clause 136(1) provides that, in respect of an on-demand rank or hail passenger transport service, a vehicle authorisation that specifies that the vehicle can be operated for this type of passenger transport service, authorises the operation of the vehicle to provide that service anywhere in the State for the prescribed period.

Clause 136(2) provides that, in respect of an on-demand charter passenger transport service, a vehicle authorisation that specifies that the vehicle can be operated for this type of passenger transport service, authorises the operation of the vehicle to provide that service anywhere in the State for the prescribed period.

Clause 136(3) provides that, in respect of a regular passenger transport service, a vehicle authorisation that specifies that the vehicle can be operated for this type of passenger transport service, authorises the operation of the vehicle to provide that service anywhere in the State for the prescribed period.

Although a vehicle authorised to be operated to provide a regular passenger transport service can be used for that purpose anywhere in the State, the provider of the regular passenger transport service that the vehicle is used in the provision of will still need to be authorised to provide the service on the relevant routes or areas pursuant to Part 4 of the Bill. Meaning that although the vehicle may be authorised for use in that kind of service, the service provider still needs to be authorised to provide the service (through the use of those vehicles) in the relevant locations. This ensures appropriate management of regular passenger transport services, whilst enabling flexibility in the use of authorised vehicles within or between service providers where required, to meet changing levels of demand or service needs at particular times and in particular areas.

Clause 136(4) provides that, in respect of a tourism passenger transport service, a vehicle authorisation that specifies that the vehicle can be operated for this type of passenger transport service, authorises the operation of the vehicle to provide that service anywhere in the State for the prescribed period.

Clause 136(5) provides that, in respect of a prescribed passenger transport service, a vehicle authorisation that specifies that the vehicle can be operated for this type of passenger transport service, authorises the operation of the vehicle to provide that service for the prescribed period. The areas in which the vehicle may be operated may depend on the nature of the prescribed service and accordingly the provision does not authorise operation anywhere in the State.

137. Duration of authorisation

Clauses 137(1) and (2) provide that a passenger transport vehicle authorisation is granted for prescribed period, and may be renewed in accordance with the regulations. It is intended that vehicle authorisations will be able to be granted for 12 months, but shorter periods of 1, 3 or 6 months will be available to cater for the applicant's business needs. For example, a shorter period may be more appropriate for a person who only

intends to operate a vehicle as a passenger transport vehicle on a seasonal basis, providing a degree of flexibility to operators.

Clause 137(3) provides that a passenger transport vehicle authorisation remains in force until it expires, or it is cancelled, whichever occurs first.

Pursuant to clause 137(4), a passenger transport vehicle authorisation is not in force during the time it is suspended.

Clause 137(5) provides that if the vehicle licence for the vehicle under the *Road Traffic (Vehicles) Act 2012* is not in force, the passenger transport vehicle authorisation is not in force.

This ensures that if a vehicle licence is suspended or cancelled, whether as a result of a decision of the CEO under that Act or otherwise, the passenger transport vehicle authorisation for that vehicle is also not in force. Circumstances in which a vehicle licence may be suspended or cancelled under the *Road Traffic (Vehicles) Act 2012* include where a vehicle does not meet the prescribed standards and requirements for that vehicle, and the vehicle has not been presented for inspection when required by the CEO under a road law.

138. Authorisation not transferable

This clause provides that a passenger transport vehicle authorisation is not transferable.

This ensures that the authorisation for a specified vehicle cannot be transferred to another person, including in circumstances where the vehicle is sold to another person. This removes the potential for vehicle authorisations to become a consideration in the valuing the vehicle.

Division 4 — Suspension or cancellation of authorisation

Subdivision 1 — Suspension or cancellation by order

139. Suspension or cancellation order

Clause 139(1) empowers the CEO to make an order suspending or cancelling a passenger transport vehicle authorisation in the following circumstances:

- the CEO is no longer satisfied that the vehicle meets the requirements of the regulations for the grant of an authorisation;
- the holder of the authorisation fails to comply with any requirements under this Bill, including a condition of the authorisation and any duty or obligation imposed on the holder under this Act;
- the authorisation was obtained by fraud or misrepresentation;
- the CEO is no longer satisfied that the holder of the authorisation is a fit and proper person to hold the authorisation.

Clause 139(2) specifies that a suspension order made under subsection (1)(b) or (d) (where the holder failed to comply with any requirements under this Bill or the CEO no longer considers the holder to be a fit and proper person to hold an authorisation), may require that the holder undertake remedial action.

Clause 139(3) provides that the CEO may, by written notice, vary or waive any requirement for remedial action.

Clause 139(4) specifies that a suspension or cancellation order may be made to two or more passenger transport vehicle authorisations on the same grounds. For example, this would be relevant where the holder of an authorisation has failed to comply with a requirement of this Bill in respect of multiple vehicles for which they hold authorisations in respect of.

140. Order may be made even if authorisation suspended

Clause 140 mandates that a suspension or cancellation order under clause 139 can be made in respect of a passenger transport vehicle authorisation even if the passenger transport vehicle authorisation is already suspended when the order is made.

For example, if the CEO decides to make a cancellation order in respect of a passenger transport vehicle authorisation that is already subject to a suspension, it is not necessary for the suspension order to be revoked before the cancellation order may be made.

141. Show cause process

Clause 141(1) provides that the CEO must not make a suspension or cancellation order under clause 139(1), unless the CEO has first undertaken a show cause process.

Pursuant to clause 141(2), the CEO must serve notice on the holder of the passenger transport vehicle authorisation to show cause within 30 days why the vehicle authorisation should not be suspended or cancelled, as the case may be. If the CEO is not satisfied at the end of the 30-day notice period, the CEO may suspend or cancel the passenger transport vehicle authorisation.

If necessary in the circumstances, clause 141(4) provides that the CEO may make an order suspending a passenger transport vehicle authorisation within the 30-day notice period. For example, this may be appropriate where the CEO has evidence of a safety issue or other serious non-compliance.

The CEO is not required to comply with this clause if the vehicle authorisation may be suspended or cancelled with immediate effect as permitted by clause 142, which permits immediate suspension or cancellation in response to serious safety considerations.

142. Immediate suspension or cancellation

If the CEO has reason to believe that the passenger transport vehicle is in a condition that, if driven, will or could pose a danger to the public or the vehicle has been or is

being operated in a way that is, or may be, a danger to the public, clause 142 provides that an order to immediately suspend or cancel the passenger transport vehicle authorisation can be made.

The show cause process in clause 141 does not apply.

This ensures action can be taken in the interests of public safety where the vehicle itself is causing a safety issue or there are issues with the way the vehicle is being operated by the provider which poses a safety risk, such as a failure in the implementation of a safety management system that is in place in respect of the management of a fleet of vehicles.

143. Notice of suspension order

This clause provides that the CEO must give written notice of a suspension order made under 139(1) or 141(4) to the holder of the passenger transport vehicle authorisation stating:

- that the passenger transport vehicle authorisation is suspended;
- the day on which the period of suspension commences;
- the grounds on which the suspension order was made;
- if the order is made under clause 139(1), the details of any remedial action that the holder is required to undertake under clause 139(2); and,
- if the order was made under clause 139(1)(b) or (d), where the holder of the authorisation has failed to comply with any requirements under this Act, or the CEO is no longer satisfied that the holder of the authorisation is a fit and proper person, or clause 141(4) during a show cause period, that the holder has a right to a review under Part 10.

144. Period of suspension

A passenger transport vehicle authorisation, which is subject to a suspension order under clause 139(1), is suspended for the period commencing on the day stated in the written notice in clause 143(b), and ends either on the day stated in the notice of revocation under clause 145(4)(b) or the day on which the authorisation expires or is cancelled, whichever occurs first.

Clause 144(2) provides that a passenger transport vehicle authorisation, which is subject to a suspension order under clause 141(4), is suspended for the period commencing on the day stated in the written notice in clause 143(b) and ending on the first of:

- the day on which the authorisation is suspended or cancelled after the end of the 30-day period referred to in clause 141;
- the day stated in the notice of revocation under clause 145(4)(b);
- the day on which the authorisation is otherwise cancelled under this Bill; or

- the day on which the authorisation expires.

145. Revocation of suspension order

This clause sets out circumstances in which the CEO may or must revoke a suspension order.

Clause 145 provides that the CEO may, at any time, revoke a suspension order made under clause 139(1) or 141(4).

Clause 145(2) requires that the CEO must revoke a suspension order made under clause 141(4) as soon as is practicable after the end of the 30-day notice period if the CEO decides not to make an order under clause 139(1).

Clause 145(3) provides that the CEO must revoke a suspension order made under clause 139(1)(b) or (d), as soon as is reasonably practicable, if the CEO is satisfied that the holder of the authorisation has undertaken the remedial action required under clause 139(2) and the grounds for making the suspension order no longer exist.

If the CEO is obliged to revoke the suspension order, clause 145(4) requires that the CEO must give written notice of the revocation of the suspension order to the holder of the authorisation, stating that the suspension has been revoked, the day on which the suspension ends and the reasons for the revocation.

146. Notice of cancellation order

Clause 146(1) requires the CEO to give written notice of a cancellation order to the holder of the passenger transport vehicle authorisation which states:

- that the authorisation is cancelled
- the day on which the cancellation takes effect;
- the grounds on which the order is made; and
- if the order is made under section 139(1)(b) or (d), where the holder of the authorisation has failed to comply with any requirements under this Act, or the CEO is no longer satisfied that the holder of the authorisation is a fit and proper person, that the holder has a right to a review under Part 10.

Clause 146(2) specifies that the passenger transport vehicle authorisation subject to a cancellation order is cancelled on the day stated in the order.

Subdivision 2 — Automatic cancellation of authorisation

147. Cancellation of authorisation: cancellation of vehicle licence

Clause 147 provides that a passenger transport vehicle authorisation is cancelled in respect of a vehicle if the vehicle licence is cancelled under the *Road Traffic (Vehicles) Act 2012*.

The *Road Traffic (Vehicles) Act 2012* imposes various requirements on vehicles in the interests of safety. Being licensed under that Act will be a condition of authorisation as a passenger transport vehicle under this Bill. Accordingly, if the vehicle licence has

been cancelled, it is appropriate for the passenger transport vehicle authorisation to also be cancelled.

148. Cancellation of authorisation: transfer of ownership of vehicle

Clause 148 applies if the ownership of an authorised passenger transport vehicle is transferred to a person other than the person who is the holder of the authorisation for the vehicle. This new owner of the vehicle is referred to as the transferee.

Clause 148(2) provides that if ownership of the authorised vehicle is transferred to another person, the passenger transport vehicle authorisation is cancelled at the end of the prescribed period after the transfer, unless the CEO is notified within the prescribed period that the transferee has consented to the holder of the authorisation for the vehicle continuing to hold the authorisation.

Under clause 148(3), the notice to the CEO is to be in the approved form and contain the information required by the CEO.

This clause ensures that a new owner of an authorised vehicle can permit the authorisation holder to continue to use the vehicle to provide passenger transport services, if desired, without the authorisation being cancelled and a new application having to be made. For example, a person who owns a fleet of cars and has consented to another person leasing those vehicles for use in the provision of passenger transport services may sell the fleet, along with the business. The purchaser may wish to continue with the existing business model and allow the same person to continue leasing those vehicles for use in the provision of passenger transport services.

Subdivision 3 — Cancellation of authorisation on request

149. Cancellation of authorisation on request

Clause 149 empowers the CEO to cancel a passenger transport vehicle authorisation at the request of the holder of the authorisation or the owner of the vehicle. This will ensure the owner of the vehicle retains the ability to withdraw their consent as to use their asset as they see fit.

The CEO must provide a written notice of the cancellation of an authorisation to the owner of the vehicle and, if the holder of the authorisation is not the owner of the vehicle, to the holder of the passenger transport vehicle authorisation.

Clause 149(3) stipulates that the cancellation of the passenger transport authorisation takes effect at the end of the relevant prescribed period specified in the notice.

PART 7 — CONFIDENTIALITY AND EXCHANGE OF INFORMATION

Part 7 deals with issues of confidentiality and exchange of information.

Division 1 — Interpretation

150. Terms used

This clause defines various terms that are used throughout Part 7 of this Bill.

disclose - the term “disclose” is used throughout the provisions of this Part that deal with the sharing of information by the CEO with other entities, including by the Commissioner of Police with the CEO.

The normal meaning of the term “disclose” is widened to include “to provide, to release and to give access to [information]”. This definition is identical to that used in respect of the disclosure of information in the *Road Traffic (Administration) Act 2008*.

driver’s licence information - the *Road Traffic (Authorisation to Drive) Act 2008* empowers the making of regulations setting out a driver licensing scheme. The road traffic CEO is responsible for all matters associated with authorisation to drive pursuant to that Act and regulations made under it.

One category of information that the road traffic CEO may disclose under this Part is driver’s licence information. Driver’s licence information is to mean information about driver’s licences, and is to include:

- details of persons who have made application for or in relation to a driver’s licence;
- details of persons who hold or who have held a driver’s licence;
- information contained in a driver’s licence register maintained pursuant to the *Road Traffic (Authorisation to Drive) Act 2008*; and
- information about driver’s licences granted in other Australian jurisdictions or in other countries.

This definition is based on the same term used for the purposes of road laws as provided in the *Road Traffic (Administration) Act 2008*.

infringement notice information is to mean information about infringement notices, and is to include information about:

- an infringement notice given to a person;
- the payment by a person of the modified penalty associated with an infringement notice;
- the withdrawal of an infringement notice;
- an alleged offence the subject of an infringement notice being referred to a court for determination;
- the registration of an infringement notice with the Fines Enforcement Registrar under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA), because of non-payment of the modified penalty associated with the infringement notice;

- any withdrawal of proceedings under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, where an infringement notice has been registered with the Fines Enforcement Registrar under that Act because of the non-payment of the modified penalty associated with the infringement notice.

interstate passenger transport authority

Clause 164 empowers the CEO to disclose to and seek certain information from an interstate passenger transport authority. This clause provides what is considered to be an interstate passenger transport authority.

It is to mean a person, agency or authority of another Australian jurisdiction that administers or performs functions under a law of that jurisdiction relating to passenger transport.

interstate passenger transport law

This term provides what is considered to be a law that is recognised for the purposes of this Part. It is used in the term '*interstate passenger transport authority*', providing the basis for recognising which jurisdiction's authorities with which the CEO may exchange information. Interstate passenger transport law is to mean a law of another Australian jurisdiction that relates to passenger transport, or a prescribed law.

law enforcement official

Clause 162 permits the CEO to disclose certain information to a 'law enforcement official' if the CEO considers that the information is required by the official for the purposes of the performance of the official's functions. This will contribute to effective enforcement of other laws.

This clause provides that the term 'law enforcement official' means a person prescribed, or a person of a class prescribed, by the regulations.

offence information – this term is to mean:

- details of any offence with which a person has been charged, or of which a person has been convicted, in Western Australia;
- details of any penalty suspension, cancellation or disqualification arising from such a conviction;
- details held by the Commissioner of Police, if any, of any offence with which a person has been charged, or of which a person has been convicted, elsewhere than in Western Australia;
- details held by the Commissioner of Police, if any, of any penalty, suspension, cancellation or disqualification arising from such a conviction.

passenger transport authorisation information

Under this Part, the CEO will be empowered to disclose passenger transport authorisation information in certain circumstances. A passenger transport authorisation under this Bill is any of the following authorisations:

- an on-demand booking service authorisation;
- a regular passenger transport service authorisation;
- a passenger transport driver authorisation;
- a passenger transport vehicle authorisation.

This clause provides that the term ‘passenger transport authorisation information’ means information about passenger transport authorisations, and includes:

- details of the persons who have made applications for or in relation to one of those authorisations;
- details of the persons who hold or have held one of those authorisations;
- details of passenger transport vehicles that are the subject of an application for an authorisation, or that are or were authorised, under Part 6;
- details of any decision to refuse to grant an authorisation;
- details of the suspension or cancellation of any authorisation;
- details of any disqualification from holding or obtaining an authorisation;
- details of charges and convictions for offences under this Act;
- infringement notice information relating to alleged offences under this Act;
- information relating to whether an applicant for or a holder of a passenger transport service authorisation is a fit and proper person;
- information relating to whether a person who is, or has been nominated to be, a responsible officer of a provider of an on-demand booking service authorisation is a fit and proper person.

relevant authority

Clause 160 will empower the CEO to disclose to and seek information from a “relevant authority”. Pursuant to that clause, the CEO may disclose passenger transport information, or any other information that is prescribed for the purposes of the clause, if the CEO considers that the information is required by the authority for the performance of their functions. Similarly, the CEO may seek from a relevant authority any information the CEO considers is required for the purposes of his/her functions under this Bill.

This clause provides the term “relevant authority” means a person prescribed, or a class of persons prescribed in the regulations.

relevant person – this term means a person who:

- is an applicant for a passenger transport authorisation;
- holds or has held a passenger transport authorisation;

- is a person nominated by, or a close associate of, an applicant for, or the holder of, an on-demand booking service authorisation; or
- is a responsible officer of the provider of an on-demand booking service.

This Part will provide for the disclosure of information about relevant persons, in certain circumstances, in order to enable the administration and enforcement of the provisions of this Bill or of another written law.

road law has the meaning given in the *Road Traffic (Administration) Act 2008* section 4 – in that Act, road law means that Act, as well as the:

- *Road Traffic Act 1974*;
- *Road Traffic (Authorisation to Drive) Act 2008*; and
- *Road Traffic (Vehicles) Act 2012*.

road traffic CEO means the CEO as defined in the *Road Traffic (Administration) Act 2008* section 4;

traffic infringement notice information – this means details of the instances in which a person has paid a penalty under an infringement notice under a road law, obtained by the road traffic CEO from the Commissioner of Police under a road law;

transport co-ordination CEO means the Director General as defined in the *Transport Co-ordination Act 1966* section 4(1);

vehicle licence information

The *Road Traffic (Vehicles) Act 2012* requires a vehicle of a kind prescribed in regulation to be licensed. The road traffic CEO is responsible for the grant, renewal, transfer, suspension and cancellation of vehicle licences.

One category of information that the road traffic CEO may disclose under this Part is vehicle licence information. Vehicle licence information is to mean information about vehicle licences, and is to include:

- details of the persons who have made applications for or in relation to a vehicle licence;
- details of the persons who hold or have held a vehicle licence;
- information contained in the register of vehicle licences maintained pursuant the *Road Traffic (Vehicles) Act 2012*;
- details of any defect notices issued in relation to vehicles under the *Road Traffic (Vehicles) Act 2012*;
- information about vehicle authorisations granted in other Australian jurisdictions or other countries.

Division 2 — Confidentiality

151. Confidentiality

Clause 151(1)

This Bill requires people to share certain information with the regulator in order to lawfully carry out their business. It also provides for the disclosure of certain kinds of information to third parties, and for disclosure of certain information by specified persons, to the CEO to ensure the effective administration of the scheme.

Having access to and use of people's personal and business information, as well as the ability to disclose that information to third parties, and for a purpose other than the purpose for which it was provided, is a significant matter. Accordingly, clause 151(1) provides that a person must not disclose any information provided to them in the performance of a function under this Act except in the following circumstances, and makes non-compliance an offence:

- (a) in the performance of that function or another function under this Act;
- (b) in the performance of a function under the *Transport Co-ordination Act 1966* that relates to passenger transport vehicles; or
- (c) as authorised under this Act or the *Transport Co-ordination Act 1966* in relation to a function mentioned in paragraph (a) or (b).

A person who contravenes this provision is liable for a fine of \$12,000 or 12 months imprisonment.

Clauses 315, 316 and 318 of the Bill will also amend the penalty for the offences in sections 14(3), 15(3) and 143A of the *Road Traffic (Administration) Act 2008* (RTAA), which apply to use of certain information for a purpose other than the purpose for which it was disclosed. The existing penalty in those provisions is a fine of 100 penalty units or imprisonment for 12 months. Pursuant to section 7(b) of the RTAA, a penalty unit is currently set at \$50.00 per unit, making the current maximum pecuniary penalty in respect of these offences \$5,000.

The amendments to be made by clauses 313 to 317 will increase the penalty from 100 to 240 penalty units, resulting a maximum pecuniary penalty of \$12,000 for the offences. This will bring the penalties connected with the related offences in the RTAA, in line with the penalty in clause 151(1) of the Bill. An increase in the pecuniary penalties connected with these related offences in the RTAA is appropriate given the personal and sensitive nature of some of the information that is subject to the provisions.

Consistent penalty provisions in respect of offences applicable to unauthorised use of information in both the RTAA and this Bill is also appropriate given that, to an extent, they apply to the same kinds of information.

Clauses 151(2) & (3)

Clause 151(2) will empower the CEO to publish de-identified data from time to time to provide information to the public about the performance for the passenger transport industry. Clause 151(3) will empower the CEO to provide de-identified data on request to any person on payment of a prescribed fee. These clauses are intended to facilitate access to information for purposes such as research into transport trends and issues, without compromising personal and business information.

Clause 151(4)

Clause 151(4) provides that nothing in this clause affects the operation of the *Taxation Administration Act 2003* (WA) (TAA) section 114, which relates to the duty of confidentiality under that Act.

Clause 329 of this Bill will amend the TAA to prescribe Part 9 Division 2 as a taxing Act for the purposes of that Act. Making Part 9 Division 2 of this Bill a taxing Act for the purposes of the TAA will see the levy subject to an established administration regime for State taxing laws.

Clause 243(1) provides that the TAA is to be read with Part 9 Division 2 as if they formed a single Act, meaning that the duty of confidentiality in section 114 of the TAA will still operate in respect of information relevant to the on-demand passenger transport levy.

152. CEO may provide authorisation information

This clause will empower the CEO to provide certain vehicle information to the provider of an authorised on-demand booking service, regular passenger transport service, or the provider of an authorised passenger transport vehicle to assist in complying with their safety duties under the Act. In particular, the CEO may advise the provider whether or not:

- (a) in the prescribed period before the request, an improvement notice under this Bill was issued in relation to the holder of a passenger transport authorisation or a passenger transport vehicle; or
- (b) a defect notice under the *Road Traffic (Vehicles) Act 2012* is in effect in relation to a passenger transport vehicle.

This information will allow booking service, regular passenger transport service and vehicle providers, access to information that may be relevant to their role in managing safety. In respect of improvement notices, as these do not have an expiry date, only information about recently issued improvement notices will be shared.

This clause will not authorise the CEO to share details of the improvement notice or the defect notice that has been issued, or details of the person to whom the relevant notice was given. It is intended that the information will be disclosed by reference to the passenger transport driver authorisation number or driver's licence number, or the passenger transport vehicle authorisation number or vehicle plate number, to which the notice relates. In the case of driver authorisations, to enable appropriate driver

validation, it is intended that the person requesting the information will also be required to provide information about the person who holds the relevant driver's licence such as the person's name and date of birth.

In order to determine who is authorised to operate the vehicle, or who the authorised driver is, the on-demand booking service provider, regular passenger transport service provider, or the passenger transport vehicle provider would already need to have a business relationship with that person. It would then be up to the person provided with the information under this clause to seek further information from the vehicle provider or authorised driver about the nature of the notice that was issued, pursuant to private business arrangements.

153. Disclosure of authorisation status of driver

This clause will empower the CEO to disclose the authorisation status of a passenger transport driver on the Department's website or to any member of the public or any other person in accordance with the regulations.

The authorisation status of a passenger transport driver authorisation is intended to include whether or not it is in force and whether or not it is subject to conditions. If an authorisation is not in force, this may include details as to whether this is a result of a suspension, cancellation or disqualification and the period of any suspension or disqualification.

Given the importance of careful management of personal information, regulations will provide further parameters as to how information that may be shared pursuant to this clause can be disclosed.

In the case of disclosure to persons such as the providers of on-demand booking services or passenger transport vehicles, it is intended that the regulations made pursuant to this clause will permit the information to be accessed by reference to a person's passenger transport driver authorisation number or driver's licence number. To enable appropriate driver validation, it is intended that the person requesting the information will also be required to provide prescribed information about the person who holds the relevant driver's licence such as the person's name and date of birth.

Details such as the name of the person who holds the authorisation may be included in respect of disclosure to certain persons, however no other personal information about the person who holds the passenger transport driver authorisation is intended to be disclosed.

In order to determine who holds the authorisation about which the information is disclosed, the person accessing the information would need to have further information. This will enable persons dealing directly with a particular driver, such as on-demand booking service provider who is passing bookings on to the driver under an arrangement between the parties, or a vehicle provider allowing a driver to use their vehicle under an arrangement between the parties, to check the driver's authorisation status after obtaining certain information from the driver's authorisation document in the context of those private relationships.

Regulations may also provide for the disclosure of a driver's authorisation status to a member of the public via the Department's website. This may involve a hirer or passenger of a vehicle entering in to the website, a driver's authorisation number and first name (which may be available on an identify document that the driver is required to display) and being provided with confirmation as to whether or not the driver's authorisation is in force. This would empower consumers in making choices about the services they book and the safety of those services.

154. Disclosure of information about vehicle authorisation

This clause will empower the CEO to disclose certain information about a passenger transport vehicle authorisation on the Department's website or to any member of the public or any other person, including:

- (a) the authorisation number and number plate of the vehicle;
- (b) the category of authorisation;
- (c) whether or not the authorisation is in force;
- (d) the conditions imposed on the authorisation by the CEO under section 129.

The ability to share details as to whether or not a vehicle is authorised will assist providers of services and vehicles as well as drivers, in meeting their safety duties under this Bill. It is intended for the information to be disclosed pursuant to this clause to be accessed by reference to the passenger transport vehicle authorisation number or vehicle number plate.

Regulations may also provide for the disclosure of a vehicle's authorisation status to a member of the public via the Department's website. This may involve a hirer or passenger of a vehicle entering in a vehicle plate number to the website, and being provided with confirmation as to whether or not the vehicle's authorisation is in force. This would empower consumers in making choices about the services they book and the safety of those services.

155. Use of and access to information provided under this Part

This Part imposes obligations on different persons to disclose information that is considered relevant or necessary to disclose in order to enable the effective enforcement of the provisions of this Bill or of another written law.

The disclosure of an individual's personal information, to a person other than the person to whom it was provided by the individual and for a purpose other than the purpose for which the individual provided it, is a significant matter.

This clause makes clear that the CEO's access to and use of the following information, is limited to the purpose of the performance of the CEO's functions under this Bill, including:

- (a) information disclosed to or obtained by the CEO under Part 7 of the Bill;
- (b) information disclosed to the CEO under the *Road Traffic (Authorisation to Drive) Act 2008* – in connection with clause 156 of this Bill, which will authorise the

CEO to use a photograph relating to a person's driver's licence for the purposes of the production of an identity document under this Bill, clauses 317 to 320 of the Bill will make consequential amendments to the *Road Traffic (Authorisation to Drive) Act 2008* empower the CEO under that Act to disclose those photographs to the CEO for use for that purpose;

- (c) information disclosed to or obtained by the Director General under the *Taxi Act 1994* (Taxi Act) – this will ensure information gathered in the administration of the Taxi Act will be available in the administration of this Bill. Clause 4(4) of the Bill will operate in respect of this clause to ensure that the reference to the Taxi Act is still effective after that Act has been repealed.

156. Use of photographs

This clause will authorise the CEO to use a photograph relating to a person's driver's licence for the purposes of producing a passenger transport driver authorisation or other identification document for a person required by this Act.

Specifically, this clause will authorise the CEO to use a photograph, previously provided by a person to the CEO under the *Road Traffic (Authorisation to Drive) Act 2008* for use in the production of a driver's licence document, in the production of the person's passenger transport driver authorisation or other identification document. To ensure a photograph is not out-dated, this clause will provide that the photograph must have been previously provided by the person within ten years before the grant of their passenger transport driver authorisation.

A passenger transport driver authorisation may be in electronic or paper form. It will identify the passenger transport driver to whom it is issued and specify the authorisation number and may also include any conditions imposed on the authorisation.

A passenger transport driver authorisation or other identification document will assist in the enforcement of the provisions of the Bill. It may be tendered by a holder to an enforcement officer, to a booking service or to a passenger transport vehicle provider in an endeavour to establish the person's authorisation to carry on the occupation of passenger transport driver.

Division 3 — Exchange of information

157. Exchange of information between CEO and Commissioner of Police

This clause will impose obligations on the CEO and the Commissioner of Police to exchange information that is considered relevant or necessary to disclose in order to enable the effective enforcement of the provisions of this Bill or of another written law.

Clause 157(1) will require the CEO to disclose the following information to the Western Australian Commissioner of Police:

- details of any applications for the grant, renewal or variation of a passenger transport authorisation, including decisions to refuse to grant an authorisation;

- details of the persons who hold or who have previously held a passenger transport authorisation, or of vehicles that are or were authorised under Part 6;
- details of the suspension and cancellation of a passenger transport authorisation, and of related disqualifications to which persons are subject as a result;
- details of charges and convictions for offences created under the provisions of this Bill or of regulations made under it;
- infringement notice information relating to alleged offences under this Act; and
- information relating to whether certain persons regulated under this Bill are fit and proper persons.

Clause 157(1)(b) will also empower the making of regulations prescribing other information that the CEO must disclose to the Commissioner of Police, if the need for the disclosure of such information is identified.

Clause 157(2)(a) will empower the Commissioner of Police to use information disclosed under clause 157(1) in the performance of the Commissioner's functions under a written law, but not for any other purpose.

Clause 157(2)(b) will empower the Commissioner of Police to disclose information, that was disclosed to the Commissioner by the CEO under clause 157(1), to a police officer for use in the performance of the police officer under this Bill or under another written law, but not for any other purpose.

Pursuant to clause 166, a police officer will be an authorised officer. In addition, the CEO will be empowered to designate relevant officers of the Department of Transport as authorised officers.

Authorised officers will be responsible for the enforcement of the provisions of this Bill. Persons designated by the CEO as authorised officers will perform a dedicated enforcement role, however, while police officers will perform a limited enforcement function, the need for which is most likely to arise in the course of a police officer's performance of his or her frontline policing responsibilities.

For example, a police officer may stop a vehicle that is being driven as a passenger transport vehicle in order to ensure that the passenger transport vehicle driver is complying, or that the passenger transport vehicle complies, with relevant provisions of the *Road Traffic Act 1974*. The police officer may, at the same time, exercise his or her powers as an authorised officer for the purposes of this Bill and request that the passenger transport vehicle driver produce his or her passenger transport vehicle driver authorisation so that the police officer can establish that the passenger transport vehicle driver has a valid passenger transport vehicle driver authorisation.

A police officer will be authorised to use information disclosed to the police officer by the Commissioner of Police both in the performance of enforcement functions under this Bill and in the performance of other law enforcement functions, where relevant.

Clause 157(3) will require the Western Australian Commissioner of Police to disclose the following information about a relevant person (as defined in clause 150), to the CEO:

- details of any offence with which the person has been charged, or of which a person has been convicted, in Western Australia;
- details of any penalty suspension, cancellation or disqualification arising from such a conviction;
- details held by the Commissioner of Police, if any, of any offence with which the person has been charged, or of which a person has been convicted, elsewhere than in Western Australia;
- details held by the Commissioner of Police, if any, of any penalty, suspension, cancellation or disqualification arising from such a conviction.

Clause 157(3)(b) will also empower the making of regulations prescribing other relevant information that the Commissioner of Police must disclose to the CEO.

158. Exchange of information between CEO and road traffic CEO

Clause 158(1) will require the CEO to disclose the following information to the road traffic CEO (as defined in clause 150):

- details of any applications for the grant, renewal or variation of a passenger transport authorisation, including decisions to refuse to grant an authorisation;
- details of the persons who hold or who have previously held a passenger transport authorisation, or of vehicles that are or were authorised under Part 6;
- details of the suspension and cancellation of a passenger transport authorisation, and of related disqualifications to which persons are subject as a result;
- details of charges and convictions for offences created under the provisions of this Bill or of regulations made under it;
- infringement notice information relating to alleged offences under this Act; and
- information relating to whether certain persons regulated under this Bill are fit and proper persons.

Clause 158(1)(b) will also empower the making of regulations prescribing other information that the CEO must disclose to the road traffic CEO, if the need for the disclosure of such information is identified.

Clause 158(2) will require the road traffic CEO to disclose to the CEO driver's licence and traffic infringement notice information about a relevant person, as well as vehicle licence information about a relevant person or about a passenger transport vehicle or alleged passenger transport vehicle.

Clause 158(2)(d) will also empower the making of regulations prescribing other relevant information that the road traffic CEO must disclose to the CEO, if the need for the disclosure of such information is identified.

Clause 158(3) will provide that photographs and signatures provided to the road traffic CEO, for use in the grant of driver's licences or driving authorisations, must not be provided under this section except when the CEO is authorised to use a photograph for the purposes of producing a passenger transport driver authorisation or other identification document (pursuant to clause 156).

159. Exchange of information between CEO and transport co-ordination CEO

Clause 159(1) will require the CEO to disclose the following information to the transport co-ordination CEO (as defined in clause 150):

- details of any applications for the grant, renewal or variation of a passenger transport authorisation, including decisions to refuse to grant an authorisation;
- details of the persons who hold or who have previously held a passenger transport authorisation, or of vehicles that are or were authorised under Part 6;
- details of the suspension and cancellation of a passenger transport authorisation, and of related disqualifications to which persons are subject as a result;
- details of charges and convictions for offences created under the provisions of this Bill or of regulations made under it;
- infringement notice information relating to alleged offences under this Act; and
- information relating to whether certain persons regulated under this Bill are fit and proper persons.

Clause 159(1)(b) will also empower the making of regulations prescribing other information that the CEO must disclose to the transport co-ordination CEO, if the need for the disclosure of such information is identified.

Clause 159(2) will require the transport co-ordination CEO to disclose the following information to the CEO about a relevant person:

- details of any offence with which the person has been charged under the *Transport Co-ordination Act 1966* (TCA);
- details of infringement notices given for alleged offences under the TCA, including whether the modified penalties associated with those infringement notices were paid or any infringement notices withdrawn, or any matter associated with an infringement notice referred to *the Fines Enforcement Registrar under the Fines, Penalties and Infringement Notices Act 1994* (WA);
- any other information prescribed in regulations for this purpose.

Clause 159(3) will require the transport co-ordination CEO to disclose to the CEO information about any omnibus or taxi-car licensed under the TCA. As this Bill will regulate vehicles and service providers that are currently regulated pursuant to an

omnibus or country taxi-car licence under the TCA, this will enable sharing of information that is necessary to the continued and effective regulation of these matters under this Bill.

160. Exchange of information between CEO and relevant authority

Clause 160(1) will empower the CEO to disclose passenger transport authorisation information and any other information prescribed in regulations to a relevant authority (as defined in clause 150) if the CEO considers that the information is required by the authority for the purposes of the performance of the authority's functions. Passenger transport authorisation information includes:

- details of any applications for the grant, renewal or variation of a passenger transport authorisation, including decisions to refuse to grant an authorisation;
- details of the persons who hold or who have previously held a passenger transport authorisation, or of vehicles that are or were authorised under Part 6;
- details of the suspension and cancellation of a passenger transport authorisation, and of related disqualifications to which persons are subject as a result;
- details of charges and convictions for offences created under the provisions of this Bill or of regulations made under it;
- infringement notice information relating to alleged offences under this Act; and
- information relating to whether certain persons regulated under this Bill are fit and proper persons.

Clause 160(1)(b) will also empower the making of regulations prescribing other information that the CEO may disclose to a relevant authority, if the need for the disclosure of such information is identified.

Clause 160(2) will empower the CEO to seek from a relevant authority any information that the CEO considers is required for the purposes of performance of the CEO's functions under this Act.

161. Disclosure of information where agreement is made

Clause 161 will empower the CEO to disclose particular information to a body or person with whom the CEO has entered into an agreement under clause 285 if the CEO considers the body or person requires the information in order to be able to perform the function or functions the subject of the clause 285 agreement.

Clause 285 will empower the CEO to enter into an agreement with a third party, under which agreement the third party will, on behalf of the CEO, perform a function or functions of the CEO under this Bill, including any functions delegated to the CEO under the *Taxation Administration Act 2003* for the purposes of the administration of the on-demand passenger transport levy in Part 9 Division 2 of this Bill, that is or are the subject of the agreement, in accordance with the terms of the agreement.

Clause 161 will empower the CEO to disclose to the body or person details of any passenger transport authorisation including but not limited to:

- details of any applications for the grant, renewal or variation of a passenger transport authorisation, including decisions to refuse to grant an authorisation;
- details of the persons who hold or who have previously held a passenger transport authorisation, or of vehicles that are or were authorised under Part 6;
- details of the suspension and cancellation of a passenger transport authorisation, and of related disqualifications to which persons are subject as a result;
- details of charges and convictions for offences created under the provisions of this Bill or of regulations made under it;
- infringement notice information relating to alleged offences under this Act; and
- information relating to whether certain persons regulated under this Bill are fit and proper persons.

Clause 161 will also empower the CEO to disclose to the body or person:

- any information disclosed to the CEO under this Division, or by an interstate passenger transport authority, if the CEO considers the body or person requires the information in order to be able to perform the function or functions the subject of the clause 285 agreement; and
- any information prescribed by the regulations.

162. Disclosure of information to law enforcement official

Clause 162 will empower the CEO to disclose the following information to a law enforcement official (as defined in clause 150):

- details of any applications for the grant, renewal or variation of a passenger transport authorisation, including decisions to refuse to grant an authorisation;
- details of the persons who hold or who have previously held a passenger transport authorisation, or of vehicles that are or were authorised under Part 6;
- details of the suspension and cancellation of a passenger transport authorisation, and of related disqualifications to which persons are subject as a result;
- details of charges and convictions for offences created under the provisions of this Bill or of regulations made under it;
- infringement notice information relating to alleged offences under this Act; and
- information relating to whether certain persons regulated under this Bill are fit and proper persons.

Clause 162(b) will also empower the making of regulations prescribing other information that the CEO may disclose to a law enforcement official, if the need for the disclosure of such information is identified.

163. Disclosure of information to CEO of Public Transport Authority

This clause will empower the CEO to disclose passenger transport authorisation information to the CEO of the Public Transport Authority (PTA) to facilitate the provision of effective public transport services in the State.

This is intended to support the PTA in its statutory function of operating safe and reliable public passenger transport services.

164. Exchange of information between CEO and interstate passenger transport authorities

Other Australian jurisdictions also regulate passenger transport services. This clause will empower the disclosure by the CEO of relevant information to authorities in other jurisdictions who are responsible for regulating passenger services transport, and will empower the CEO to seek information from those authorities if the CEO considers the information necessary to enable the CEO to perform his or her functions under the provisions of this Bill.

Clause 164(1) will empower the CEO to disclose information to an interstate passenger transport authority if the CEO considers that information is necessary to enable the authority to perform its functions. Such information includes details of any passenger transport authorisation including:

- details of any applications for the grant, renewal or variation of a passenger transport authorisation, including decisions to refuse to grant an authorisation;
- details of the persons who hold or who have previously held a passenger transport authorisation, or of vehicles that are or were authorised under Part 6;
- details of the suspension and cancellation of a passenger transport authorisation, and of related disqualifications to which persons are subject as a result;
- details of charges and convictions for offences created under the provisions of this Bill or of regulations made under it;
- infringement notice information relating to alleged offences under this Act; and
- information relating to whether certain persons regulated under this Bill are fit and proper persons.

If any information disclosed includes information about an offence of which a person has been convicted or an alleged offence for which a person has been given an infringement notice, clause 164(2) will also require the CEO to disclose the following information:

- any quashing or setting aside of the conviction; or

- any withdrawal of the infringement notice or the matter coming before a court for determination; or
- any withdrawal of proceedings in relation to the infringement notice under the *Fines, Penalties and Infringement Notices Act 1994* (WA); or
- anything else the CEO knows that is relevant to the offence or the alleged offence, the disclosure of which is likely to be favourable to the person.

Clause 164(3) will empower the CEO to request information from an interstate passenger transport authority, if the CEO considers the information is necessary to enable the CEO to perform his or her functions under the provisions of this Bill.

This subclause will not require the interstate authority to disclose the requested information to the CEO.

165. Disclosures under this Part free of charge

Part 7 will impose obligations on different persons to disclose information that it is considered is relevant or necessary to disclose in order to enable the effective enforcement of the provisions of the Bill or of another written law.

Except for section 151(3) which provides that the CEO may provide unpublished de-identified data on request and on payment of a prescribed fee, this clause will require persons responsible for the disclosures within Part 7 to make them free of charge.

PART 8 — ENFORCEMENT

Part 8 provides the enforcement framework for the road passenger transport industry.

Division 1 — Authorised officers

Subdivision 1 — Designation

166. Authorised officers

Pursuant to clause 166(1), a police officer is an authorised officer. In addition, the CEO is empowered to designate other persons as authorised officers.

Authorised officers will be responsible for the enforcement of the provisions of this Bill. Persons designated by the CEO as authorised officers will perform a dedicated enforcement role. Police officers will perform a limited enforcement function, the need for which will most likely arise in the course of a police officer's performance of their frontline policing responsibilities.

For example, a police officer may stop a vehicle that is being driven as a passenger transport vehicle in order to ensure that the driver is complying, or that the vehicle complies, with relevant provisions of the *Road Traffic Act 1974*. The police officer may, at the same time, exercise his or her powers as an authorised officer for the purposes of this Bill and request that the driver produce his or her passenger transport

driver authorisation document so that the police officer can establish that the driver has a valid authorisation.

Clause 166(2) clarifies that the other persons the CEO may designate as authorised officers are to be persons employed or engaged by the Department of Transport.

Clause 166(3) requires the CEO to ensure that each person whom the CEO designates as an authorised officer is issued with an identity card in a form approved by the CEO. The identity card will display the authorised officer's name, photograph and other credentials deemed necessary.

Clause 166(4) requires an authorised officer, who is not a police officer, to carry their identity card when performing enforcement functions and to show it when exercising enforcement powers under other provisions of this Bill.

Clause 166(5) will provide that, in any legal proceedings, such as a prosecution, an identity card issued pursuant to clause 162(3) will constitute proof that the person to whom it was issued has been designated as an authorised officer by the CEO, unless another person tenders evidence that proves otherwise.

Subdivision 2 — General powers

167. Term used: relevant person

Clause 167 defines relevant person for the purpose of limiting to whom general powers of authorised officers may be exercised. It means:

- a person who holds, or has held, any kind of passenger transport authorisation under this Bill, or, other than in respect of a passenger transport driver, an agent of that person;
- a person who, or whom an authorised officer suspects on reasonable grounds, is or was the provider of an on-demand booking service or associated booking service or an agent of those persons;
- a person who is or was a responsible officer of the provider of an authorised on-demand booking service;
- a person who is or was an employee of the provider of an on-demand booking service or the provider of an associated booking service;
- a person whom an authorised officer suspects on reasonable grounds has driven a vehicle for the purpose of transporting passengers for hire or reward;
- a person who is or was the owner of a passenger transport vehicle or whom an authorised officer reasonably suspects is or was the responsible person for the vehicle for the purposes of clause 174; or
- a person whom an authorised officer suspects on reasonable grounds is or was the provider of a passenger transport service or vehicle, or an agent of that person;

- a person who is or was an employee of the provider of a passenger transport service or a passenger transport vehicle.

The above are all persons with a key role in the operation of the passenger transport system, or who are likely to have information relevant to the operation of the system and compliance with the provisions of this Bill.

168. Powers of authorised officers: purposes

Clause 168 provides that an authorised officer may exercise the powers set out in this subdivision of the Bill in order to monitor compliance with this Bill, to investigate a suspected contravention of this Bill and to investigate whether there are grounds for suspending or cancelling an authorisation granted under this Bill.

169. Powers in relation to vehicles

A component of an authorised officer's enforcement activities will take place on roads and at places where vehicles are being used in the provision of a passenger transport service. For this reason, clause 169(1) sets out what an authorised officer will be empowered to do in relation to a vehicle that is being, or appears to be, used in the provision of a passenger transport service:

- to cause the vehicle to stop and to remain stopped for as long as is reasonably necessary for the authorised officer to exercise other powers (clause 169(1)(a));
- to direct the person driving the vehicle to produce the person's driver's licence document, the person's driver authorisation document and/or any additional identification document issued to the person, or required to be held or displayed by the person in accordance with the regulations (clause 169(1)(b));
- to direct a person travelling in the vehicle to get out of the vehicle, or to direct a person not to get into the vehicle (clause 169(1)(c));
- to direct the person driving the vehicle, or any passenger travelling in the vehicle, to provide information requested by the authorised officer, answer a question asked by the authorised officer, advise the authorised officer of the person's name and address, or show to the authorised officer a document or a record that the person is capable of showing to the authorised officer (clause 169(1)(d));
- to inspect the vehicle and any equipment in or on the vehicle (clause 169(1)(e));
- make a still or moving image or recording of the vehicle and anything in or on the vehicle (clause 169(1)(f));
- operate a computer or other thing in or on the vehicle (clause 165(1)(g));
- make a copy of, take an extract from, download or print out any document or thing (clause 169(1)(h));
- seize a document or record and retain it for as long as is reasonably necessary (clause 169(1)(i)); and,

- direct the driver of the vehicle, or a person in possession of the vehicle, to give the authorised officer any assistance that the officer reasonably requires for the purposes in clause 168 (clause 169(1)(j)).

170. Directions to relevant persons

Clause 170 provides an authorised officer with general powers in order to monitor compliance with the provisions of this Bill, to investigate a suspected breach of the provisions of the Bill or of regulations made under it, or to investigate whether there are grounds for suspending or cancelling an authorisation granted under this Bill. This will include the power to:

- direct a relevant person to answer a question asked by the authorised officer or to provide the authorised officer with information required by the authorised officer (clause 170(a));
- direct a relevant person to produce a document or record that the person is capable of producing (clause 170(b));
- seize, inspect, make a copy, take an extract, download or print out such a document or record and retain it for as long as is reasonably necessary (clause 170(c) and (d)).

171. Entry of premises

Clause 171 provides an authorised officer with powers of entry and search, and related powers, where these powers are necessary in order to monitor compliance with the provisions of this Bill, to investigate a suspected breach of the provisions of the Bill or of regulations made under it, or to investigate whether there are grounds for suspending or cancelling an authorisation granted under this Bill. On entering premises, clause 171(1) empowers an authorised officer to:

- search the premises;
- make a still or moving image or recording of the place and anything in or on the place;
- operate a computer or other thing at the premises;
- make a copy of, take an extract from, download or print out any document or record;
- seize a document, or make a record that the authorised officer can retain for as long as is reasonably necessary; and,
- direct the occupier of the premises, or another person at the premises, to give the authorised officer any assistance that the authorised officer reasonably requires.

Clause 171(2) will ensure that these powers may only be exercised if the occupier of the premises consents to the entry or, if the occupier does not consent, pursuant to an entry warrant obtained pursuant to Division 2 of this Part.

The powers provided by this clause will only be exercisable in respect of a premises occupied by a relevant person. 'Relevant person' is defined in clause 167.

172. Requirement to comply with directions

Clause 172(a) provides that a person directed to give any information, answer any question or produce any document or record under clauses 169, 170 or 171, may not refuse to comply with these directions on the grounds that the information, answer, document or record may tend to incriminate the person or render the person liable to any penalty.

However, clause 172(b) provides that any information or answer given, or document or record produced, by the person is not admissible in evidence in any criminal proceedings against the person other than proceedings for perjury or for providing false or misleading information under this Bill. This preserves the common law privilege against self-incrimination.

173. Assistance to exercise powers

Clause 173(1) permits an authorised officer to authorise other persons to assist in the exercise of the officer's powers under this subdivision, as are reasonably necessary in the circumstances. Accordingly, a person so authorised may exercise the power, or assist the authorised officer to exercise the power, as the case requires (clause 173(2)), and must obey any lawful and reasonable directions of the other person when exercising or assisting to exercise the power (clause 173(4)).

Clause 173(3) specifies that if a person is lawfully entitled to exercise the power and another person reasonably suspects the person needs assistance to do so, the other person may assist whether or not they are requested to do so.

Pursuant to clause 173(5), a person who provides assistance to an authorised officer in accordance with this clause will have the benefit of any enactment that protects the authorised officer or the State from liability for the person's acts or omissions as though those acts or omissions included the acts or omissions of the person assisting, when acting under this clause.

This clause has been adopted from section 9 of the *Criminal Investigation Act 2006* and means that a person assisting an authorised officer, who performs a function under the provisions of this Bill will not be liable for their actions, provided the person performed the action in good faith. The latter refers to performing a function with honesty and sincerity. Clause 286 provides for protection from personal liability arising from the performance of functions under the Bill.

Similar protections are commonly provided in other comparable statutes in Western Australia. Without them, employees and contractors of State Government agencies would be reluctant or unwilling to undertake responsibilities that could lead to them being personally sued.

174. Duty to identify driver or person in charge of vehicle

Clause 174(1) provides that in this clause the term 'responsible person', in relation to a vehicle, has the same meaning as provided in section 4 of the *Road Traffic (Administration) Act 2008 (WA)* (RTAA) as if this clause were a road law, and includes a person to whom possession or control of the vehicle was entrusted at the time of an alleged offence under this Bill involving the driving of the vehicle.

In the RTAA, a responsible person for a vehicle is the current vehicle licence holder, the new owner of a vehicle as specified in a notice of change in ownership, or the previous licence holder if the vehicle is unlicensed. In any other case, a responsible person for a vehicle is the person who is entitled to the immediate possession of the vehicle or, if there are several persons entitled to its immediate possession, the person whose entitlement is paramount.

Clause 174(2) stipulates that a responsible person for a vehicle commits an offence if:

- a) an alleged offence under this Bill has been committed involving the driving of a vehicle; and
- b) an authorised officer requests the responsible person to give information which may lead to the identification of the driver or person in charge of the vehicle at the time of the alleged offence; and
- c) the responsible person has, or could reasonably have ascertained, the information; and
- d) the responsible person, without lawful excuse, fails to give the information.

The penalty for an offence under clause 174(2) is, for an individual, \$5,000 for a first offence and \$10,000 for a subsequent offence. The fine for a body corporate is \$25,000. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

Clause 174(3) provides that it is an offence for a responsible person to provide false information to an authorised officer following a request for information which may lead to the identification of the driver or person in charge of a vehicle at the time of an alleged offence under this Bill involving the vehicle. The penalty for this offence is, for an individual, \$5,000 for a first offence and \$10,000 for a subsequent offence. The fine for a body corporate is \$25,000. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

The penalty structure for clauses 174(2) and (3) is based on that provided in section 34 of the *Road Traffic (Administration) Act 2008*.

Clause 174(4) specifies that a person charged with an offence under clause 174(2) may instead be convicted under clause 175.

175. Duty to take reasonable measures to be able to comply with identity request

Clause 175(1) provides that in this clause:

- 'identity request' means a request for information as to the identity of the person who was driving or in charge of a vehicle at any particular time; and
- 'responsible person', in relation to a vehicle, has the same meaning as provided in section 4 of the *Road Traffic (Administration) Act 2008* (WA) as if this clause were a road law. In that Act, a responsible person for a vehicle is the current vehicle licence holder, the new owner of a vehicle as specified in a notice of change in ownership, or the previous licence holder if the vehicle is unlicensed. In any other case, a responsible person for a vehicle is the person who is entitled to the immediate possession of the vehicle or, if there are several persons entitled to its immediate possession, the person whose entitlement is paramount.

Clause 175(2) specifies that a responsible person for a vehicle commits an offence if they fail to take reasonable measures, or make reasonable arrangements, to ensure that if an identity request is made in relation to a vehicle, the responsible person will be able to comply with it.

The penalty for an offence against clause 175(2) is, for an individual, a fine of \$5,000 for a first offence and \$10,000 for a subsequent offence. For a body corporate the fine is \$25,000. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

This clause is based on section 35 of the *Road Traffic (Administration) Act 2008*.

176. Offences

Clause 176 sets out the offences for non-compliance with enforcement activities.

Clause 176(1) provides that it constitutes an offence for a person to fail to obey a direction given by authorised officer under Part 8. The maximum penalty that a court may impose for such an offence is \$5,000.

Clause 176(2) provides that it constitutes an offence for a person to interfere or seek to obstruct an authorised officer who is performing, or trying to perform, an enforcement function under this Part. The maximum penalty that a court may impose for such an offence is \$5,000. Clause 176(5) elaborates on the circumstances that are covered by this provision.

Clause 176(3) provides that it constitutes an offence for a person to provide false information to, or wilfully mislead, an authorised officer exercising a function under this Part. The maximum penalty that a court may impose for such an offence is \$5,000.

Clause 176(4) provides that it constitutes an offence for a person to fail to assist an authorised officer in exercising a function under this Part when required to do so. The maximum penalty that a court may impose for such an offence is \$5,000 for an individual and \$25 000 for a body corporate.

Clause 176(5) makes clear that a person is considered to have interfered with or obstruct an authorised officer who is performing, or trying to perform, an enforcement function under this Part, if the person refuses or fails to provide, or obstructs the provision of, an on-demand booking service or on-demand passenger transport service to the authorised officer when sought in the exercise of a function under this Part.

This would include where a person refused to take a booking from, or withdrew access to the means of making a booking from, a person they knew or suspected to be an authorised officer or a controlled operations officer authorised pursuant to clause 215.

Division 2 — Entry warrants

This division sets out how entry warrants are to be applied for and their effect.

The provisions of this Bill relating to entry warrants replicate provisions in the *Criminal Investigation Act 2006* Part 5 Division 3 relating to search warrants. The powers of a police officer or a public officer relating to search warrants under that Act are not available to persons who are designated by the CEO as authorised officers responsible for the enforcement of the provisions of this Bill.

177. Terms used

Clause 177(1) defines ‘remote communication’ to mean any way of communicating at a distance including by telephone, fax, email and radio. This definition applies to the use of this term in this Division.

Clause 177(2) clarifies that any reference to making an application in this Division includes a reference to giving information in support of the application.

178. Application for entry warrant

Clause 171 empowers an authorised officer to enter and search premises, either with the consent of the occupier of the premises or pursuant to an entry warrant.

This clause set out how an authorised officer is to apply for an entry warrant.

Clause 178 empowers an authorised officer to apply to a Justice of the Peace for an entry warrant that will empower an authorised officer to enter premises in order to monitor compliance with the provisions of this Bill, to investigate a suspected breach of the provisions of the Bill or of regulations made under it or of a code of conduct, or to investigate whether there are grounds for suspending or cancelling an authorisation granted under this Bill.

The application must be made in accordance with this Division and must include the prescribed information (if any).

179. Application to be in person unless urgent

Clause 179 requires an applicant for an entry warrant to make the application in person before a Justice of the Peace, unless there is an urgent need for the entry warrant and the applicant reasonably suspects that there is no Justice of the Peace available within a reasonable distance of the applicant.

If this is the case, clause 179(2) permits an authorised officer to make an application for an entry warrant to a Justice of the Peace via remote communication, which, pursuant to clause 177(1), may include the use of a telephone, fax, email or radio communication.

If an application is made via remote communication, the Justice of the Peace to whom it is made must not grant the application, unless the Justice is also satisfied that there does exist an urgent need for the entry warrant and that the applicant did not reasonably have access to a Justice of the Peace in order to make the application in person.

180. Application to be in writing unless made remotely

Clause 180 requires an application for an entry warrant to be made in writing, unless the application is being made via remote communication and it is not practicable to send written material to the Justice of Peace to whom the application is being made. For example, if an authorised officer applies for an entry warrant via telephone, because the authorised officer does not have any other means of communication available, the authorised officer will likely have no practicable means of providing written material to the Justice when making the application.

If this is the case, then clause 180(2) empowers the authorised officer to make the application for the entry warrant orally. In such a case, this requires the Justice of the Peace to whom the application is made to make a written record of the application, as well as any information the authorised officer provides orally in support of the application.

181. Application to be on oath unless made remotely

Clause 181 requires an application to be made on oath when applying for an entry warrant. The *Interpretation Act 1984* provides that an oath means an oath or affirmation taken or made in accordance with the *Oaths, Affidavits and Statutory Declarations Act 2005*. This reflects the gravity of the request to enter private premises without the consent of the occupier of those premises.

Clause 181(1) specifies that it is not necessary for the applicant to swear an oath when making the application if the application is being made by remote communication and, because of the nature of the remote communication, it is not practicable for the Justice of the Peace to whom the application is being made to administer an oath.

If this is the case, clause 181(2) permits the application to be made without the applicant swearing an oath. In such a case, if the Justice of the Peace determines to issue the entry warrant sought, the applicant must, as soon as is reasonably practicable after the issue of the entry warrant, send to the Justice an affidavit that verifies the application and any information provided in support of the application.

182. Form of entry warrant made remotely

Clause 182 sets out the procedure if a Justice of the Peace issues an entry warrant, when the application has been made via remote communication. This situation

requires the Justice to send a copy of the warrant to the applicant by remote communication (for example, by email or fax), if this is practicable.

If this is not practicable, clause 182(1) stipulates that the Justice is to send the applicant, by remote communication, any information that the warrant must contain. The applicant is then to transcribe the information provided by the Justice into a form devised by the applicant, and to give the Justice a copy of that form as soon as is practicable after completing the form.

The Justice is then to attach a copy of that form to the original warrant, together with any affidavit that the applicant provides to the Justice pursuant to clause 181(2), which is required if it is not possible for the applicant to swear an oath when making the application. The Justice is to make sure that these documents are made available for the applicant to collect.

Clause 182(2) provides that an entry warrant, filled out in a form devised by the applicant will have the same force and effect as the original warrant issued by the Justice of the Peace.

183. Evidence obtained inadmissible if section 181(2)(b) or 182(1)(b) contravened

Clause 183 provides that any evidence obtained by the authorised officer under the entry warrant is not admissible in proceedings in court or in the State Administrative Tribunal if the applicant for the warrant does not comply with the provisions of clause 181(2)(b) or 182(1)(b), which require the applicant to:

- send the Justice of the Peace an affidavit where the application was made via remote communication and it was not practicable for the applicant to swear an oath when making the application (clause 181(2)(b)); or
- provide the Justice of the Peace with a copy of the form of warrant completed by the applicant, containing information provided by the Justice via remote communication, where it was not practicable for the Justice to send the applicant a copy of the original warrant by remote communication (clause 182(1)(b)).

184. Issue and content of entry warrant

Clause 184(1) empowers a Justice of the Peace to issue an entry warrant to an authorised officer who has applied for one pursuant to clause 178, provided the Justice of the Peace is satisfied that an authorised officer needs to enter a premises in order to monitor compliance with the provisions of this Bill, to investigate a suspected breach of the provisions of the Bill or to investigate whether there are grounds for suspending or cancelling an authorisation granted under this Bill.

Clause 184(2) sets out the information an entry warrant must contain:

- the applicant's full name and authorisation (184(2)(a));
- a description of the premises to which it relates (184(2)(b));

- a description of the purposes for which entry to the place is required (184(2)(c));
- details of the relevant provision or provisions of the Bill, if entry is required because it is suspected that there has been a breach of those provisions (184(2)(d));
- the period of validity of the entry warrant, which cannot be longer than 30 days following the date of issue of the entry warrant (184(2)(e));
- the name of the Justice of the Peace who issued it (184(2)(f)); and,
- the date and time the entry warrant was issued by the Justice of the Peace (184(2)(g)).

Under clause 184(3), an entry warrant is to be in the form prescribed in regulation for this purpose.

Clause 184(4) provides that, if a Justice of the Peace refuses an application made by an authorised officer for the issue of an entry warrant, the Justice must make a record of the refusal, the Justice's reasons for the refusal and the date and time of the refusal.

185. Effect of entry warrant

Clause 185(1) provides that an entry warrant will have effect in accordance with its content, and in accordance with clauses 185(2) and (3).

Clause 185(2) provides that an entry warrant will have force immediately once it is issued by a Justice of the Peace.

Clause 185(3) makes it clear that once an entry warrant has been issued by a Justice of the Peace, it may be executed by any person who is an authorised officer for the purposes of this Bill. The authorised officer who applied for the entry warrant need not be the authorised officer who enters premises pursuant to the entry warrant.

Division 3 — Obtaining business records

This division sets out how business records may be obtained for the purposes of this Part. The provisions of this division relating to obtaining business records replicate provisions in the *Criminal Investigation Act 2006* Part 6 pertaining to obtaining business records.

186. Terms used

Clause 186 defines the terms used in this Division.

Business is taken to mean any business, including a business of a governmental body or instrumentality or of a local government, or any occupation, trade or calling.

Business record means a record prepared or used in the ordinary course of a business for the purpose of recording any matter related to the business.

Order to produce means an order issued under clause 189.

187. Application of this Division

Clause 187 provides that an order to produce must not be issued to a person in relation to a business record that does, or may, relate to an offence that the person is suspected to have committed. The intent is to ensure that an order to produce business records is not used to obtain evidence from suspects as an alternative to a search warrant. Clause 187(2) provides that an authorised officer is not prevented from applying for an entry warrant in relation to a business record, whether before or after the issue of an order to produce.

188. Application for order to produce

Clause 188(1) provides that an authorised officer may apply for an order to produce a business record, if the authorised officer seeks to investigate a suspected contravention of a provision in this Bill or to investigate suspected grounds for suspending or cancelling an authorisation granted under provisions of this Bill.

Clause 188(2) provides that the application must be made to a Justice of the Peace in accordance with Division 2, applicable to entry warrants, with any necessary changes relevant to the application of the provisions of Division 2 to orders to produce. This means that the provisions of Division 2 dealing with applications in urgent circumstances or by remote means also apply to this Division in respect of applications for orders to produce business records.

Clause 188(3) sets out the information that must be included on an order to produce as follows:

- the applicant's full name and authorisation;
- state the purposes for which the order is required;
- set out the prescribed information, if any;
- the name of the person to whom the requested order will apply;
- state that the person is not suspected of having committed an offence;
- describe the business record or class of business record that the applicant wants the person to produce;
- state the reason the applicant reasonably believes the business record or class of business record is relevant to the investigation; and
- state whether the original or a copy of the business record or class of business record is required.

189. Issue of order to produce

Clause 189(1) empowers a Justice of the Peace to issue an order to produce a business record to an authorised officer who has applied for one pursuant to clause 188, provided the Justice of the Peace is satisfied that there are reasonable grounds for the authorised officer to suspect a breach of the provisions of the Bill or to suspect that grounds exist for suspending or cancelling an authorisation granted under this Bill.

An order to produce issued by a Justice of the Peace is to be served on the person to whom it applies. Clause 189(2) sets out the information an order to produce must contain:

- the applicant's full name and authorisation;
- the name of the person to whom the order applies;
- a description of the business record or class of business record to be produced;
- an order that the person is required to produce the record or records;
- whether the original or a copy of the record or records is required, and the form they are to be in (paper, electronic or other version);
- the place where the record or records are to be produced;
- the date on or before which the order must be obeyed, which must allow a reasonable period for the person to obey the order;
- the name of the Justice of the Peace who issued it; and
- the date and time it was issued.

Under clause 189(3), an order to produce must be in the form prescribed in regulation for this purpose.

Clause 189(4) provides that, if a Justice of the Peace refuses an application made by an authorised officer for the issue of an order to produce, the Justice must make a record of the refusal, the Justice's reasons for the refusal and the date and time of the refusal.

190. Service of order to produce

Clause 190 provides that an order to produce is to be served as soon as is practicable after it is issued and may be served either personally, by post or, with the consent of the person to which it relates, by fax or email.

191. Effect of order to produce

Clause 191(1) provides that an order to produce will have effect according to its contents.

Clause 191(2) it will constitute an offence for a person to disobey an order to produce a business record without lawful excuse. The maximum penalty that a court may impose for such an offence is \$5,000 for an individual and \$25,000 for a body corporate.

In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

192. Powers in relation to order to produce

Clause 192 allows for a business record that has been produced to be retained for a reasonable time to determine its evidentiary value. Further, if necessary to preserve the evidentiary value of the document or to subject it to forensic analysis, an authorised officer may seize, forensically examine, and make and retain a copy of a business record produced pursuant to an order.

Clause 192(3) also precludes any action in contract or tort against a person complying with an order.

Division 4 — Seizing things and related matters

The provisions of this Bill relating to seizing things and related matters are based on provisions in the *Criminal Investigation Act 2006* Part 13 pertaining to seizing things and related matters.

Subdivision 1 — Seizing of things

193. Application

This clause provides that this subdivision of the Bill applies to and in relation to any seizures of a thing under this Part of the Bill.

194. Grounds for seizing things

Part 8 empowers an authorised officer to seize a thing in certain circumstances. Seizing another person's property or a thing in their possession is a significant matter.

In addition to any criteria that may be in a provision that permits seizure, clause 194 provides that something may be seized only if the authorised officer reasonably suspects that it is necessary to be seized in order to prevent it from being concealed, disturbed or lost; to preserve its evidentiary value; to subject it to forensic analysis; or, to prevent it from being used in the commission of an offence.

195. Records relevant to offence

Clause 195(1) provides that where an authorised officer may seize a record, the officer may instead reproduce the record if practicable, and seize the reproduction.

This clause provides the example of a record on a computer, which could be reproduced by printing it out on paper or copying it to a data storage device and the paper or data storage device could then be seized.

Pursuant to clause 195(2), an authorised officer may also copy or take extracts from a record that has already been seized.

Clause 195(3) also provides that if a person who appears entitled to possession of a seized record, and who does not already have a copy of it, requests, the authorised officer must:

- give a copy of the record to the person as soon as practicable after it is seized, where it is practicable to do so; or

- allow the person to have access to the record to inspect it and make and keep a copy of it, unless the officer suspects that this would jeopardise the evidentiary value of the record.

Clause 195(4) defines 'relevant person' for the purposes of 195(3), as a person who appears entitled to possession of the record and who does not already have a copy of the record.

196. Seizing of devices and equipment

Clause 196 provides that if a record may be seized, any device or equipment needed to gain access to, recover or reproduce the information in the record, subject to clause 194, may also be seized.

This will ensure that if an authorised officer reasonably suspects that it is necessary to seized a record in order to prevent it from being concealed, disturbed or lost, to preserve its evidentiary value, to subject it to forensic analysis, or to prevent it from being used in the commission of an offence, in addition to seizing the record, the officer may also seize the device the record is kept on or accessible by, if necessary.

197. Powers to facilitate seizing of records

Clause 197(1) provides that an authorised officer may exercise a power under this clause for the purposes of seizing a record or exercising a power in clause 195(1) or (2) to reproduce a record, or copy or take extracts from a seized record.

Clause 197(2) empowers an authorised officer to operate any device or equipment that is required to gain access to, recover or reproduce a record, and that is in the possession of the person from whom the record may be seized, whether or not the device or equipment has been seized pursuant to clause 196.

Clause 197(3) provides that if an authorised officer reasonably suspects that the person from whom a record may be seized, or an employee of that person, knows how to access to or to operate a device or equipment that is required to gain access to, recover or reproduce a record, the officer may direct the relevant person to assist. If subject to a direction under this clause, the relevant person is required to provide any information or assistance that is reasonably necessary to enable the authorised officer to seize the record or exercise the relevant power. For example, the person may be directed to provide a password or a decryption code for a computer. Failure to obey such a direction would be an offence under clause 176(1).

Clause 197(4) defines 'relevant person' for the purposes of 197(3), to mean the person from whom the record may be seized, or an employee (whether under a contract of service or contract for services) of that person.

198. List of seized things to be supplied on request

Clause 198 requires an authorised officer who seizes any thing to provide a list of things seized to the person who had control or possession of the thing before seizure, or to the occupier of the premises where the thing was seized, upon request. The

authorised officer must comply with this request within a reasonable time after it is made.

Clause 198(3) permits the authorised officer to give a general description of all the things seized, if it is not practicable to list all the things seized because they are too numerous.

Under clause 195, a copy of the record may be seized rather than the original, or a copy of the record may have been given to the person who has requested a list under this clause. If these circumstances apply, the requirement in this clause to provide a list does not apply to any such records.

Subdivision 2 — Procedure on seizure of privileged material

199. Terms used

Clause 199 defines some terms used in this subdivision of the Bill:

Court means the Magistrates Court.

Privileged means either a legal professional privilege or a public interest privilege, or both.

200. Seizure or production of privileged material

Clause 200 provides for when the procedure set out in this Subdivision for dealing with information that may be subject to legal professional privilege or public interest privilege applies.

The procedure applies in respect of records that are seized under this Part, and records produced pursuant to an order to produce a business record issued under clause 189, if privilege is claimed by any person entitled to the record, or if an authorised officer suspects that all or some of the information in the record is privileged.

201. Record to be secured

If a record is seized or produced pursuant to this Part, and privilege is claimed by any person entitled to the record, or an authorised officer suspects that all or some of the information in the record is privileged, the record must be secured.

The method of securing the record is to prevent it from being concealed, disturbed or lost, preserve its evidentiary value, and prevents access to the information in it by any person who would not be entitled to access to the information if it were privileged.

202. Application to court

Clause 202(1) provides that the authorised officer in charge of the investigation relevant to the seizure or production of the record must apply to the Magistrates Court for a determination as to whether the information is privileged. The authorised officer must deliver the record into the custody of the court.

Pursuant to 202(2), the application to the court must be in accordance with the rules of court and must be served on the person entitled to possession of the record or, if

the identity or whereabouts of the person is unknown, on any person directed by the court to be served.

Clause 202(3) provides that, if the court thinks fit, the application may be heard in private.

The authorised officer and any person entitled to possession of the record may make submissions to the court.

203. Decision of court

Notwithstanding that a record may be privileged, clause 203(1) provides that for the purpose of deciding the application the court may have access to all of the information in the record.

If the court decides that the record is not privileged, it must order that the record be available to the authorised officer who made the application (clause 203(2)).

If the court decides that the record is privileged, it must make the record available to be collected by the person from whom it was seized (clause 203(3)).

If the court decides that some of the information in the record is privileged, it must make orders to enable the authorised officer who made the application to have access to the information that is not privileged (clause 203(4)).

204. Forensic examination on record

Clause 204 applies if the court decides under clause 203 that all or some of the information is privileged and that the authorised officer has applied to be permitted to do a forensic examination of the record.

In these circumstances, the court must make orders to allow a forensic examination to be done on the record and to ensure that the privileged material remains privileged.

205. Ancillary orders

After arriving at a decision under clause 203 as to whether some or all of the information in a record is privileged, the court may make any orders it thinks fit as to costs and as to securing the record, or suspending the operation of any orders made under this clause, until an appeal against the determination is dealt with.

206. Proceedings part of criminal jurisdiction

This clause provides that proceedings under this subdivision of the Bill are part of the court's criminal jurisdiction. This confers jurisdiction on the Magistrate's Court to hear and determine applications under this Subdivision as a part of the Court's criminal jurisdiction.

Section 11(3a) of the *Magistrates Court Act 2004* provides the Court's criminal jurisdiction includes any jurisdiction that is conferred on the Court by a written law other than the Act and that is expressly said to form part of the Court's criminal jurisdiction.

207. Appeals

This clause provides that a decision of the court under this subdivision may be appealed in accordance with Part 2 of the *Criminal Appeals Act 2004*.

Subdivision 3 — Return or disposal of seized things

208. Return or disposal of seized things

Clause 208 deals with the return or disposal of seized things.

Clause 208(1) provides that the CEO may authorise the return of any thing seized under this Part of the Bill to the owner or person entitled to the possession of the thing, or the person from whom the thing was seized.

Clause 208(2) provides that the CEO may dispose of a thing seized under this Part if the CEO has taken all reasonable steps to return the item to the person and the CEO has either been unable to locate the person, the person has refused to take possession of the item or, the person has not collected the item within one month of having been contacted about the return of the thing.

The length of time between contacting a relevant person about return of an item and the disposal of the item by the CEO, accords with section 18(2) of the *Criminal and Found Property Disposal Act 2006*. That Act permits one month for collection of property before a person is no longer entitled to it and the CEO may dispose of it.

Clause 208(3) permits the CEO to dispose of the item in any manner considered appropriate.

Division 5 — Improvement notices

Improvement notices are a remedial measure to assist with maintaining compliance with this Bill and with the aim of rectifying safety risks. They are a practice means of guiding or instructing a person in making changes to support a person's compliance with the law and, in many cases, to improve safety outcomes. Improvement notices, as a remedial measure, can be used to formally require that risks be better managed in certain circumstances.

209. Issue of improvement notices

Clause 209(1) provides an improvement notice may be issued if an authorised officer reasonably believes that a person is contravening a provision in this Bill or has done so and, taking the attendant circumstances into account, is likely to keep doing so.

In such circumstances, clause 209(2) permits the authorised officer to issue an improvement notice in a written format to the person requiring the person to:

- remedy the contravention;
- prevent a likely contravention from occurring; or
- remedy the things or operations causing the contravention, or likely contravention.

210. Contents of improvement notices

This clause sets out the matters to be included in an improvement notice.

Clause 210(1) requires that an improvement notice must state the grounds for the issue of the notice. That is:

- that the authorised officer believes the person is contravening a provision of this Bill or has contravened a provision of this Bill and, given the circumstances of the contravention, is likely to repeat the contravention or continue to contravene the provision;
- the provision of the Bill believed to be contravened;
- a brief explanation of how the provision is contravened; and
- the day by which the person must take the required action.

Clause 210(2) provides that the notice must also state that the person has a right to review under Part 10. Clause 262(h) provides that the decision to issue an improvement notice is a reviewable decision. This provides a right of review, by way of reconsideration under clause 263, or to the State Administrative Tribunal under clause 264.

Clause 210(3) provides that an improvement notice may include directions concerning the measures to be taken in order to remedy or prevent the contravention, or the likely contravention, which is the subject of the notice. Clause 210(5) provides the notice may also include a requirement that the measures taken must be to the satisfaction of an authorised officer.

Clause 210(4) provides that an improvement notice may include directions prohibiting or restricting a person from driving a vehicle to transport passengers for hire or reward or using a passenger transport vehicle, or restricting any other activity, until the measures required to remedy a contravention or prevent a likely contravention have been taken.

This provides for where the contravention identified has or is likely to have an impact on safety. This could, for example, concern the safe operation of a vehicle or vehicles under the control or management of an individual or business. A contravention affecting safety may also arise in relation to the activities of a booking service. Accordingly, an improvement notice may be given to the appropriate person responsible for the breach, prohibiting or restricting specified activities until the breach has been rectified.

Clause 210(5) provides the notice may also include a requirement that the measures taken under clause 210(3) must be to the satisfaction of an authorised officer.

Clause 210(6) provides that the time stated for compliance with an improvement notice in clause 210(1)(d) must be reasonable in consideration of all the circumstances. The circumstances include factors such as the nature of the improvement to be made, the seriousness of the issue to be addressed and the reasonable time it would take to rectify.

211. Compliance with improvement notice

Clause 211(1) provides an improvement notice must be complied with within the period specified on the notice, or an extended time period provided by an authorised officer pursuant to clause 212. It constitutes an offence for a person to fail to comply with an improvement notice. The maximum penalty that a court may impose for such an offence is \$5,000 for an individual, and \$25 000 for a body corporate.

Pursuant to clause 211(2), it also constitutes an offence for a person to drive a vehicle for the purpose of transporting passengers for hire or reward, or to allow a vehicle to driven for that purpose if the driving of the vehicle is prohibited under an improvement notice. The maximum penalty that a court may impose for such an offence is \$12,000 for an individual, and \$60,000 for a body corporate. In the case of an offence by a body corporate, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

The higher penalty for the offence provided for by clause 211(2) is commensurate with the penalties in Part 6 of the Bill for driving, or permitting a person to drive, a vehicle whilst the vehicle is unauthorised. This is appropriate given that serious safety related compliance issues likely exist with the vehicle if the driving of the vehicle has been prohibited under an improvement notice.

212. Extension of time for compliance with improvement notice

Pursuant to clause 211(1) an improvement notice must be complied with within the period specified on the notice, or an extended time period provided by an authorised officer pursuant to clause 212.

This clause provides for how extensions of time may be granted to a person issued with an improvement notice.

Clause 212(1) defines 'compliance period' to mean the period ending on the day stated in an improvement notice and is the day by which a person is to comply with the requirements of the notice, and includes any period of extension under this clause.

Clause 212(3) provides that an authorised officer may extend the compliance period for an improvement notice in writing given to the person. Pursuant to clause 212(4), the compliance period can only be extended if the original compliance period has not ended, meaning a person seeking an extension must do so in advance of the expiry of the original compliance period.

213. Affixing sticker to vehicle

Clause 213(1) specifies that this clause applies only if an improvement notice has been issued in relation to a vehicle and includes in the notice specific directions or concerning the measures to be taken in order to remedy or prevent the contravention, or the likely contravention, which is the subject of the notice.

Clause 213(2) provides that an authorised officer may affix a sticker in a conspicuous place on the vehicle to communicate that an improvement notice has been issued in relation to the vehicle. The form of the sticker is to be approved by the CEO.

Once the sticker is affixed to the vehicle, it must not be removed until the improvement notice is complied with or an authorised officer assents to the removal of the sticker. The maximum penalty for unlawfully removing the sticker is a fine of \$5,000 (clause 213(3)).

A person is not in breach of clause 213(3), if, whilst the vehicle is being repaired, it is reasonably necessary to remove the sticker to rectify a defect specified in the improvement notice and the undamaged sticker is re-affixed upon rectification of the defect, and the vehicle is not driven on a road until the undamaged sticker has been re-affixed.

The penalty of \$5,000 for not complying with 213(3) aligns with the amount applicable for failing to comply with an improvement notice, as well as penalties for failing to follow directions more generally.

Division 6 — Controlled operations

This Division of the Bill provides for limited ‘controlled purchase’ type compliance or investigative operations involving activities around booking and riding in vehicles that are or are suspected to be operated to carry passengers for hire or reward. The operations empowered under this Division are complementary to the department’s compliance and enforcement activities provided for under this Part.

214. Term used: controlled operation

Clause 214 provides the meaning of a controlled operation. For the purposes of this Division, a controlled operation means an operation carried out under this division to:

- monitor compliance with the provisions of this Bill; or
- to investigate a suspected contravention of this Bill; or
- to investigate whether there are grounds for suspension or cancellation of a passenger transport authorisation because the holder is not a fit or proper person to hold the authorisation, and in the case of an on-demand booking service authorisation, because the responsible officer of the provider is not a fit and proper person.

A passenger transport authorisation, as defined in clause 4(1), is an on-demand booking service authorisation, a regular passenger transport service authorisation, a passenger transport driver authorisation or a passenger transport vehicle authorisation.

215. Controlled operations officers

Clause 215(1) specifies that the CEO may authorise a person employed in, or engaged for the purposes of, the Department to be a controlled operations officer for the purpose of a controlled operation.

Pursuant to clause 215(2), to achieve the purpose of a controlled operation, the identity or purpose of a controlled operations officer may be concealed or misrepresented. For example, a booking to travel in a vehicle may be made under an assumed name to ensure the person taking the booking is not aware of the person's identity or role as a controlled operations officer.

216. Controlled operations

Clause 216(1) provides that a controlled operation is to be conducted under the direction of an authorised officer using one or more controlled operations officers.

Clause 216(2) empowers a controlled operations officer to take any or all of the actions specified in the authorisation given by the CEO for the purpose of the controlled operation.

Clause 216(3) makes clear that an authorisation given by the CEO for the purpose of a controlled operation does not permit the taking of an action by the controlled operations officer which involves inducing or encouraging another person to engage in criminal activity of a kind that the other person could not reasonably have been expected to engage in unless so persuaded.

The intent of a controlled operation is to monitor compliance or investigate contraventions of the Bill from the perspective of, and in the guise of a consumer. These provisions empower controlled operations officers to engage with providers of services as a consumer, including where the provision of the service itself constitutes an offence. It is not intended, nor is it empowered by this Bill, to exceed the level of influence reasonably provided by a consumer during the course of a controlled operation.

Under clause 216(4), the CEO may authorise the following actions in relation to any vehicle(s) that are authorised as passenger transport vehicles, or that are operated or suspected by the authorised or controlled operations officer of being operated for the purpose of transporting passengers for hire or reward:

- entry and travel in the vehicle;
- booking a journey in the vehicle;
- paying for a journey in the vehicle;
- any actions that are ancillary to an action mentioned above.

A controlled operation that involves the above kinds of actions would assist in monitoring compliance with some of the key provisions of this Bill, enabling the officer to determine if a particular vehicle is being used to transport passengers for hire or reward. Also, whether the persons driving the vehicle, providing the vehicle and/or taking the bookings for the use of the vehicle are appropriately authorised, and are operating in accordance with the requirements of the regulations and any applicable conditions.

Clause 216(5) sets out that an authorisation under clause 216(4) does not have to identify the passenger transport vehicles or vehicles. This is to ensure that controlled

operations powers can be utilised to conduct compliance monitoring where there is no specific vehicle or person suspected of being involved in the commission of an offence. For example, a controlled operation may involve actions in respect of multiple vehicles on a single day or over one weekend - in the case of a booking service that dispatches the next available vehicle and where the hirer cannot nominate the vehicle, it may not always be possible to identify an exact vehicle that is to be the target of the compliance action.

Clause 216(6) clarifies that if a controlled operations officer takes any action that is specified in the authorisation given by the CEO for the purpose of the controlled operation, neither the controlled operations officer or the CEO, or the authorised officer directing the operation, commit an offence and are not liable to an offence committed by another person. Part I Chapter II – Parties to offence of *The Criminal Code* deems that persons enabling, aiding, counselling or procuring an offence are also guilty of the offence. An officer, and others involved in the operation, booking and paying for a ride in an unauthorised vehicle, or with an unauthorised driver or via an unauthorised booking service may be captured as a party to the offence. Accordingly, in the authorised conduct of a controlled operation, this provision provides protection to those specified in this clause.

Clause 216(7) ensures that the evidence of the controlled operations officer, after taking actions authorised by the CEO for the purpose of the controlled operation, in any proceedings against a person in connection with which the controlled operations officer took the action is not evidence of an accomplice. This clarifies that the evidence of a controlled operations officer is not to be treated as ‘suspect’ and be given less weight due to the authorised conduct of an operation.

217. Reports of controlled operations

Clause 217 provides that the CEO must, when requested to do so, give the Minister a written report containing any particulars of a controlled operation that the Minister requires.

Division 7 — Offence provisions

218. Liability of officers of body corporate for offence by body

Clause 218 makes provision for when officers of a body corporate are guilty of an offence if the body corporate is also guilty of an offence.

Clause 218(1) defines ‘officer’ for the purpose of this clause. It provides that an officer in relation to a body corporate has the meaning given in section 9 of the *Corporations Act 2011* (Commonwealth).

Clause 218(2) identifies the offence provisions to which this clause applies and enables provisions of the regulations that contain offences to also be prescribed for the purposes of this clause.

Clause 218(3) provides that if a body corporate is guilty of an offence to which this section applies, then an officer of the body corporate is also guilty of the offence if the officer failed to take all reasonable steps to prevent the commission of the offence. In

determining whether a person took all reasonable steps, clause 218(4) provides that a court must have regard to: what the person knew or ought reasonably to have known about the commission of the offence, whether or not the officer was able to influence the body corporate in relation to the commission of the offence, or any other relevant matter.

The offences for which an officer in relation of a body corporate is held liable are those in the following clauses 27(1), 28, 56(1), 57, 58, 91(1), 90(3), 93, 122(1) and (2), 123, 151(1), 174(2) and (3), 175(2), 191(2), 211(1) and (2), and 288.

219. Further provisions relating to liability of officers of body corporate

Clause 219(1) provides that clause 218 does not affect the liability of a body corporate for any offence.

Further, clause 219(2) stipulates that clause 218 does not affect the liability of an officer of a body corporate, or any other person, under Chapters II (Parties to Offence), LVII (Attempts and preparation to commit offences), LVIII (Conspiracy) and LIX (Accessories after the fact and property laundering) of *The Criminal Code*.

Clause 219(3) provides that an officer of a body corporate may be charged with, and convicted of, an offence in accordance with clause 218 whether or not the body corporate is charged with, or convicted of, the principal offence committed by the body corporate.

Clause 219(4) provides that an officer of a body corporate who is charged with an offence in accordance with clause 218 claims that the body corporate would have a defence if so charged, then the onus of proving the defence is on the officer and that the standard of proof required is the standard that would be required of the body corporate.

Clause 219(5) provides that subsection (4) does not limit any other defence available to the officer

220. When prosecution can be commenced

Clause 220(1) specifies that a prosecution of a person for an offence under the provisions of this Bill must commence within two years after the date on which the offence was allegedly committed.

Clause 220(2) provides the regulations may prescribe an offence requiring that the prosecution must commence within 12 months after the date on which the offence was allegedly committed.

Clause 220(3) provides that this section does not apply to the Category 1 or Category 2 safety duty offences under clauses 21 and 22. The *Criminal Procedure Act 2004* section 22(1) provides that a prosecution of a person for an indictable offence may be commenced at any time, unless another written law provides otherwise.

Category 1 and Category 2 safety duty offences are crimes and are therefore indictable offences. Given the seriousness of these offences, it is appropriate that no limitation be placed of when a prosecution for such an offence may be commenced.

Division 8 — Evidentiary provisions

221. Evidentiary certificates: records and authorisation

Under clause 221(1) a certificate may be issued for a prosecution for an offence under any written law, any legal proceedings under the provisions of this Bill and to verify the accuracy of information provided to an interstate passenger transport authority under Part 7.

Clauses 221(2), (3) and (4) permit the CEO to issue a certificate stating any of the following, and pursuant to clause 221(5), the certificate is evidence and, in the absence of evidence to the contrary, proof of any fact stated in the certificate:

- that a fact in the certificate appears in or is derived from a register or record kept by the CEO under this Bill;
- that on a specified date or during a specified period a person was or was not authorised as:
 - the provider of an on-demand booking service
 - the provider of a regular passenger transport service
 - a passenger transport driver; or
 - the provider of a passenger transport vehicle;
- that on a specified date a specified passenger transport authorisation was or was not granted, renewed, varied, suspended or cancelled;
- that on a specified date a vehicle was or was not authorised as a passenger transport vehicle, on a particular date, in relation to a specified category of passenger transport service;
- that a person named in the certificate was, at the time or during the period specified in the certificate, a person authorised under clause 215 to act as a controlled operations officer;
- that a person named in the certificate was, at the time or during the period specified in the certificate, authorised under clause 216(4) to take an action specified in the certificate.

222. Evidentiary certificates: specific matters

Similar to clause 221(1), clause 222(1) provides that a certificate may be issued for any legal proceedings under the provisions of this Bill or to verify the accuracy of information provided to an interstate passenger transport authority under Part 7.

Clause 222(2) provides that the CEO or a person authorised by the CEO may issue a certificate stating any of the following and, pursuant to clause 222(3) the certificate is to be evidence and, in the absence of evidence to the contrary, proof of any fact stated in the certificate:

- that on a specified date or during a specified period:

- a specified passenger transport authorisation was subject to specified conditions;
 - a specified regular passenger transport authorisation applied to a particular route(s) or within certain area(s); or
 - a specified passenger transport authorisation applied to a specified category of passenger transport service.
- that on a specified date a person was disqualified from holding or obtaining an on-demand booking service authorisation or a passenger transport driver authorisation for a specified period;
 - that a specified exemption granted under this Bill did or did not apply to a specified person or a specified vehicle at a specified time;
 - that a specified requirement imposed under this Bill did or did not apply to a specified person or a specified vehicle at a specified time;
 - that a specified person had or had not notified the CEO of a change of address; or
 - that a specified document was or was not lodged, or a specified fee was or was not paid, by a specified person.

223. Proof of certain matters not required in legal proceedings

Clause 223(1) provides that in legal proceedings under this Bill, proof is not required that the defendant is or was the owner of any vehicle in question or a responsible person (as defined in clause 174(1)) for that vehicle, in the absence of evidence to the contrary.

Furthermore, clause 223(2) provides that proof is not required in any proceedings for an offence under this Bill, that the person by whom the prosecution was commenced was authorised to commence the prosecution, in the absence of evidence to the contrary.

224. Proof of appointments and signatures unnecessary

In relation to clause 224, an office holder means the CEO or a controlled operations officer.

Clause 224(2) stipulates that for the purposes of this Bill it is not necessary to prove the appointment or authorisation of an office holder. Note that clause 166 provides that, in any proceedings, an authorised officer may provide evidence of their designation by producing their identity card.

Clause 224(3) provides that for the purposes of the Bill a signature purporting to be the signature of an office holder or an authorised officer, is evidence of the signature it purports to be.

Division 9 — Infringement notices and the *Criminal Procedure Act 2004*

225. Infringement notices and the *Criminal Procedure Act 2004*

The *Criminal Procedure Act 2004* Part 2 deals with alleged offenders without prosecuting them and provides for prescribed offences, modified penalties and infringement notices. Pursuant to this Part, regulations made under a prescribed Act may prescribe an offence to be an offence for which an infringement notice may be issued.

This Bill will be known as the *Transport (Road Passenger Services) Act 2018* when it is passed by Parliament and receives Royal Assent. This clause provides that if the *Transport (Road Passenger Services) Act 2018* is a prescribed Act for the purposes of Part 2 of the *Criminal Procedure Act 2004*, this clause applies in relation to the service of an infringement notice by an authorised officer in relation to an alleged offence under this Act and the effect of Part 2.

Sections 11 to 13 of the *Criminal Procedure Act 2004* do not apply to an alleged offence under this Act. These sections provide extra powers and duties in respect of vehicle offences, which are offences with an element of driving, parking, standing or leaving of a vehicle in a road traffic context. Many offences in this Bill could be considered to be vehicle offences, however, the powers and duties in sections 11 to 13 either cover similar powers and duties provided in this Bill or are not relevant in the passenger transport context.

Clause 225(2) provides that an infringement notice issued for an offence against this Bill must be served within 21 days after the authorised officer is satisfied there is sufficient evidence to support the allegation of the offence. Further, the infringement notice must be served within six months after the alleged offence is believed to have been committed.

Clause 225(4) states that the payment of the whole or part of a modified penalty under an infringement notice for an alleged offence under this Bill may be taken into account by the CEO as if it were a conviction of the offence in determining whether a person is a fit and proper person to be the holder of a passenger transport authorisation or to be a responsible officer of the provider of an on-demand booking service under this Bill.

PART 9 — VOLUNTARY BUYBACK AND ADJUSTMENT ASSISTANCE PAYMENT SCHEMES AND LEVY

Part 9 provides the legislative framework for implementing the voluntary buyback for Perth owned taxi plates, the on-demand passenger transport levy that will fund the buyback, and adjustment assistance grants for holders of country taxi-car licences for the local government districts of Mandurah and Murray.

Division 1 — Voluntary buyback payment

This Division provides for an industry funded buyback scheme in respect of owned taxi plates issued under the *Taxi Act 1994* (WA) (Taxi Act). The buyback scheme is to be funded through a levy on leviable passenger service transactions, provided for in Part 9 Division 2, and which will be imposed by the Transport (Road Passenger Services) Amendment Bill 2018.

Section 15(1) of the Taxi Act provides that a vehicle may not be operated as a taxi within a control area unless that vehicle is operated using taxi plates. As at end June 2018 there were a total of 1925 taxi plates in existence.

Under the Taxi Act, taxi plates can be offered for sale by public tender (owned plates) or offered for lease (leased plates). Of the existing plates still in operation, 1035 are owned plates, and 890 are leased plates. Leased plates give the lessee the right to operate a vehicle using taxi plates for the duration of the lease and require the lessee to be the owner and principal driver of the vehicle operated as a taxi using the plates. In the case of owned plates, it is open to the plate holder to engage third parties to manage and/or operate the vehicle. No plates have been offered for sale by tender by the Government since the enactment of amendments to the Taxi Act in late 2003, which enabled taxi plates to be offered for lease. However, existing owned plates are able to be transferred in accordance with the requirements of section 24 of the Taxi Act. This generally occurs in the context of private sales between parties.

Taxi plate owners, in many cases, invested considerable sums of money in the purchase of taxi plates. Owned taxi plates issued pursuant to the Taxi Act have been treated as property by plate owners and, unlike lease plates and country taxi-car licences issued pursuant to the *Transport Co-ordination Act 1966*, plate owners are not subject to a renewal requirement. Owned taxi plates have effectively been used as an asset through which the owners have leveraged income either by using those plates to operate a vehicle as a taxi themselves, or through leasing the plate to a third party for use on a vehicle.

Changes to the industry in recent years, particularly increased competition in the metropolitan area, have seen a substantial decrease in the value of owned taxi plates, as well as a reduction in the amount of income some plate owners have been able to generate from their plates, resulting in financial difficulty.

Buyback payments

As part of the move from taxi plates to an annual passenger transport vehicle authorisation, buyback payments will be made available to owners of plates issued pursuant to the Taxi Act. Clause 229 of the Bill will enable a person who is an “eligible owner (buyback)” to apply for a buyback payment.

“Eligible owner (buyback)” is defined in clause 226(1) in respect of a set of taxi plates to mean a person who is the owner of, or has an interest in the ownership of, the taxi plates and who also owned or had an interest in the ownership of the taxi plates on 2 November 2017. 2 November 2017 is the date of the Government’s announcement of the proposed buyback scheme for owners of plates issued under the Taxi Act. A

plate owner who purchased a set of taxi plates after the Minister's announcement of the buyback scheme will not be eligible for a buyback payment.

Clauses 231, 232 and 233 make provision in respect of the calculation of buyback payments, the calculations for which vary according to when the plates were purchased and according to the type of plates in respect of which a buyback application has been made.

Clause 230(2) provides that any right of a person to ownership of taxi plates ceases to exist on the grant of the buyback payment in relation to the taxi-plates. Regulations will make provision for how the physical sets of taxi plates that were issued to plate holders under the Taxi Act are to be dealt with following the grant of a buyback payment.

Once the buyback applications have been received and assessed, successful applicants will be granted a buyback payment. Immediately following the grant of the buyback payments and the cessation of the ownership rights in respect of those plates, Part 6 of the Bill is proposed to commence. Part 6 makes provision for the authorisation of passenger transport vehicles pursuant to this Bill. In connection with the commencement of Part 6, the transitional provisions of Part 13 of the Bill will provide, among other matters, for the continued operation of vehicles that were being operated pursuant to taxi plates immediately prior to the commencement of Part 6.

Clause 295(2) of the transitional provisions will enable a vehicle that has been operating as a taxi pursuant to owned plates (or which would have been operated under owned plates if not for a grant of a buyback payment in respect of the plates) up to and immediately before the commencement of Part 6 of this Bill, to continue to do so for the prescribed transitional period. The owner of the vehicle or a person who has the consent of the owner, will be taken to be the holder of an on-demand rank or hail passenger transport vehicle authorisation for the vehicle. This person may or may not be the person who was the owner of the taxi plates that the vehicle was operated pursuant to under the Taxi Act.

As the ownership rights of plate owners will cease upon the granting of a buyback payment, former plate owners who participated in the buyback will not be provided with any transitional rights in connection with the commencement of Part 6 of the Bill (unless they also happen to be the owner of the vehicle that was operated pursuant to the plates, or have the consent of that person).

Clause 295(3) makes transitional provision in respect of a plate owner who has not participated in the buyback. Pursuant to clause 295(3), a person who is the eligible owner (buyback) of taxi plates immediately before commencement day for which no grant of a buyback payment has been made under Part 9 Division 1 before commencement day and to whom clause 295(2) does not apply (meaning they are not the owner of the vehicle that was operated pursuant to the plates, or do not have the consent of the vehicle owner), is taken on and from commencement day until the prescribed day to be the holder of an on-demand rank or hail vehicle authorisation for a "nominated vehicle".

Clause 295(4) provides that a nominated vehicle is a vehicle nominated to the CEO before commencement day by the owner of the taxi plates, that complies with the prescribed requirements. The Department of Transport will communicate with plate owners ahead of the commencement of Part 6 to ensure that they are aware of these transitional arrangements and have time to find an alternative vehicle if they are not the owner of the vehicle that is being operated pursuant to the plates, and if the vehicle owner no longer intends for the plate owner to have a role in the operation of the vehicle.

Net loss payments

Persons who sold their plates, or their interest in the ownership of plates, prior to the Minister's announcement of the proposed buyback scheme likely also experienced financial difficulty as a result of the decline in plate values and the amount of income some plate owners have been able to generate from their plates. These persons generally sold their plates or interest in the plates in order to liquidate their asset, and did so without knowledge of the subsequent announcement of a buyback scheme.

Accordingly, in addition to making provision for buyback payments, this Division also makes provision for payments to persons who are within the meaning of "eligible former owner" of taxi plates. These payments are called net loss payments.

"Eligible former owner" is defined in clause 226(1), in respect of a set of taxi plates, to mean a person who was the owner of, or had an interest in the ownership of, the taxi plates on or after 1 January 2016, but was not the owner of, or did not hold an interest in the ownership of, the plates on 2 November 2017.

1 January 2016 follows the former Government's announcement of industry reforms in late December 2015. 2 November 2017 is the date of the Government's announcement of the proposed buyback scheme for owners of plates issued under the Taxi Act. A former plate owner who sold their plates, or their interest in plates, after the Minister's November announcement of the buyback scheme will not be eligible for a net loss payment.

Clauses 237, 238 and 239 make provision in respect of the calculation of net loss payments, the calculations for which vary according to when the plates were purchased and according to the type of plates in respect of which a net loss application has been made.

Buyback payments and net loss payments – plates purchased pre 1 January 2016

Pursuant to clause 232, an "eligible owner (buyback)" in respect of taxi plates, who purchased the plates prior to 1 January 2016 will, subject to the grant of their application under clause 229, be eligible for a base payment amount in respect of the plates. The base payment amount is dependent on the type of plate, less any outstanding fees or Hardship Fund payment already paid.

Pursuant to clause 238, an "eligible former owner" in respect of taxi plates who purchased the plates prior to 1 January 2016 will, subject to the grant of their application under clause 235, be eligible for a base payment amount in respect of the

plates. The base payment amount is dependent on the type of plate, less any outstanding fees or Hardship Fund payment already paid.

These base payment amounts are referred to in the Bill as the “floor payment”. “Floor payment” is defined in clause 226(1) to mean:

- \$100,000 in relation to each set of conventional or multi-purpose taxi plates;
- \$40,000 in relation to each set of area restricted plates; and
- \$28,000 in relation to each set of peak period plates.

Clause 226(1) defines the different plate types as follows:

- **Conventional taxi plates** means taxi plates other than multi-purpose taxi plates or plates that are not subject to conditions restricting the operation of the taxi to specified times or areas;
- **Multi-purpose taxi plates** means taxi plates used on a multi-purpose taxi, being a taxi that is intended principally for the transport of persons who have a disability and any wheelchairs or other aids required by those persons;
- **Area restricted plates** means taxi plates used or to be used on a taxi operated subject to conditions restricting the operation of the taxi to specified areas;
- **Peak period plates** means taxi plates used, or to be used, on a taxi operated subject to conditions restricting the operation of the taxi to peak times.

Persons who are “eligible owners (buyback)” or “eligible former owners” in respect of taxi plates who purchased the plates prior to 1 January 2016 may receive a buyback or net loss payment that is greater than the floor payment per plate. This is because the calculations provided for by clauses 232 and 238 respectively, provide for the amount of the buyback or net loss payment to be based on the greater of the floor payment and the “net loss” associated with the taxi plates.

Clause 227 explains what is meant by **net loss** in relation to taxi plates in this Division. It means the plate purchase amount of the plates, less the sum of:

- (a) the weekly plate lease revenue that may have been earned in respect of the plate (this is based on the estimated maximum weekly plate lease rates for the plates, and differs according to the type of plate and the point in time, and period of, plate ownership); and
- (b) the amount of any adjustment assistance grants paid in relation to the taxi plates under the *Taxi Act 1994* Part 3A.

Plate owners can lease their plates to another person who wishes to use the plates to operate a vehicle as a taxi. Conditions imposed on taxi plates set the maximum weekly plate lease rates that owners were permitted to charge a person under a plate owner’s lease. The meaning of **net loss** takes into account the capacity of plate owners and former plate owners to have generated revenue from their plates during their ownership of the plates, with the difference between the price paid for the purchase of

the plates, and the revenue that was able to be generated from the plates, being treated as the **net loss** in respect of those plates. The formulas provided by clauses 232 and 238 recognise that persons who purchased their plates some time ago are more likely to have recouped a substantial cost of their investment, as compared with a person who purchased the plates more recently, but prior to the announcement of Government reform to the sector.

In 2016 the *Taxi Act 1994* was amended to include Part 3A, which made provision for the payment of adjustment assistance grants to plate owners, in respect of each set of taxi plates that they owned or had an interest in the ownership of. The amounts of these grants were:

- \$20,000 in respect of conventional or multi-purpose taxi plates; and
- \$6,000 in respect of restricted plates, which are plates that are to be used on a taxi operated subject to conditions restricting the operation of the taxi to specified times or areas – in this Bill restricted plates are referred to as ‘area restricted plates’ or ‘peak period plates’ according to the type of restriction.

Any amount of adjustment assistance grant paid in respect of a set of plates is to be deducted from the **net loss** for those plates, in recognition of the monies already paid by the Government in respect of those plates.

If the **net loss** in respect of a set of plates is greater than the floor payment, then the buyback or net loss payment will be calculated by reference to the **net loss**. If the floor payment is greater than the **net loss** in respect of the set of plates, then the buyback or net loss payment will be calculated by reference to the floor payment amount applicable to the type of plates that are the subject of the application. Clause 232 and 238 then provide for the any outstanding fees in relation to the taxi plates as well as any Hardship Fund payment paid to an owner of the taxi plates to be deducted from the greater of the floor payment and the net loss, in order to determine the amount of buyback or net loss payment to be made.

A Hardship Fund was established by the former Government in 2016 to provide financial assistance to plate owners experiencing a reduced income and an inability to liquidate assets due to taxi industry reform financial hardship. Hardship Fund payments were paid to individual’s according to their specific circumstances, and were not paid in respect of a set of plates.

In the case of a net loss payment, clause 238 also provides for the amount received for the sale of the taxi plates to be deducted from the net loss payment, reducing the payment amount by an amount commensurate with any costs the eligible former owner was able to recoup through the sale of the plates.

Buyback and net loss payments – plates purchased on or after 1 January 2016

Clause 231 provides that an “eligible owner (buyback)” who purchased a set of plates, or an interest in a set of plates, on or after 1 January 2016 will, subject to the grant of their application under clause 229, be eligible for a buyback payment amount in

respect of the plates. 1 January 2016 follows the announcement by the former Government of reforms to the industry.

Clause 237 provides that an “eligible former owner” who purchased a set of plates, or interest in a set of plates on or after 1 January 2016 and who sold those plates before 2 November 2017 will, subject to the grant of their application under clause 235, be eligible for a net loss payment in respect of the plates. 1 January 2016 follows the former Government’s announcement of industry reforms in late December 2015. 2 November 2017 is the date of the Government’s announcement of the proposed buyback scheme for owners of plates issued under the Taxi Act. A former plate owner who sold their plates, or their interest in plates after the Minister’s announcement of the buyback scheme will not be eligible for a net loss payment.

As the plate purchase occurred in the context of Government reforms to the industry, at a time when the plate owner would have been aware of impending changes to the regulation of the industry, as well as the recent decline in values, the calculations for a buyback or net loss payment for plates purchased on or after 1 January 2016 do not involve a floor payment, and do not take into account any **net loss** associated with the plates.

Clause 231 provides for the buyback payment in respect of plates purchased on or after 1 January 2016 to be an amount equivalent to the plate purchase amount for the plates, less the sum of any outstanding fees in relation to the taxi plates and any Hardship Fund payment paid to an owner of the plates (if any).

Similarly, clause 237 provides for the net loss payment in respect of plates purchased on or after 1 January 2016 and who sold those plates before 2 November 2017, to be an amount equivalent to the plate purchase amount for the plates, less the sum of any outstanding fees in relation to the taxi plates and any Hardship Fund payment paid to an owner of the plates (if any). In the case of a net loss payment, clause 237 also provides for the amount received for the sale of the taxi plates to be deducted from the net loss payment, reducing the payment amount by an amount commensurate with any costs the eligible former owner was able to recoup through the sale of the plates.

Clause 226. Terms used

Clause 226(1) defines terms used in this Division.

area restricted plates is defined to mean taxi plates used or to be used on a taxi operated subject to conditions restricting the operation of the taxi to specified areas.

This term is relevant to determining the “floor payment” and the “net loss” in respect of the buyback and net loss payment calculations provided for in this Division. “Floor payment” and “net loss” are terms that are also defined in this clause.

The floor payment and net loss amounts vary according to the type of taxi plates that are the subject of the buyback or net loss payment application. Area restricted plates are one of the plate types in respect of which an application may be made.

conventional taxi plates is defined to mean taxi plates other than multi-purpose taxi plates and plates that are not subject to conditions restricting the operation of the taxi to specified times or areas.

(Multi-purpose taxi plates means taxi plates used on a multi-purpose taxi, being a taxi that is intended principally for the transport of persons who have a disability and any wheelchairs or other aids required by those persons.)

The term is relevant to determining the “floor payment” and the “net loss” in respect of the buyback and net loss payment calculations provided for in this Division. “Floor payment” and “net loss” are terms that are also defined in this clause.

The floor payment and net loss amounts vary according to the type of taxi plates that are the subject of the buyback or net loss payment application. Conventional taxi plates are one of the plate types in respect of which an application may be made.

eligible former owner – this term is relevant to who may apply for and be granted, a net loss payment in respect of taxi plates, as provided for by clauses 235 and 236. It is defined, in respect of taxi plates, to mean a person who was the owner of or had an interest in the ownership of the plates on or after 1 January 2016 and was not the owner on 2 November 2017.

1 January 2016 follows the former Government’s announcement of industry reforms in late December 2015. 2 November 2017 is the date of the Government’s announcement of the proposed buyback scheme for owners of plates issued under the Taxi Act.

Persons who sold their plates or their interest in the ownership of plates prior to the Minister’s announcement of the proposed buyback scheme likely experienced financial difficulty as a result of the decline in plate values and the amount of income some plate owners have been able to generate from their plates. This Bill will provide for such persons to receive financial assistance in relation to taxi plates that they formerly owned or had an interest in the ownership of. These persons generally sold their plates or interest in the plates in order to liquidate their asset, and did so without knowledge of the subsequent announcement of a buyback scheme.

Clauses 235 to 240 of this Division make provision for the application for and the grant, amount and payment of ‘net loss payments’ in respect of taxi plates that were owned by persons who are within the meaning of ‘eligible former owner’.

A former plate owner who sold their plates, or their interest in plates after the Minister’s announcement of the buyback scheme on 2 November 2017 will not be eligible for a net loss payment.

eligible owner (buyback) – this term is relevant to who may apply for and be granted, a buyback payment in respect of taxi plates, as provided for by clauses 229 and 230. It is defined, in respect of taxi plates, to mean a person who is the owner of, or has an interest in the ownership of, the taxi plates and who owned or had an interest in the ownership of the taxi plates on 2 November 2017.

2 November 2017 is the date of the Government's announcement of the proposed buyback scheme for owners of plates issued under the Taxi Act.

As part of the move from taxi plates to an annual passenger transport vehicle authorisation, buyback payments will be made available to owners of plates issued pursuant to the Taxi Act.

Clauses 229 to 234 of this Division make provision for the application for and the grant, amount and payment of 'buyback payments' in respect of taxi plates that are owned by persons who are within the meaning of 'eligible owner (buyback)'.

A plate owner who purchased a set of taxi plates after the Minister's announcement of the buyback scheme will not be eligible for a buyback payment.

floor payment is the base payment amount that a buyback or net loss payment may be based on.

This term is relevant to determining the buyback and net loss payments provided for in this Division, that are payable to persons who are "eligible owners (buyback)" or "eligible former owners" in respect of taxi plates and who purchased the plates prior to 1 January 2016. The calculations provided for by clauses 232 and 238 provide for the amount of the buyback or net loss payment to be based on the greater of the floor payment and the "net loss" associated with the taxi plates.

"Net loss" is a term that is also defined in this clause.

The meaning of "floor payment" in relation to a set of taxi plates is dependent on the type of taxi plates and as in defined to mean:

- \$100,000 in relation to each set of conventional or multi-purpose taxi plates;
- \$40,000 in relation to each set of area restricted plates; and
- \$28,000 in relation to each set of peak period plates.

GST has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).

GST is referred to in various clauses in this Division relevant to the calculation of net loss and buyback payment amounts.

Clause 233(3) and 239(3) provide that if a person who receives a buyback or net loss payment in respect of a set of plates would be liable to pay GST in relation to the payment, the amount of the payment is to be increased by an amount equivalent to the GST liability relevant to the payment.

These provisions will ensure that the recipient of a buyback or net loss payment will be entitled to the amount intended by this Bill, notwithstanding any GST implications associated with the payment. The Department of Transport will seek advice from the Australian Taxation Office (ATO) as to the GST implications associated with the payments, before any payments are granted.

If GST is payable in respect of the buyback or net loss payments, the payment amount will be increased accordingly, and the increased amount of payment will be claimed by the Department of Transport as an input tax credit from the ATO, meaning the increased payment amount will have no impact on the cost of the payment schemes.

Clauses 237(2) and 238(2) provide for the amount received for the sale of a set of taxi plates, excluding any GST liability, to be included in the calculation of the net loss payment. If GST was payable to the ATO by the former owner in respect of the sale of the plates, or their interest in the plates, the GST liability is not to be treated as part of the amount received for the sale given the former owner was not entitled to that portion of the sale price.

Hardship Fund means the Hardship Fund established by the Government for the taxi industry in 2016.

Hardship Fund payment means a payment from the Hardship Fund.

In 2016, a Hardship Fund was established by the former Government as an administrative scheme under which persons who had held an ownership interest in a taxi plate issued under the Taxi Act, between 1 July 2014 and 18 December 2015, and were experiencing a reduced income and an inability to liquidate assets due to taxi industry reform, could apply for financial assistance. Payments from this fund were determined on a case-by-case basis according to the applicant's income and assets. The payments were not paid in respect of a set of plates or to the plate owner, but were made to individuals.

This definition is necessary because the provisions of this Division that provide for the calculation of the amount of a buyback or net loss payment in respect of a set of plates, provide for any Hardship Fund payment amount to be deducted from the payment amount.

MPT plates is defined to mean taxi plates used on a multi-purpose taxi.

multi-purpose taxi is defined to mean a taxi that is intended principally for the transport of persons who have a disability and any wheelchairs or other aids required by those persons.

These terms are relevant to determining the "floor payment" and the "net loss" in respect of the buyback and net loss payment calculations provided for in this Division. "Floor payment" and "net loss" are terms that are also defined in this clause.

The floor payment and net loss amounts vary according to the type of taxi plates that are the subject of the buyback or net loss payment application. MPT plates are one of the plate types in respect of which an application may be made.

Net loss, associated with taxi plates, has the meaning given in section 227.

outstanding fees is defined to mean fees prescribed for the purposes of the *Taxi Act 1994* section 19(1) or 24 that are payable and have not been paid.

Section 19(1) of the *Taxi Act 1994* (WA) (Taxi Act) provides that a prescribed annual fee is payable by plate holders in respect of taxi plates.

Section 24 of the Taxi Act requires the payment of the prescribed fee upon the transfer of ownership, or an interest in the ownership, of taxi plates.

The relevant fees are prescribed by regulation 19 of the *Taxi Regulations 1995*.

Clauses 231, 232, 237 and 238 make provision for the calculation of buyback and net loss payments pursuant to this Division. In each calculation, any outstanding fees in relation to the taxi plates that are the subject of an application, are to be deducted as part of the calculation for the final payment amount.

peak period plates is defined to mean taxi plates used, or to be used, on a taxi operated subject to conditions restricting the operation of the taxi to peak times.

This term is relevant to determining the “floor payment” and the “net loss” in respect of the buyback and net loss payment calculations provided for in this Division. “Floor payment” and “net loss” are terms that are also defined in this clause.

The floor payment and net loss amounts vary according to the type of taxi plates that are the subject of the buyback or net loss payment application. Peak period plates are one of the plate types in respect of which an application may be made.

plate purchase amount, of taxi plates, or an interest in taxi plates, has the meaning given in section 228.

taxi is defined to mean a vehicle which is used for the purpose of standing or plying for hire, or otherwise for the carrying of passengers for reward, but does not include a taxi-car or omnibus licensed under the *Transport Co-ordination Act 1966*.

This definition makes clear that references to taxis within this Division, including these references in the terms ‘area restricted plates’, ‘conventional taxi plates’, ‘multi-purpose taxi’, ‘peak period plates’, are to taxis that are of a kind that are regulated pursuant to the *Taxi Act 1994*.

taxi plates is defined to mean a set of taxi number plates issued or acquired under the *Taxi Act 1994* but does not include taxi plates held under a lease within the meaning of that Act.

Changes to the industry in recent years, particularly increased competition in the metropolitan area, have seen a substantial decrease in the value of owned taxi plates, as well as a reduction in the amount of income some plate owners have been able to generate from their plates, resulting in financial difficulty for this part of the industry.

Accordingly, owned taxi plates (including conventional, multi-purpose, area restricted and peak period plates) issued pursuant to the *Taxi Act 1994* are the only plates in respect of which a buyback or net loss payment may be made. Leased plates issued under the Taxi Act, and country taxi-car licences issued under the *Transport Co-ordination Act 1966* are not covered by the buyback scheme.

Clause 226(2) provides that a reference to the purchase or sale of taxi plate includes a reference to the purchase or sale of an interest in taxi plates. This will accommodate where more than one person has or has had an interest in the ownership of the plates.

Clause 226(3) provides that a reference to the owner of taxi plates includes a reference to the estate of a deceased owner of taxi plates. This makes clear that where a plate owner or former plate is deceased, their estate is still entitled to apply for and may be eligible for a buyback or net loss payment.

Clause 226(4) - the meaning of “plate purchase amount” in clause 288, which is relevant to the calculations for the buyback and net loss payments, provides that plate purchase amount of taxi plates means, among other things, any consideration under an agreement entered into pursuant to s.30I(2) of the Taxi Act. Section 30I of the Taxi Act provides for agreements to exchange restricted hours taxi plates for conventional taxi plates and as part of these agreements the plate owner is required to pay a sum of money for the conventional plate.

Clause 226(4) provides that in this Division a reference to taxi plates does not include taxi plates surrendered under an agreement under the *Taxi Act 1994* section 30I. This provision is necessary to make clear that the initial purchase price of the restricted plate should not be added to the price paid for the conventional plate when determining the ‘plate purchase amount’ as the restricted plate was surrendered and cancelled pursuant to section 30I(2) of the *Taxi Act 1994*.

227. Net loss

A **net loss** is an amount that a buyback or net loss payment may be based on.

This term is relevant to determining the buyback and net loss payments provided for in this Division, that are payable to persons who are “eligible owners (buyback)” or “eligible former owners” in respect of taxi plates and who purchased the plates prior to 1 January 2016. The calculations provided for by clauses 232 and 238 provide for the amount of the buyback or net loss payment to be based on the greater of the “floor payment” and the **net loss** associated with the taxi plates.

“Floor payment” is a term that is defined in clause 226(1).

If the **net loss** in respect of a set of plates is greater than the floor payment, then the buyback or net loss payment will be calculated by reference to the **net loss**. If the floor payment is greater than the **net loss** in respect of the set of plates, then the buyback or net loss payment will be calculated by reference to the floor payment amount applicable to the type of plates that are the subject of the application. Clause 232 and 238 then provide for the any outstanding fees in relation to the taxi plates as well as any Hardship Fund payment paid to an owner of the taxi plates to be deducted from the greater of the floor payment and the net loss, in order to determine the amount of buyback or net loss payment to be made.

Clauses 227(1), (2) and (3) provide for the meaning of **net loss** in respect of the different types of owned taxi plates. It is based on the plate purchase amount for the plates, less the sum of the estimated weekly plate lease income that may have been generated by the plate owner in respect of the plates, and less any adjustment assistance grant paid in relation to the plates under Part 3A of the Taxi Act.

The meaning of **net loss** takes into account the capacity of plate owners and former plate owners to have generated revenue from their plates during their ownership of the plates, with the difference between the price paid for the purchase of the plates, and the revenue that was able to be generated from the plates, being treated as the **net loss** in respect of those plates. The formulas provided by clauses 232 and 238, in conjunction with **net loss**, recognise that persons who purchased their plates some time ago are more likely to have recouped a substantial cost of their investment, as compared with a person who purchased the plates more recently, but prior to the announcement of Government reform to the sector.

Clause 227(1) provides for the meaning of **net loss** in respect of conventional and multi-purpose taxi plates. It means the plate purchase amount of the plates, less the sum of:

- (a) \$355 multiplied by the number of weeks between the date of purchase of the plates and 31 December 2015;
- (b) \$225 multiplied by the number of weeks the taxi plates were owned between 1 January 2016 and 2 November 2017; and
- (c) the amount of any adjustment assistance grant paid in relation to the taxi plates under the *Taxi Act 1994* Part 3A.

Plate owners are able to lease their plates to another person who wishes to use the plates to operate a vehicle as a taxi, in what is referred to as a plate owner's lease. Conditions imposed on taxi plates set the maximum weekly plate lease rates that owners are permitted to charge a person under a plate owner's lease - the maximum weekly lease rate has been set at \$355 per week since July 2004. However, in connection with the increased competition and reduced demand for access to plates, as well as the announcement of reforms by the former Government, the market rate for a plate owner's lease in respect of conventional and multi-purpose taxi plates reduced to \$225 in early 2016.

The amount of an adjustment assistance grant paid in relation to taxi plates pursuant to Part 3A of the *Taxi Act 1994* is to be deducted from the plate purchase amount, in recognition of the monies already paid by the Government in respect of those plates.

In 2016 the *Taxi Act 1994* was amended to include Part 3A, which made provision for the payment of adjustment assistance grants to plate owners, in respect of each set of taxi plates that they owned or had an interest in the ownership of. The amounts of these grants were:

- \$20,000 in respect of conventional or multi-purpose taxi plates; and
- \$6,000 in respect of restricted plates, which are plates that are to be used on a taxi operated subject to conditions restricting the operation of the taxi to specified times or areas – in this Bill restricted plates are referred to as 'area restricted plates' or 'peak period plates' according to the type of restriction.

Clause 227(2) provides for the meaning of net loss in respect of area restricted plates. It means the plate purchase amount of the plates, less the sum of:

- (a) \$142 multiplied by the number of weeks between the date of purchase of the plates and 31 December 2015;
- (b) \$90 multiplied by the number of weeks the taxi plates were owned between 1 January 2016 and 2 November 2017; and
- (c) the amount of any adjustment assistance grant paid in relation to the taxi plates under the *Taxi Act 1994* Part 3A.

Plate owners are able to lease their plates to another person who wishes to use the plates to operate a vehicle as a taxi, in what is referred to as a plate owner's lease. Conditions imposed on taxi plates set the maximum weekly plate lease rates that owners are permitted to charge a person under a plate owner's lease - the maximum weekly lease rate has been set at \$355 per week since July 2004. However, due to the restrictions imposed on the operation of a taxi that is operated pursuant to area restricted plates, the weekly lease rate likely to have been obtained in respect of such plates would have been lower than that for conventional or multi-purpose taxi plates. Accordingly, the weekly lease rates for this kind of plate provided for in clause 227(2) are also lower.

Provision is also made for the likely decline in lease rates from the start of 1 January 2016 in connection with increased competition and reduced demand for access to plates, as well as the announcement of reforms by the former Government at that time.

The amount of an adjustment assistance grant paid in relation to taxi plates pursuant to Part 3A of the *Taxi Act 1994* is to be deducted from the plate purchase amount, in recognition of the monies already paid by the Government in respect of those plates.

In 2016 the *Taxi Act 1994* was amended to include Part 3A, which made provision for the payment of adjustment assistance grants to plate owners, in respect of each set of taxi plates that they owned or had an interest in the ownership of. The amounts of these grants were:

- \$20,000 in respect of conventional or multi-purpose taxi plates; and
- \$6,000 in respect of restricted plates, which are plates that are to be used on a taxi operated subject to conditions restricting the operation of the taxi to specified times or areas – in this Bill restricted plates are referred to as 'area restricted plates' or 'peak period plates' according to the type of restriction.

Clause 227(3) provides for the meaning of net loss in respect of peak period plates. It means the plate purchase amount of the plates, less the sum of:

- (a) \$100 multiplied by the number of weeks between the date of purchase of the plates and 31 December 2015;
- (b) \$63 multiplied by the number of weeks the taxi plates were owned between 1 January 2016 and 2 November 2017; and
- (c) the amount of any adjustment assistance grant paid in relation to the taxi plates under the *Taxi Act 1994* Part 3A.

Plate owners are able to lease their plates to another person who wishes to use the plates to operate a vehicle as a taxi, in what is referred to as a plate owner's lease. Conditions imposed on taxi plates set the maximum weekly plate lease rates that owners are permitted to charge a person under a plate owner's lease - the maximum weekly lease rate has been set at \$355 per week since July 2004. However, due to the restrictions imposed on the operation of a taxi that is operated pursuant to peak period plates, the weekly lease rate likely to have been obtained in respect of such plates would have been lower than that for conventional, multi-purpose or area restricted taxi plates. Accordingly, the weekly lease rates for this kind of plate provided for in clause 227(3) are also lower.

Provision is also made for the likely decline in lease rates from the start of 1 January 2016 in connection with increased competition and reduced demand for access to plates, as well as the announcement of reforms by the former Government at that time.

The amount of an adjustment assistance grant paid in relation to taxi plates pursuant to Part 3A of the *Taxi Act 1994* is to be deducted from the plate purchase amount, in recognition of the monies already paid by the Government in respect of those plates.

In 2016 the *Taxi Act 1994* was amended to include Part 3A, which made provision for the payment of adjustment assistance grants to plate owners, in respect of each set of taxi plates that they owned or had an interest in the ownership of. The amounts of these grants were:

- \$20,000 in respect of conventional or multi-purpose taxi plates; and
- \$6,000 in respect of restricted plates, which are plates that are to be used on a taxi operated subject to conditions restricting the operation of the taxi to specified times or areas – in this Bill restricted plates are referred to as 'area restricted plates' or 'peak period plates' according to the type of restriction.

228. Plate purchase amount

The term "plate purchase amount" is used in this Division for two purposes.

The first is in respect of the calculations for buyback and net loss payments in clauses 231 and 237 respectively. These clauses provide for the buyback or net loss payment in respect of plates purchased on or after 1 January 2016 to be an amount equivalent to the "plate purchase amount" for the plates, less the sum of any outstanding fees in relation to the taxi plates and any Hardship Fund payment paid to an owner of the plates (if any).

The second is in relation to the **net loss** associated with taxi plates. A **net loss** is an amount that a buyback or net loss payment may be based on.

The calculations provided for by clauses 232 and 238 provide for the amount of the buyback or net loss payment, respectively, in respect of plates purchased before 1 January 2016, to be based on the greater of the "floor payment" and the **net loss** associated with the taxi plates.

Net loss is calculated by reference to the “plate purchase amount” of the plates less the sum of the estimated weekly plate lease income that may have been generated by the plate owner in respect of the plates (as provided for in clause 227), and less any adjustment assistance grant paid in relation to the plates under Part 3A of the Tax Act.

Clause 228(1)

Clause 228(1)(a) provides that plate purchase amount of taxi plates means the purchase price paid for the taxi plates by tender under the *Taxi Act 1994* or on transfer under the *Taxi Act 1994*, or as consideration under an agreement under the *Taxi Act 1994* section 30I.

Section 30I of the Tax Act provides for agreements to exchange restricted hours taxi plates for conventional taxi plates. As part of these agreements the plate owner is required to pay a sum of money for the conventional plate.

However, if clause 228(5) applies, clause 228(1)(b) provides that plate purchase amount of taxi plates means the amount determined under that clause. Clauses 228(4) and (5) enable the CEO to determine the plate purchase amount for the taxi plates on the basis of the average value (according to records held by the Department) of plate purchases for the year the taxi plates were purchased, if there is insufficient information available to determine the purchase price paid for taxi plates by tender or transfer under the *Taxi Act 1994*.

Clause 228(2)

The Tax Act provides for ownership of taxi plates by a person, or joint ownership. In the case of joint ownership, clause 228(2) provides that the plate purchase amount of interest of a person in taxi plates is the amount arrived at after:

- (a) adding together the amount of the original plate purchase price of the taxi plates apportioned to that interest and the purchase price of any additional interest in the taxi plates the person acquired subsequently; and
- (b) deducting the transfer price of any part of the interests in the plates that the person has transferred subsequently to another person.

This will ensure that only those amounts relevant to the person acquiring and retaining their individual interest in the plates will be taken into account when determining the plate purchase amount of an interest of a person in taxi plates in the relevant calculations.

Clause 228(3) specifies that in this clause, the purchase price of taxi plates or an interest in taxi plates excludes any duty under the *Duties Act 2008* paid in connection with the transfer of ownership of the taxi plates or interest, as well as any input tax credits the purchaser received or is entitled to under the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) (GST Act)).

Under the GST Act, input tax credits are generally refundable by the Australian Taxation Office (ATO) to a business who is registered for GST, in respect of a

purchase of a good or service for which GST was payable, to the amount equivalent to the GST component relating to the purchase. If a plate owner received or is entitled to receive an input tax credit in connection with a plate purchase, this is to be deducted from the plate purchase amount.

Clauses 228(4) and (5)

Clause 228(4) applies if the CEO is satisfied that there is insufficient information available to determine the purchase price paid for taxi plates by tender, or on transfer, under the *Taxi Act 1994*.

If this clause applies, clause 228(5) provides that the CEO may determine the plate purchase amount based on the average value (according to records held by the Department) of plate purchases for the year the taxi plates were bought.

In most cases Departmental records contain details of the purchase price paid for plates, and applicants for buyback and net loss payments will also be able to provide evidence of the purchase price paid. However, should historical records be inconclusive, and the owner not be able to provide evidence of the plate purchase amount, this clause will provide for the purchase price in respect of a calculation for a payment.

229. Application for buyback payment

This clause sets out the requirements for an application for a buyback payment.

Clause 229(1) provides that an eligible owner (buyback) of taxi plates may apply for a buyback payment in relation to the taxi plates. Eligible owner (buyback) is defined in clause 226(1) to mean, in respect of taxi plates, a person who is the owner of, or has an interest in the ownership of, the taxi plates and who owned or had an interest in the ownership of the taxi plates on 2 November 2017.

A plate owner will be able to apply for a buyback payment in respect of each set of taxi plates for which the plate owner falls within the definition of 'eligible owner (buyback)'.

Clause 229(2) provides that an application for a buyback payment must be made to the CEO in the approved form on or before the prescribed day. It is proposed to make regulations prescribing the day on or before which applications must be received. This will ensure the approved form and any associated administrative arrangements can be put in place to facilitate prompt receipt and processing of the applications. It will also ensure that the scheme will be available for a finite period, ahead of the transition from existing legislation applying to taxis, to the provisions of this Bill for the regulation of passenger transport vehicles.

Clause 229(3) makes provision for applications in respect of taxi plates owned by 2 or more eligible owners in partnership. This is because, in the case of a partnership, each member of the partnership is considered to have an interest in the ownership of the taxi plates.

Pursuant to clause 230(1)(b), only one buyback payment may be paid in respect of the same set of taxi plates. Accordingly, clause 229(3) provides that those partners who fall within the definition of 'eligible owner' must apply jointly. This is intended to ensure that all members of a partnership who are eligible for the buyback payment are aware of the application in respect of the taxi plates, and that they act together in applying for the payment.

As noted above, a plate owner will be able to apply for a buyback payment in respect of each set of taxi plates for which the plate owner falls within the proposed definition of 'eligible owner (buyback)'. If the individual members of a partnership who owned a set of taxi plates were subject to change after 2 November 2017, only those members of the partnership who had an interest in the ownership of the taxi plates on that date, and who are still within the meaning of eligible owner (buyback) will be eligible to apply for a buyback payment.

Clause 229(4) specifies that the applicant must provide any additional information required by the CEO for the proper consideration of the application. This is intended to ensure that the CEO can verify any information provided in an application, if necessary, in order to be satisfied that the application can be granted.

Clause 229(5) provides that the CEO may require any information provided with an application to be verified by a statutory declaration. If necessary, a statutory declaration may be required to support the administrative processes associated with the processing of applications for buyback payments, and to deter the provision of false or misleading information in any such applications

230. Requirement to grant buyback payment

Clause 230(1) provides that the CEO must, by notice in writing, grant an application for a buyback payment if satisfied that both:

- the applicant, or each applicant (in the case of a joint application, which is required by clause 229(3) in relation to an application by 2 or more eligible owners in a partnership), is the eligible owner (buyback) of the taxi plates ('eligible owner (buyback)' is defined in clause 226(1) to mean in respect of taxi plates, a person who is the owner of, or has an interest in the ownership of, the taxi plates and who owned or had an interest in the ownership of the taxi plates on 2 November 2017); and
- no other application for a buyback payment in respect of the same taxi plates has been granted.

If these criteria are met, the application must be granted.

Clause 230(2) provides that any right of a person to ownership of taxi plates ceases to exist on the grant of the buyback payment in relation to the taxi plates. The grant of a buyback payment will remove the ownership rights of the person who owned the plates and the person will no longer be entitled to operate a taxi pursuant to those plates.

Immediately following the grant of the buyback payments and the cessation of the ownership rights in respect of those plates, Part 6 of the Bill is proposed to commence. Part 6 makes provision for the authorisation of passenger transport vehicles pursuant to this Bill. In connection with the commencement of Part 6, the transitional provisions of Part 13 of the Bill will, among other matters, provide for the continued operation of vehicles that were being operated pursuant to taxi plates immediately prior to the commencement of Part 6.

Clause 295(2) of the transitional provisions will enable a vehicle that has been operating as a taxi pursuant to owned plates (or which would have been operated under owned plates if not for a grant of a buyback payment in respect of the plates) up to and immediately before the commencement of Part 6 of this Bill, to continue to do so for the prescribed transitional period. The owner of the vehicle or a person who has the consent of the owner, will be taken to be the holder of an on-demand rank or hail passenger transport vehicle authorisation for the vehicle. This person may or may not be the person who was the owner of the taxi plates that the vehicle was operated pursuant to under the Taxi Act.

Clause 295(3) makes transitional provision in respect of a plate owner who has not participated in the buyback. Pursuant to clause 295(3), a person who is the eligible owner (buyback) of taxi plates immediately before commencement day for which no grant of a buyback payment has been made under Part 9 Division 1 before commencement day and to whom clause 295(2) does not apply (meaning they are not the owner of the vehicle that was operated pursuant to the plates, or do not have the consent of the vehicle owner), is taken on and from commencement day until the prescribed day to be the holder of an on-demand rank or hail vehicle authorisation for a “nominated vehicle”.

Clause 295(4) provides that a nominated vehicle is a vehicle nominated to the CEO before commencement day by the owner of the taxi plates, that complies with the prescribed requirements. The Department of Transport will communicate with plate owners ahead of the commencement of Part 6 to ensure that they are aware of these transitional arrangements and have time to find an alternative vehicle if they are not the owner of the vehicle that is being operated pursuant to the plates, and if the vehicle owner no longer intends for the plate owner to have a role in the operation of the vehicle.

Clause 230(3) provides no compensation is payable by the State to any other person who has an interest in the taxi plates or the use of the taxi plates because the right of a person to the ownership of the taxi plates ceases to exist. This would include any person with an interest in the use of the taxi plates under a plate owner’s lease, for example. Such arrangements are private matters between a plate owner and third parties.

231. Amount of buyback payment: taxi plates purchased on or after 1 January 2016

Clause 231 provides the calculation for determining a buyback payment payable to an eligible owner (buyback), in relation to taxi plates purchased on or after 1 January

2016. Eligible owner (buyback) is defined in clause 226(1) to mean, in respect of taxi plates, a person who is the owner of, or has an interest in the ownership of, the taxi plates and who owned or had an interest in the ownership of the taxi plates on 2 November 2017.

Clause 231(2) provides, subject to clause 233, the formula for the buyback payment for the taxi plates as $BP = A - (B + C)$, where:

- BP is the buyback payment
- A is the plate purchase amount for the taxi plates
- B is any outstanding fees in relation to the taxi plates; and
- C is any Hardship Fund payment paid to an owner of the taxi plates.

The buyback payment is an amount equivalent to the plate purchase amount for the plates, less the sum of any outstanding fees in relation to the taxi plates and any Hardship Fund payment paid to an owner of the plates (if any).

“Plate purchase amount” is defined in clause 228 to mean the purchase price paid for the taxi plates by tender under the *Taxi Act 1994* or on transfer under the *Taxi Act 1994*, or as consideration under an agreement under the *Taxi Act 1994* section 30I.

Clauses 228(4) and (5) also make provision for determining the plate purchase amount in circumstances where there are insufficient records of the actual purchase amount.

Clause 228(2) deals with where more than one person owns a set of plates in partnership. It provides that the plate purchase amount of interest of a person in taxi plates is the amount arrived at after:

- (a) adding together the amount of the original plate purchase price of the taxi plates apportioned to that interest and the purchase price of any additional interest in the taxi plates the person acquired subsequently; and
- (b) deducting the transfer price of any part of the interests in the plates that the person has transferred subsequently to another person.

This will ensure that only those amounts relevant to the person acquiring and retaining their individual interest in the plates will be taken into account when determining the plate purchase amount of an interest of a person or persons in taxi plates in the calculation.

Clause 228(3) specifies that the purchase price of taxi plates or an interest in taxi plates excludes any duty under the *Duties Act 2008* paid in connection with the transfer of ownership of the taxi plates or interest, as well as any input tax credits the purchaser received or is entitled to under the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth)).

Outstanding fees is defined in clause 226(1) to mean fees prescribed for the purposes of the *Taxi Act 1994* section 19(1) or 24 that are payable and have not been paid. The relevant fees are the prescribed annual fee is payable by plate holders in respect of

taxi plates, and the prescribed fee payable upon the transfer of ownership, or an interest in the ownership, of taxi plates.

Hardship Fund payment is defined in clause 226(1) to mean a payment from the Hardship Fund.

The Hardship Fund was established by the former Government as an administrative scheme under which persons who had held an ownership interest in a taxi plate issued under the Taxi Act, between 1 July 2014 and 18 December 2015, and were experiencing a reduced income and an inability to liquidate assets due to taxi industry reform, could apply for financial assistance. Payments from this fund were determined on a case-by-case basis according to the applicant's income and assets. The payments were not paid in respect of a set of plates or to the plate owner, but were made to individuals.

The calculation of the amount of a buyback payment pursuant to this clause provides that any Hardship Fund payment amount paid to an owner of the plates the subject of the application, is to be deducted from the payment amount.

Clause 233(2) provides that if a person who received a Hardship Fund payment is eligible for a buyback and/or net loss payment in respect of more than one set of taxi plates, only the balance of the Hardship Fund payment remaining after a deduction in respect of a payment for one or more other sets of plates, is to be deducted from any subsequent payment. In connection with this, clause 233(1) provides that the Hardship Fund payment amount is only to be deducted to the extent that the deduction results in the payment being reduced to zero – ensuring that the balance of any undeducted amount can be deducted as part of the calculation for a payment in respect of a subsequent set of plates.

An example is provided below in respect of the explanation of clause 233(2).

In some cases, where a set of taxi plates was owned by a partnership, a Hardship Fund payment was made to one member of the partnership but not the other.

Accordingly, clause 233(4) provides that in the case of a joint application for a buyback payment where more than one person has an interest in the ownership of the plates, the amount of Hardship Fund payment may be deducted only from the portion of the amount payable to the person with the interest in, or who had an interest in, the ownership of the plates that received the Hardship Fund payment. This will ensure that any buyback payment amount payable to a person with an interest in, or who had an interest in, the ownership of plates who did not receive a Hardship Fund payment, will not be reduced because another person with or who had an interest in the plates received such a payment.

Clause 233(3) also provides, for the purpose of determining a buyback payment pursuant to this clause, that if a person who receives a buyback payment in respect of a set of plates would be liable to pay GST in relation to the payment, the amount of the payment is to be increased by an amount equivalent to the GST liability relevant to the payment.

This will ensure that the recipient of a buyback payment will be entitled to the amount intended by this Bill, notwithstanding any GST implications associated with the payment. The Department of Transport will seek advice from the Australian Taxation Office (ATO) as to the GST implications associated with the payments, before any payments are granted.

If GST is payable in respect of buyback payments, the payment amount will be increased accordingly, and the increased amount of payment will be claimed by the Department of Transport as an input tax credit from the ATO, meaning the increased payment amount will have no impact on the cost of the buyback scheme.

232. Amount of buyback payment: taxi plates purchased before 1 January 2016 and held at 2 November 2017

Clause 232 provides the calculation for determining a buyback payment payable to an eligible owner (buyback), in relation to taxi plates purchased before 1 January 2016 and still owned at 2 November 2017. Eligible owner (buyback) is defined in clause 226(1) to mean, in respect of taxi plates, a person who is the owner of, or has an interest in the ownership of, the taxi plates and who owned or had an interest in the ownership of the taxi plates on 2 November 2017.

Clause 231(2) provides, subject to clause 233, the formula for the buyback payment for the taxi plates as $BP = A - (B + C)$ where:

- BP is the buyback payment
- A is the greater of the floor payment for the taxi plates and the net loss associated with the taxi plates
- B is any outstanding fees in relation to the taxi plates; and
- C is any Hardship Fund payment paid to an owner of the taxi plates.

The buyback payment is the greater of the floor payment for the taxi plates and the net loss associated with the taxi plates, less the sum of any outstanding fees in relation to the taxi plates and any Hardship Fund payment paid to an owner of the plates (if any).

Greater of the floor payment and net loss

The formula for payments pursuant to this clause provides for a base amount in respect of the calculation for the payment to be made in respect of the plates.

The base amount is dependent on the type of plate. These base payment amounts are referred to in the Bill as the “floor payment”. “Floor payment” is defined in clause 226(1) to mean:

- \$100,000 in relation to each set of conventional or multi-purpose taxi plates;
- \$40,000 in relation to each set of area restricted plates; and
- \$28,000 in relation to each set of peak period plates.

As stated above, the calculations provided for by this clause, provides for the amount of payment to be based on the greater of the floor payment and the “net loss” associated with the taxi plates.

Clause 227 explains what is meant by **net loss** in relation to taxi plates in this Division. It means the plate purchase amount of the plates, less the sum of:

- (a) the weekly plate lease revenue that may have been earned in respect of the plate (this is based on the estimated maximum weekly plate lease rates for the plates, and differs according to the type of plate and the point in time, and period of, plate ownership); and
- (b) the amount of any adjustment assistance grants paid in relation to the taxi plates under the *Taxi Act 1994* Part 3A.

Plate owners may lease their plates to another person who wishes to use the plates to operate a vehicle as a taxi. Conditions imposed on taxi plates set the maximum weekly plate lease rates that owners were permitted to charge a person under a plate owner’s lease. The meaning of **net loss** takes into account the capacity of plate owners to have generated revenue from their plates during their ownership of the plates, with the difference between the price paid for the purchase of the plates, and the revenue that was able to be generated from the plates, being treated as the **net loss** in respect of those plates.

The formula provided by this clause recognises that persons who purchased their plates some time ago are more likely to have recouped a substantial cost of their investment, as compared with a person who purchased the plates more recently, but prior to the announcement of Government reform to the sector.

In 2016 the *Taxi Act 1994* was amended to include Part 3A, which made provision for the payment of adjustment assistance grants to plate owners, in respect of each set of taxi plates that they owned or had an interest in the ownership of. The amounts of these grants were:

- \$20,000 in respect of conventional or multi-purpose taxi plates; and
- \$6,000 in respect of restricted plates, which are plates that are to be used on a taxi operated subject to conditions restricting the operation of the taxi to specified times or areas – in this Bill restricted plates are referred to as ‘area restricted plates’ or ‘peak period plates’ according to the type of restriction.

Any amount of adjustment assistance grant paid in respect of a set of plates is to be deducted from the **net loss** calculation for those plates, in recognition of the monies already paid by the Government in respect of those plates.

If the **net loss** in respect of a set of plates is greater than the floor payment, then the buyback payment will be calculated by reference to the **net loss**. If the floor payment is greater than the **net loss** in respect of the set of plates, then the buyback payment will be calculated by reference to the floor payment amount applicable to the type of plates that are the subject of the application.

Outstanding fees is defined in clause 226(1) to mean fees prescribed for the purposes of the *Taxi Act 1994* section 19(1) or 24 that are payable and have not been paid. The relevant fees are the prescribed annual fee payable by plate holders in respect of taxi plates, and the prescribed fee payable upon the transfer of ownership, or an interest in the ownership, of taxi plates.

Hardship Fund payment is defined in clause 226(1) to mean a payment from the Hardship Fund.

The Hardship Fund was established by the former Government as an administrative scheme under which persons who had held an ownership interest in a taxi plate issued under the *Taxi Act*, between 1 July 2014 and 18 December 2015, and were experiencing a reduced income and an inability to liquidate assets due to taxi industry reform, could apply for financial assistance. Payments from this fund were determined on a case-by-case basis according to the applicant's income and assets. The payments were not paid in respect of a set of plates or to the plate owner, but were made to individuals.

The calculation of the amount of a buyback payment pursuant to this clause provides that any Hardship Fund payment amount paid to an owner of the plates the subject of the application is to be deducted from the payment amount.

Clause 233(2) provides that if a person who received a Hardship Fund payment is eligible for a buyback and/or net loss payment in respect of more than one set of taxi plates, only the balance of the Hardship Fund payment remaining after a deduction in respect of a payment for one or more other sets of plates, is to be deducted from any subsequent payment. In connection with this, clause 233(1) provides that the Hardship Fund payment amount is only to be deducted to the extent that the deduction results in the payment being reduced to zero – ensuring that the balance of any undeducted amount can be deducted as part of the calculation for a payment in respect of a subsequent set of plates.

An example is provided below in respect of the explanation of clause 233(2).

In some cases, where a set of taxi plates was owned by a partnership, a Hardship Fund payment was made to one member of the partnership but not the other.

Accordingly, clause 233(4) provides that in the case of a joint application for a buyback payment where more than one person has an interest in the ownership of the plates, the amount of Hardship Fund payment may be deducted only from the portion of the amount payable to the person with the interest in the ownership of the plates that received the Hardship Fund payment. This will ensure that any buyback payment amount payable to a person with an interest in the ownership of plates who did not receive a Hardship Fund payment, will not be reduced because another person with an interest in the plates received such a payment.

Clause 233(3) also provides, for the purpose of determining a buyback payment pursuant to this clause, that if a person who receives a buyback payment in respect of a set of plates would be liable to pay GST in relation to the payment, the amount of

the payment is to be increased by an amount equivalent to the GST liability relevant to the payment.

This will ensure that the recipient of a buyback payment will be entitled to the amount intended by this Bill, notwithstanding any GST implications associated with the payment. The Department of Transport will seek advice from the Australian Taxation Office (ATO) as to the GST implications associated with the payments, before any payments are granted.

If GST is payable in respect of buyback payments, the payment amount will be increased accordingly, and the increased amount of payment will be claimed by the Department of Transport as an input tax credit from the ATO, meaning the increased payment amount will have no impact on the cost of the buyback scheme.

233. Provisions relating to determining buyback payments

Clause 233 makes provision in respect of the buyback payment formulas provided for in clauses 231 and 232, to provide for how certain matters relevant to those formulas are to be dealt with.

Clause 233(1) provides that if an amount of Hardship Fund payment is to be deducted under clause 231 or 232, it is only to be deducted to the extent that the deduction results in the buyback payment being reduced to zero. This ensures that the balance of any un-deducted amount can be deducted as part of the calculation for a payment in respect of a subsequent set of plates, as provided for by clause 233(2).

Clause 233(2) provides that if an amount of Hardship Fund payment has already been deducted for a buyback payment or net loss payment for one or more other sets of taxi plates of which an applicant for the buyback payment was an eligible owner (buyback) or former eligible owner, the Hardship Fund payment referred to in clause 231(2) or 232(2) is the balance of that payment remaining after the earlier deduction or deductions.

The effect of this clause is that the total amount of Hardship Fund payment which was paid to a person will not be deducted from each buyback or net loss payment that they may be eligible for. The payments will only be subject to a deduction to the extent that the total sum of any deductions made, equal the total Hardship Fund payment that the person may have received.

Clause 233(3) provides that if the owner of the taxi plates is required to pay GST in relation to a buyback payment then the amount of the buyback payment is to be increased by an amount equivalent to the GST liability relevant to the payment.

This provision will ensure that the recipient of a buyback payment will be entitled to the amount intended by this Bill, notwithstanding any GST implications associated with the payment. The Department of Transport will seek advice from the Australian Taxation Office (ATO) as to the GST implications associated with the payments, before any payments are granted.

If GST is payable in respect of buyback payments, the payment amount will be increased accordingly, and the increased amount of payment will be claimed by the

Department of Transport as an input tax credit from the ATO, meaning the increased payment amount will have no impact on the cost of the buyback scheme.

Clause 233(4) provides that if a joint application is made for a buyback payment in relation to taxi plates and a Hardship Fund payment was paid to one or more of the applicants, the CEO, in determining the buyback payment under clause 231 or 232;

- (a) may apportion the buyback payment among the applicants according to their respective interests without deducting any Hardship Fund payment; and
- (b) may then deduct any Hardship Fund payment from the portion of each person who received the payment, in order to determine the final buyback payment for that person.

In some cases, where a set of taxi plates was owned by a partnership, a Hardship Fund payment was made to one member of the partnership but not the other.

As Hardship Fund payments were made to individuals according to their circumstances, rather than in respect of a set of plates, this will ensure that any buyback payment amount payable to a person with an interest in the ownership of plates who did not receive a Hardship Fund payment, will not be reduced because another person with an interest in the plates received such a payment.

234. Payment of buyback payment

Clause 234(1) sets out to whom an buyback payment is to be paid. This is limited to:

- (a) the applicant - pursuant to clause 229(1), this is limited to the eligible owner (buyback) of the taxi plates in respect of which the application is being made; or
- (b) subject to 234(2), if the application specifies a person who is to receive the payment on behalf of the eligible owners of the taxi plates, then that person. This allows the eligible owner of the plates to nominate to whom payment is to be made.

Clause 234(2) provides that if, under clause 233(4), the eligible owners of taxi plates to which a joint application applies are entitled to different amounts of buyback payment (because of the deduction of a Hardship Fund payment amount from a portion of the amount payable to one or more of the eligible owners), then the relevant portion of the payment is to be paid to each applicant separately.

235. Application for net loss payment

This clause sets out the requirements for an application for a net loss payment.

Clause 235(1) provides that an eligible former owner of taxi plates may apply for a net loss payment in relation to the taxi plates. Eligible former owner is defined in clause 226(1) to mean, in respect of taxi plates, a person who was the owner of or had an interest in the ownership of the plates on or after 1 January 2016 and was not the owner on 2 November 2017.

A former plate owner will be able to apply for a net loss payment in respect of each set of taxi plates for which the former plate owner falls within the definition of 'eligible former owner'.

Clause 235(2) provides that an application for a net loss payment must be made to the CEO in the approved form on or before the prescribed day. It is proposed to make regulations prescribing the day on or before which applications must be received. This will ensure the approved form and any associated administrative arrangements can be put in place to facilitate prompt receipt and processing of the applications. It will also ensure that the scheme will be available for a finite period, ahead of the transition from existing legislation applying to taxis, to the provisions of this Bill for the regulation of passenger transport vehicles.

Clause 235(3) makes provision for applications in respect of taxi plates that were owned by 2 or more eligible former owners in partnership and provides that the application may be made jointly. Unlike applications from eligible owners (buyback), as these payments are available to persons who are no longer own a plate, or an interest in the ownership of a plate, some time may have passed since these persons were in partnership with the other person or persons who also had an interest in the ownership of the plates. As such, joint application is accommodated but not required.

Clause 235(4) specifies that the applicant must provide any additional information required by the CEO for the proper consideration of the application. This is intended to ensure that the CEO can verify any information provided in an application, if necessary, in order to be satisfied that the application can be granted.

Clause 235(5) provides that the CEO may require any information provided with an application to be verified by a statutory declaration. If necessary, a statutory declaration may be required to support the administrative processes associated with the processing of applications for net loss payments, and to deter the provision of false or misleading information in any such applications

236. Requirement to grant net loss payment

Clause 236(1) provides that the CEO must, by notice in writing, grant an application for a net loss payment if satisfied that both:

- the applicant, or each applicant (in the case of a joint application, which is permitted by clause 235(3) in relation to an application by 2 or more eligible former owners in a partnership), is an eligible former owner of the taxi plates ('eligible former owner' is defined in clause 226(1) to mean, in respect of taxi plates, a person who was the owner of or had an interest in the ownership of the plates on or after 1 January 2016 and was not the owner on 2 November 2017); and
- no other application for a net loss payment in relation to the taxi plates has been granted to the eligible former owner.

With respect to the latter, as more than one person may have owned or had an interest in the ownership of the plates between 1 January 2016 and 2 November 2017, it is

possible for more than one net loss payment to be payable in respect of the same set of plates. This clause will not prevent more than one payment in respect of the same set of plates, but will ensure that a given person can only receive one net loss payment in respect of the same set of plates.

If the above criteria are met, the application must be granted.

237. Amount of net loss payment: taxi plates purchased on or after 1 January 2016 and sold before 2 November 2017

Clause 237 provides the calculation for determining a net loss payment payable to an eligible former owner, in relation to taxi plates purchased on or after 1 January 2016 and sold before 2 November 2017. Eligible former owner is defined in clause 226(1) to mean, in respect of taxi plates, a person who was the owner of or had an interest in the ownership of the plates on or after 1 January 2016 and was not the owner on 2 November 2017.

Clause 237(2) provides, subject to clause 239, that the formula to calculate the net loss payment for eligible former owners of taxi plates is $NLP = A - (B + C + D)$, where:

- NLP is the net loss payment
- A is the plate purchase amount of the taxi plates
- B is any outstanding fees in relation to the taxi plates
- C is any Hardship Fund payment paid to an owner of the taxi plates
- D is the amount received for the sale of the taxi plates, excluding any GST liability incurred in connection with the sale.

The net loss payment is an amount equivalent to the plate purchase amount for the plates, less the sum of any outstanding fees in relation to the taxi plates, any Hardship Fund payment paid to an owner of the plates (if any) and the amount received for the sale of the plates.

“Plate purchase amount” is defined in clause 228 to mean the purchase price paid for the taxi plates by tender under the *Taxi Act 1994* or on transfer under the *Taxi Act 1994*, or as consideration under an agreement under the *Taxi Act 1994* section 30I.

Clauses 228(4) and (5) also make provision for determining the plate purchase amount in circumstances where there are insufficient records of the actual purchase amount.

Clause 228(2) deals with where more than one person owned a set of plates in partnership. It provides that the plate purchase amount of interest of a person in taxi plates is the amount arrived at after:

- (a) adding together the amount of the original plate purchase price of the taxi plates apportioned to that interest and the purchase price of any additional interest in the taxi plates the person acquired subsequently; and
- (b) deducting the transfer price of any part of the interests in the plates that the person has transferred subsequently to another person.

This will ensure that only those amounts relevant to the person acquiring and retaining their individual former interest in the plates will be taken into account when determining the plate purchase amount of an interest of a person or persons in taxi plates in the calculation.

Clause 228(3) specifies that the purchase price of taxi plates or an interest in taxi plates excludes any duty under the *Duties Act 2008* paid in connection with the transfer of ownership of the taxi plates or interest, as well as any input tax credits the purchaser received or is entitled to under the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth)).

Outstanding fees is defined in clause 226(1) to mean fees prescribed for the purposes of the *Taxi Act 1994* section 19(1) or 24 that are payable and have not been paid. The relevant fees are the prescribed annual fee is payable by plate holders in respect of taxi plates, and the prescribed fee payable upon the transfer of ownership, or an interest in the ownership, of taxi plates.

Hardship Fund payment is defined in clause 226(1) to mean a payment from the Hardship Fund.

The Hardship Fund was established by the former Government as an administrative scheme under which persons who had held an ownership interest in a taxi plate issued under the *Taxi Act*, between 1 July 2014 and 18 December 2015, and were experiencing a reduced income and an inability to liquidate assets due to taxi industry reform, could apply for financial assistance. Payments from this fund were determined on a case-by-case basis according to the applicant's income and assets. The payments were not paid in respect of a set of plates or to the plate owner, but were made to individuals.

The calculation of the amount of a net loss payment pursuant to this clause provides that any Hardship Fund payment amount paid to a former owner of the plates the subject of the application, is to be deducted from the payment amount.

Clause 239(2) provides that if a person who received a Hardship Fund payment is eligible for a buyback and/or net loss payment in respect of more than one set of taxi plates, only the balance of the Hardship Fund payment remaining after a deduction in respect of a payment for one or more other sets of plates, is to be deducted from any subsequent payment. In connection with this, clause 239(1) provides that the Hardship Fund payment amount is only to be deducted to the extent that the deduction results in the payment being reduced to zero – ensuring that the balance of any undeducted amount can be deducted as part of the calculation for a payment in respect of a subsequent set of plates.

An example is provided below in respect of the explanation of clause 239(2).

In some cases, where a set of taxi plates was owned by a partnership, a Hardship Fund payment was made to one member of the partnership but not the other.

Accordingly, clause 239(4) provides that in the case of a joint application for a net loss payment where more than one person had an interest in the ownership of the plates,

the amount of Hardship Fund payment may be deducted only from the portion of the amount payable to the person who had an interest in the ownership of the plates that received the Hardship Fund payment. This will ensure that any net loss payment amount payable to a person who had an interest in the ownership of plates who did not receive a Hardship Fund payment, will not be reduced because another person with or who had an interest in the plates received such a payment.

Clause 239(3) also provides, for the purpose of determining a net loss payment pursuant to this clause, that if a person who receives a net loss payment in respect of a set of plates would be liable to pay GST in relation to the payment, the amount of the payment is to be increased by an amount equivalent to the GST liability relevant to the payment.

This will ensure that the recipient of a net loss payment will be entitled to the amount intended by this Bill, notwithstanding any GST implications associated with the payment. The Department of Transport will seek advice from the Australian Taxation Office (ATO) as to the GST implications associated with the payments, before any payments are granted.

If GST is payable in respect of net loss payments, the payment amount will be increased accordingly, and the increased amount of payment will be claimed by the Department of Transport as an input tax credit from the ATO, meaning the increased payment amount will have no impact on the cost of the net loss payment scheme.

Amount received for the sale of the plates

The amount received for the sale of the taxi plates is to be deducted from the calculation for the net loss payment. Clause 226(2) provides that a reference to the sale of taxi plates includes a reference to the sale of an interest in the taxi plates. This will accommodate where more than one person had an interest in the ownership of the plates.

The intention of this is to reduce the final net loss payment amount by an amount commensurate with any costs the eligible former owner was able to recoup through the sale of the plates.

If GST was payable by the former owner in respect of the sale of the plates, or their interest in the plates, the GST liability is not to be treated as part of the amount received for the sale given the former owner was not entitled to that portion of the sale price.

238. Amount of net loss payment: taxi plates purchased before 1 January 2016 and sold on or after 1 January 2016 and before 2 November 2017

Clause 238 provides the calculation for determining a net loss payment payable to an eligible former owner, in relation to taxi plates purchased before 1 January 2016 and sold on or after 1 January 2016 and before 2 November 2017. Eligible former owner is defined in clause 226(1) to mean, in respect of taxi plates, a person who was the owner of or had an interest in the ownership of the plates on or after 1 January 2016 and was not the owner on 2 November 2017.

Clause 238(2) provides, subject to clause 239, that the formula to calculate the net loss payment for eligible former owners of taxi plates is $NLP = A - (B + C + D)$, where:

- NLP is the net loss payment
- A is the greater of the floor payment for the taxi plates and the net loss associated with the taxi plates
- B is any outstanding fees in relation to the taxi plates
- C is any Hardship Fund payment paid to the owner of the taxi plates
- D is the amount received for the sale of the taxi plates, excluding any GST liability incurred in connection with the sale.

The net loss payment is the greater of the floor payment for the taxi plates and the net loss associated with the taxi plates, less the sum of any outstanding fees in relation to the taxi plates, any Hardship Fund payment paid to an owner of the plates (if any), and any amount received for the sale of the plates.

Greater of the floor payment and net loss

The formula for payments pursuant to this clause provides for a base amount in respect of the calculation for the payment to be made in respect of the plates.

The base amount is dependent on the type of plate. These base payment amounts are referred to in the Bill as the “floor payment”. “Floor payment” is defined in clause 226(1) to mean:

- \$100,000 in relation to each set of conventional or multi-purpose taxi plates;
- \$40,000 in relation to each set of area restricted plates; and
- \$28,000 in relation to each set of peak period plates.

As stated above, the calculations provided for by this clause, provides for the amount of payment to be based on the greater of the floor payment and the “net loss” associated with the taxi plates.

Clause 227 explains what is meant by **net loss** in relation to taxi plates in this Division. It means the plate purchase amount of the plates, less the sum of:

- (a) the weekly plate lease revenue that may have been earned in respect of the plate (this is based on the estimated maximum weekly plate lease rates for the plates, and differs according to the type of plate and the point in time, and period of, plate ownership); and
- (b) the amount of any adjustment assistance grants paid in relation to the taxi plates under the *Taxi Act 1994* Part 3A.

Former plate owners were able to lease their plates to another person who wished to use the plates to operate a vehicle as a taxi. Conditions imposed on taxi plates set the maximum weekly plate lease rates that owners were permitted to charge a person under a plate owner’s lease. The meaning of **net loss** takes into account the capacity

of former plate owners to have generated revenue from their plates during their ownership of the plates, with the difference between the price paid for the purchase of the plates, and the revenue that was able to be generated from the plates, being treated as the **net loss** in respect of those plates.

The formula provided by this clause recognises that persons who purchased their plates some time ago are more likely to have recouped a substantial cost of their investment, as compared with a person who purchased the plates more recently, but prior to the announcement of Government reform to the sector.

In 2016 the *Taxi Act 1994* was amended to include Part 3A, which made provision for the payment of adjustment assistance grants to plate owners, in respect of each set of taxi plates that they owned or had an interest in the ownership of. The amounts of these grants were:

- \$20,000 in respect of conventional or multi-purpose taxi plates; and
- \$6,000 in respect of restricted plates, which are plates that are to be used on a taxi operated subject to conditions restricting the operation of the taxi to specified times or areas – in this Bill restricted plates are referred to as ‘area restricted plates’ or ‘peak period plates’ according to the type of restriction.

Any amount of adjustment assistance grant paid in respect of a set of plates is to be deducted from the **net loss** calculation for those plates, in recognition of the monies already paid by the Government in respect of those plates.

If the **net loss** in respect of a set of plates is greater than the floor payment, then the net loss payment will be calculated by reference to the **net loss**. If the floor payment is greater than the **net loss** in respect of the set of plates, then the net loss payment will be calculated by reference to the floor payment amount applicable to the type of plates that are the subject of the application.

Outstanding fees is defined in clause 226(1) to mean fees prescribed for the purposes of the *Taxi Act 1994* section 19(1) or 24 that are payable and have not been paid. The relevant fees are the prescribed annual fee payable by plate holders in respect of taxi plates, and the prescribed fee payable upon the transfer of ownership, or an interest in the ownership, of taxi plates.

Hardship Fund payment is defined in clause 226(1) to mean a payment from the Hardship Fund.

The Hardship Fund was established by the former Government as an administrative scheme under which persons who had held an ownership interest in a taxi plate issued under the *Taxi Act*, between 1 July 2014 and 18 December 2015, and were experiencing a reduced income and an inability to liquidate assets due to taxi industry reform, could apply for financial assistance. Payments from this fund were determined on a case-by-case basis according to the applicant’s income and assets. The payments were not paid in respect of a set of plates or to the plate owner, but were made to individuals.

The calculation of the amount of a net loss payment pursuant to this clause provides that any Hardship Fund payment amount paid to a former owner of the plates the subject of the application is to be deducted from the payment amount.

Clause 239(2) provides that if a person who received a Hardship Fund payment is eligible for a buyback and/or net loss payment in respect of more than one set of taxi plates, only the balance of the Hardship Fund payment remaining after a deduction in respect of a payment for one or more other sets of plates, is to be deducted from any subsequent payment. In connection with this, clause 233(1) provides that the Hardship Fund payment amount is only to be deducted to the extent that the deduction results in the payment being reduced to zero – ensuring that the balance of any undeducted amount can be deducted as part of the calculation for a payment in respect of a subsequent set of plates.

An example is provided below in respect of the explanation of clause 239(2).

In some cases, where a set of taxi plates was owned by a partnership, a Hardship Fund payment was made to one member of the partnership but not the other.

Accordingly, clause 239(4) provides that in the case of a joint application for a net loss payment where more than one person had an interest in the ownership of the plates, the amount of Hardship Fund payment may be deducted only from the portion of the amount payable to the person who had the interest in the ownership of the plates that received the Hardship Fund payment. This will ensure that any net loss payment amount payable to a person who had an interest in the ownership of plates who did not receive a Hardship Fund payment, will not be reduced because another person who also had an interest in the plates received such a payment.

Clause 239(3) also provides, for the purpose of determining a net loss payment pursuant to this clause, that if a person who receives a net loss payment in respect of a set of plates would be liable to pay GST in relation to the payment, the amount of the payment is to be increased by an amount equivalent to the GST liability relevant to the payment.

This will ensure that the recipient of a net loss payment will be entitled to the amount intended by this Bill, notwithstanding any GST implications associated with the payment. The Department of Transport will seek advice from the Australian Taxation Office (ATO) as to the GST implications associated with the payments, before any payments are granted.

If GST is payable in respect of net loss payments, the payment amount will be increased accordingly, and the increased amount of payment will be claimed by the Department of Transport as an input tax credit from the ATO, meaning the increased payment amount will have no impact on the cost of the net loss payment scheme.

Amount received for the sale of the plates

The amount received for the sale of the taxi plates is to be deducted from the calculation for the net loss payment. Clause 226(2) provides that a reference to the sale of taxi plates includes a reference to the sale of an interest in the taxi plates. This

will accommodate where more than one person had an interest in the ownership of the plates.

The intention of this is to reduce the final net loss payment amount by an amount commensurate with any costs the eligible former owner was able to recoup through the sale of the plates.

If GST was payable by the former owner in respect of the sale of the plates, or their interest in the plates, the GST liability is not to be treated as part of the amount received for the sale given the former owner was not entitled to that portion of the sale price.

239. Provisions relating to determining net loss payments

Clause 239 makes provision in respect of the net loss payment formulas provided for in clauses 237 and 238, to provide for how certain matters relevant to those formulas are to be dealt with.

Clause 239(1) provides that if an amount of Hardship Fund payment is to be deducted under clause 237 or 238, it is only to be deducted to the extent that the deduction results in the net loss payment being reduced to zero. This ensures that the balance of any un-deducted amount can be deducted as part of the calculation for a payment in respect of a subsequent set of plates, as provided for by clause 239(2).

Clause 239(2) provides that if an amount of Hardship Fund payment has already been deducted for a buyback payment or net loss payment for one or more other sets of taxi plates of which an applicant for the net loss payment was an eligible owner (buyback) or former eligible owner, the Hardship Fund payment referred to in clause 237(2) or 238(2) is the balance of that payment remaining after the earlier deduction or deductions.

The effect of this clause is that the total amount of Hardship Fund payment which was paid to a person will not be deducted from each buyback or net loss payment that they may be eligible for. The payments will only be subject to a deduction to the extent that the total sum of any deductions made, equal the total Hardship Fund payment that the person may have received.

For example:

- If the payment for an applicant for a net loss payment in respect of a set of conventional taxi plates (the initial plates) was to be based on the net loss for those plates, less the sale price of the plates and the amount came to \$50,000, but the applicant previously received a Hardship Fund payment of \$70,000, the final payment in respect of the initial plates would be nil after the deduction of the \$50,000 of the Hardship Fund payment amount that results in the payment being reduced to zero; and
- If the applicant also made application in respect of another set of conventional taxi plates (subsequent plates) that they were an eligible owner (buyback) in respect of, and the payment in respect of those plates is to be based on the floor payment of \$100,000, the final payment in respect of the subsequent

plates would be \$80,000 after the deduction of the \$20,000 portion of the Hardship Fund payment that was not deducted in respect of the initial plates.

Clause 239(3) provides that if the owner of the taxi plates is required to pay GST in relation to a buyback payment then the amount of the buyback payment is to be increased by an amount equivalent to the GST liability relevant to the payment.

This provision will ensure that the recipient of a net loss payment will be entitled to the amount intended by this Bill, notwithstanding any GST implications associated with the payment. The Department of Transport will seek advice from the Australian Taxation Office (ATO) as to the GST implications associated with the payments, before any payments are granted.

If GST is payable in respect of net loss payments, the payment amount will be increased accordingly, and the increased amount of payment will be claimed by the Department of Transport as an input tax credit from the ATO, meaning the increased payment amount will have no impact on the cost of the net loss payment scheme.

Clause 239(4) provides that if a joint application is made for a net loss payment in relation to taxi plates and a Hardship Fund payment was paid to one or more of the applicants, the CEO, in determining the buyback payment under clause 231 or 232;

- (c) may apportion the buyback payment among the applicants according to their respective interests without deducting any Hardship Fund payment; and
- (d) may then deduct any Hardship Fund payment from the portion of each person who received the payment, in order to determine the final buyback payment for that person.

In some cases, where a set of taxi plates was owned by a partnership, a Hardship Fund payment was made to one member of the partnership but not the other.

As Hardship Fund payments were made to individuals according to their circumstances, rather than in respect of a set of plates, this will ensure that any net loss payment amount payable to a person who had an interest in the ownership of plates who did not receive a Hardship Fund payment, will not be reduced because another person who had an interest in the plates received such a payment.

240. Payment of net loss payment

Clause 240(1) sets out to whom a net loss payment is to be paid. This is limited to:

- (a) the applicant - pursuant to clause 235(1), this is limited to the eligible former owner of the taxi plates in respect of which the application is being made; or
- (b) subject to 240(2), if the application specifies a person who is to receive the payment on behalf of the eligible owners of the taxi plates, then that person. This allows the eligible owner of the plates to nominate to whom payment is to be made.

Clause 240(2) provides that if, under clause 239(4), the eligible former owners of taxi plates to which a joint application applies are entitled to different amounts of net loss payment (because of the deduction of a Hardship Fund payment amount from a

portion of the amount payable to one or more of the eligible owners), then the relevant portion of the payment is to be paid to each applicant separately.

Division 2 — On-demand passenger transport levy

This Division provides for the on-demand passenger transport levy that will fund the buyback and net loss payments in respect of owned taxi plates issued under the *Taxi Act 1994* (WA) (Taxi Act), that is provided for in Division 1 of this Part. The proposed buyback and net loss payment scheme, and the administration of that scheme, is to be funded through a levy on “leviable passenger service transactions”.

Pursuant to this Division, the levy will end on the levy repeal day – this will be a date specified by the Minister, by notice published in the *Gazette*. The levy will be repealed once the cost of the buyback and net loss payment scheme has been recovered – this is expected to occur approximately four years after the date of the commencement of the levy.

The levy is proposed to commence in 2019, shortly after the provisions of the Bill applicable to the provision of on-demand booking services have commenced, and providers have had an opportunity to apply for authorisation.

Transactions that are subject to the levy

The taking of a booking for an on-demand passenger transport service that starts and finishes in the defined ‘levy area’, is a leviable passenger service transaction.

The “levy area” is the area consisting of —

- (a) the metropolitan region as defined in the *Planning and Development Act 2005* section 4(1); and
- (b) the Mandurah local government district; and
- (c) the Murray local government district.

To reduce the impost of the levy on regional taxi-car and charter operators’, the levy is only proposed to apply in the Perth metropolitan and nearby Mandurah and Murray districts. Mandurah and Murray districts are included in the levy due to their close proximity of operation with the Perth metropolitan area. Existing taxi-car licensees for the districts of Mandurah and Murray will be eligible to apply for adjustment assistance grants pursuant to Division 3 of this Part.

In the Bill, the meaning of ‘taking a booking’ includes the hiring of a vehicle as a result of a rank or hail service, meaning that the levy will be payable in respect of both pre-bookings and what can be characterised as ‘on the spot’ bookings for on-demand passenger transport services. The levy will only become payable, if and when the passenger transport service to which the booking relates is completed.

The levy is limited to bookings for on-demand passenger transport services in vehicles that are equipped to seat no more than 12 people (including the driver), and will not apply to regular or tourism passenger transport services that are not on-demand in nature.

Regular passenger transport services and tourism passenger transport services that are available to the public according to a set timetable or publicly available itinerary determined by the provider are not considered a key competitor of the taxi and charter industry, and are therefore not subject to the levy.

Who will be liable to pay the levy

The liability for payment of the levy will rest with the on-demand booking service provider who takes the booking for an on-demand passenger transport service. It will not rest with the driver or provider of the on-demand passenger transport service, or the person who was provided with the passenger service.

The Bill allows for an on-demand booking service provider (associated booking service) to enter into an association arrangement with an authorised on-demand booking service (principal booking service). However, a provider of an associated booking service does not need to be authorised to provide an on-demand booking service if they have an association arrangement with a principal booking service.

The ability to enter into association arrangements in lieu of becoming authorised to provide an on-demand booking service will likely be most relevant to self-employed drivers of on-demand vehicles authorised to provide rank or hail services – i.e. taxi drivers. Similar to existing arrangements under the Taxi Act where drivers and taxi operators affiliate with different booking services, the association arrangements provided for by the Bill will allow drivers who take bookings directly from hirers for on-demand passenger transport services, to do so without being authorised to provide an on-demand booking service.

If the provider of an associated booking service takes a booking for an on-demand vehicle to be used in providing an on-demand passenger transport service, the provider of the principal booking service under the association arrangement is, for the purposes of this Division, taken to have taken that booking in place of the provider of the associated booking service. This means that the responsibility for the levy in respect of that booking will rest with the principal booking service.

It will be up to on-demand booking service providers as to whether or not they choose to pass on to another person, any amount of levy that they are liable to pay in respect of a booking. For example, if a provider does choose to pass on an amount of levy, it could be passed on to either the provider of the passenger service to which the levy relates as part of the cost for use of the booking service, or onto the hirer as part of the cost for use of the on-demand booking service or as part of the fare payable by the hirer in respect of the passenger transport service provided.

An on-demand booking service provider may choose to recover any amount of levy payable in respect of a booking for an on-demand passenger transport service by allocating an amount for the levy in the fare payable in respect of the on-demand passenger transport service. If this occurs, the provider will be permitted to give an on-demand driver or other person who collects amounts paid for those fares, reasonable directions as to the collection or payment of any amount of fare allocated for the levy, and to recover any amount so allocated as a debt owing.

The Bill will also permit regulations to be made in relation to the manner in which amounts are allocated for the levy in fares that relate to leviable passenger service transactions, and how those amounts are dealt with. This will enable regulations to address matters such as transparency of any fare increases associated with the levy, if necessary. It will also allow regulations to be made that ensure consistency as to how any amounts allocated for the levy are built into fares by providers – this may assist drivers and providers who operate in connection with more than one booking service by reducing complexity, and will also ensure any implications of the levy with respect to the application of GST to fares for on-demand passenger transport services, and any amount of levy allocated in the fare, can be managed.

Imposition of the levy

The levy is to be imposed by the *Transport (Road Passenger Services) Amendment Bill 2018* (the Levy Amendment Bill). Clause 4 of the Levy Amendment Bill will, upon commencement, amend clause 245 of Part 9 Division 2 of this Bill to impose the levy and provide for the amount of levy payable in respect of each leviable passenger service transaction.

A separate Bill is required to impose the levy because of section 46(7) of the *Constitution Acts Amendment Act 1899*, which provides that bills imposing taxation shall deal only with the imposition of taxation.

The amount of levy payable is to be calculated by reference to the fare paid for the on-demand passenger transport service to which the leviable passenger service transaction (being the booking for the passenger service) relates.

The levy will be 10% of the 'levy fare' to a maximum of \$10 per transaction.

Clause 241 of the Bill defines 'levy fare' to mean a fare calculated in accordance with the regulations for the purposes of the levy.

Administration of the levy

Part 9 Division 2 of this Bill provides for the administration of the levy.

Clause 329 of this Bill will amend the *Taxation Administration Act 2003* (WA) (TAA) to prescribe Part 9 Division 2 as a taxing Act for the purposes of that Act. The TAA will provide the statutory framework for the administration of the on-demand passenger transport levy. This will see the levy subject to an established administration regime for State taxing laws, subject to some minor modifications.

It is proposed that the CEO for the purposes of this Bill will administer the on-demand passenger transport levy pursuant to a delegation from the Commissioner of State Revenue, apart from functions in Part 2 and Part 8 of the TAA. Part 2 of the TAA provides for tax administration generally, including matters such as delegation and appointment of tax investigators. Part 8 provides for investigations of certain matters relevant to taxation Acts.

Under this framework, when exercising functions in respect of the levy the CEO will be able to draw on existing Government expertise on taxation matters under the TAA

where required, including by seeking assistance from the Commissioner and/or and investigators appointed by the Commissioner for the purposes of the taxation Acts to conduct more complex revenue investigations.

Subdivision 1 — Preliminary

241. Terms used

Clause 241 defines the terms used in this Division of Part 9.

assessment period, in relation to a prescribed class of on-demand booking service or prescribed class of provider of an on-demand booking service, means the period determined by the CEO for that class of service or provider for the purposes of this Division.

This term is used in clause 246, which makes provision as to when the levy is payable. Pursuant to clause 246(1), a person who was the provider of an on-demand booking service, during any assessment period, is liable to pay the levy for each leviable passenger service transaction by the provider that occurred in the relevant assessment period.

By prescribing classes of on-demand booking service provider pursuant to this provision, the CEO will be able to set longer assessment periods for smaller on-demand booking service providers. This will mean that smaller providers will not have to lodge a return as frequently as larger providers who have higher revenues.

levy area

A booking for a 'relevant journey' is a leviable passenger service transaction pursuant to clause 244. 'Relevant journey' is defined in this clause to mean a journey that starts and finishes in the levy area.

'Levy area' is defined to mean the area consisting of:

- (a) the metropolitan region as defined in section 4(1) of the *Planning and Development Act 2005*; and
- (b) the Mandurah local government districts; and
- (c) the Murray local government district.

To reduce the impost of the levy on regional taxi-car and charter operators', the levy is only proposed to apply in the Perth metropolitan and nearby Mandurah and Murray districts. Mandurah and Murray districts are included in the levy due to their close proximity of operation with the Perth metropolitan area. Existing taxi-car licensees for the districts of Mandurah and Murray will be eligible to apply for adjustment assistance grants pursuant to Division 3 of this Part.

levy fare means a fare calculated in accordance with the regulations for the purposes of the levy.

Clause 4 of the *Transport (Road Passenger Services) Amendment Bill 2018* (the Levy Amendment Bill) will, upon its commencement, amend clause 245 of this Bill to impose

the levy and provide for the amount of levy payable in respect of each leviable passenger service transaction.

The amount of levy payable is to be calculated by reference to the fare paid for the on-demand passenger transport service to which the leviable passenger service transaction (being the booking for the passenger service) relates.

The levy will be 10% of the 'levy fare' to a maximum of \$10 per transaction.

The levy fare for the purposes of calculating the amount of levy payable by an on-demand booking service provider may be different to the fare payable by the passenger for the on-demand passenger service to which the leviable passenger service transaction relates.

It is intended that the regulations made pursuant to this clause will provide that the levy fare is to be based on the metered fare, or the contract fare agreed with the passenger, prior to the imposition of GST on those amounts. Most other fees that may be imposed in connection with the passenger transport service, such as cleaning fees and airport charges, are proposed to be excluded from the 'levy fare'.

relevant journey means a journey that starts and finishes in the levy area (whether or not a part of the journey is carried out outside the levy area).

A booking for a relevant journey will be a leviable passenger service transaction.

242. Meaning of terms

Clause 242 makes clear that the Glossary at the end of the *Taxation Administration Act 2003* (WA) defines or affects the meaning of some words and expressions used in this Division and also affects the operation of other provisions.

This is relevant to clause 243 which provides that the *Taxation Administration Act 2003* is to be read with this Division as if they formed a single Act.

243. Relationship with *Taxation Administration Act 2003*

Clause 243(1)

Clause 329 of this Bill will amend the *Taxation Administration Act 2003* (WA) to prescribe Part 9 Division 2 as a taxing Act for the purposes of that Act. This clause provides that the *Taxation Administration Act 2003* (TAA) is to be read with this Division as if they formed a single Act.

Making Part 9 Division 2 of this Bill a taxing Act for the purposes of the TAA will see the levy subject to an established administration regime for State taxing laws. Consistency across taxes and their administration, and a regime that will be familiar to some taxpayers liable to pay the levy (subject to some minor modifications to be made to the TAA), will be beneficial to taxpayers and their advisers, and improve administrative efficiency. This is also important given the short-term nature of the levy and the need to minimise its impact on stakeholders.

Given the CEO's expertise with respect to the on-demand passenger transport industry, it is intended that the CEO will administer all aspects of the TAA relevant to

the on-demand passenger transport levy (on-demand levy), pursuant to a delegation from the Commissioner of State Revenue (the Commissioner), apart from functions in Part 2 and Part 8 of the TAA. Part 2 of the TAA provides for tax administration generally, including matters such as delegation and appointment of tax investigators. Part 8 provides for investigations of certain matters relevant to taxation Acts.

Under this framework, when exercising functions in respect of the levy the CEO will be able to draw on existing Government expertise on taxation matters under the TAA where required, including by seeking assistance from the Commissioner and/or and investigators appointed by the Commissioner for the purposes of the taxation Acts to conduct more complex revenue investigations.

As the CEO will have responsibility for the day to day administration of the levy, clause 253(2) provides that a function that is delegated to the CEO under the TAA in relation to this Division is taken, while the delegation is in effect, to be a function of the CEO, and not to be a function of the Commissioner under the TAA to the extent that it relates to this Division. This will ensure that the on-demand levy is administered in a consistent manner and makes clear who persons liable for the levy need to deal with.

Clause 243(2) stipulates that the regulations may modify the operation of the *Taxation Administration Act 2003* for the purposes of this Division. This will enable regulations to be made that ensure the effective administration of the levy by the CEO of this Bill. The need for modifications is included in the explanation of clause 243 below.

The following summarises the main components of the TAA in their application to on-demand passenger transport levy.

Assessments of tax

Part 3 of the TAA establishes a standard regime for the assessment of tax liability arising under a taxing Act. The making of an assessment underpins tax liability and rights under the TAA such as rights of review and refund, operate in connection with an assessment.

Assessments are made via the self-assessment process or by the Commissioner. For the on-demand levy, the lodgement of a return by a person liable to pay the levy in respect of a leviable passenger service transaction will be a self-assessment of the tax, similar to payroll tax. Under the TAA, self-assessments are a subset of an assessment, which means they are subject to objection and review proceedings under Part 4 of that Act, as well as to the provisions relevant to determining the time limits for making a reassessment of tax liability under Part 3 of the Act.

Payments of tax

Under section 45 of the TAA, tax is due for payment on the date fixed by or worked out in accordance with the relevant taxation Act. Clause 246 of this Bill provides that the on-demand levy is to be paid on or before the last day of the following assessment period or on or before any other day that is specified by the CEO. It is intended to specify that the levy must be paid on or shortly following the date the return for the self-assessment is required to be lodged (similar to payroll tax).

Clause 281(e) of this Bill provides for regulations to be made in relation to the method of payment of the levy, including payment of the levy by electronic means. It is intended to require persons liable to pay the levy to do so via direct debit except in exceptional circumstances, in which case other payment arrangements will be provided for. Direct debit agreements will be entered into as part of the requirement in clause 249 for on-demand booking service providers to register for the levy if they are liable to pay it. This method of payment is expected to provide administrative efficiencies in the payment processes for the levy.

The allocation of payments and the Commissioner's power to recover unpaid tax are specified under the TAA.

Objections and appeals against assessments

The TAA enables taxpayers to seek a review of an assessment, including where the tax liability is self-assessed, by lodging an objection. Where a taxpayer is dissatisfied with the Commissioner's decision on an objection, it also allows a taxpayer to apply to the Western Australia State Administrative Tribunal (SAT) for a review of the decision, or the Supreme Court for an appeal of a decision of the SAT.

Refunds of tax

The TAA establishes a standard regime for refunds under a taxation Act, linking entitlement to a refund to a reassessment of tax that results in a decrease in liability or where an assessment of tax is overpaid.

The period within which an application for a refund may be made under the TAA corresponds to the five year period for making a reassessment provided for by section 17(1). In the case of overpayments, application for a refund must also be made within five years from the date of the overpayment.

The TAA (sections 39(2)(b) and 43(3)(b)) provides for the payment of interest on amounts that are to be refunded to taxpayers arising from reassessments of tax that are made as a result of the Commissioner's decision in response to an objection as to an assessment amount, or a reassessment resulting from a decision of the SAT or Court.

Penalty tax and interest payable under tax payment arrangements

The TAA provides for taxation arrangements under which a taxpayer is provided with an extended time for paying tax or the ability to pay tax in specified instalments. Such an arrangement may include conditions agreed with the taxpayer, for the payment of interest at the prescribed rate or at some other rate agreed with the taxpayer. The TAA also establishes a standard penalty tax regime as an administrative sanction where taxpayers have failed to comply with their tax obligations.

Investigations

Pursuant to clause 254, the enforcement powers under Part 8 of this Bill will be available to authorised officers under this Bill for the purpose of determining liability for the levy and other matters related to the payment or collection of the levy. In

addition to this, the standard powers of investigation in the TAA will also apply to the on-demand passenger transport levy, including the power of the Commissioner or an investigator to:

- require the provision of information;
- require a person to attend for an examination;
- retain documents;
- enter premises and exercise various information gathering powers; and
- authorise, conduct, or assist in the conduct of investigations by the Commonwealth or another State in relation to a revenue law.

The two sets of enforcement powers in each Bill are to be exercised by different officers and in this regard, are intended to work in a complementary manner. As noted above, the Commissioner will, by agreement with the CEO, only be undertaking investigations on discrete, and more complex taxation investigation matters if required.

Confidentiality

Section 114 of the *Taxation Administration Act 2003* (TAA) subjects certain persons to a duty of confidentiality in respect of information and material obtained under a taxation Act, and specifies the circumstances in which confidential information may be disclosed, as well as the consequences for disclosing information in breach of the provisions.

Clause 151 of this Bill also provides that a person must not disclose any information provided to them in the performance of a function under the Bill except in specified circumstances and makes non-compliance an offence. Clause 151(4) provides that nothing in this clause affects the operation of the TAA section 114. This ensures that the duty of confidentiality in section 114 of the TAA will still operate in respect of information relevant to the on-demand levy.

Record Keeping

Section 87 of the TAA requires taxpayers to keep tax records that they are required to keep under a taxation Act for at least 5 years after the later of:

- (a) the date it was made by the person or, if it was not made by the person, the date it was obtained by the person; or
- (b) if it relates to a transaction, the date of completion of the transaction.

This section will operate in conjunction with clause 251 of the Bill, which will provide that persons required to be registered for the on-demand passenger transport levy must keep records that are prescribed, and any other records that will enable liability to pay the levy to be determined.

Enforcement and legal proceedings

The TAA establishes a number of offences of general application to the taxing Acts to which it applies. In addition, where the TAA or taxing Acts impose obligations, specific offences are created for failure to comply.

Section 111 of the TAA sets the period for commencing a prosecution action for an offence against a taxation Act at three years after date of the alleged commission of an offence. However, if the alleged offence involves tax evasion, no time limit is imposed.

The TAA also sets out arrangements for the institution of proceedings, prosecution actions, evidentiary matters, how actions may be instituted and the orders that may be made by a court.

Giving and service of documents

Sections 115 to 117 of the TAA set out how and when documents must be given to or by the Commissioner.

Clause 282 of this Bill also makes provision for documents required or authorised under the Bill to be given to a person. Clause 282(5) provides that the clause does not apply to a document to which the TAA section 117 applies. This will ensure that one consistent regime applies to the giving of documents relevant to the levy.

Clause 243(2)

Clause 243(2) provides that regulations may modify the operation of the *Taxation Administration Act 2003* (TAA) for the purposes of this Division.

Minor modifications to the TAA may be made where relevant to simplify arrangements and will also be required to accommodate the CEO's role in the administration of the levy.

For example, section 112(1) of the TAA provides that proceedings for an offence against a taxation Act may only be taken by the Commissioner, or under the Commissioner's authority, and in the Commissioner's name. Section 115 of the TAA provides for how documents may be serviced on the Commissioner. It is intended to modify these sections, in light of the role of the CEO in administering the on-demand levy, to provide that the CEO may take proceedings for offences against Part 9 Division 2 of the Bill, and to provide that documents relevant to the levy are to be served on the CEO rather than the Commissioner.

Subdivision 2 — On-demand passenger transport levy

244. Leviable passenger service transactions

Clause 244 sets out what kinds of transactions are leviable passenger service transactions for the purpose of this Division.

Clause 244(1)(a) provides that taking a booking for an on-demand vehicle to be used in providing an on-demand passenger transport service to a person (whether the

passenger transport service is to be provided by the provider who takes the booking or another person) for a relevant journey is a leviable passenger service transaction.

‘Relevant journey’ is defined in clause 241 to mean a journey that starts and finishes in the ‘levy area’, is a leviable passenger service transaction.

“Levy area” is defined in clause 241 to mean the area consisting of —

- (a) the metropolitan region as defined in the *Planning and Development Act 2005* section 4(1); and
- (b) the Mandurah local government district; and
- (c) the Murray local government district.

In the Bill, the meaning of ‘taking a booking’ includes the hiring of a vehicle as a result of a rank or hail service (clause 4(1)), meaning that the levy will be payable in respect of both pre-bookings and what can be characterised as ‘on the spot’ bookings for on-demand passenger transport services. Pursuant to clauses 246(1) and (4), the levy will only become payable, when the passenger transport service to which the booking relates is completed. Clause 248(1)(a) also provides that a person will not be liable to pay the levy for taking a booking if the on-demand passenger service to which the booking related is not provided for any reason.

Clause 244(1)(b) will enable regulations to prescribe other passenger service transactions that will be treated as leviable transactions for the purposes of the division. This power will ensure that should there be any doubt as to the kinds of transactions intended to be captured by the meaning of leviable passenger service transaction, regulations can be made to ensure that the levy applies as intended.

Clause 244(2) will permit regulations to be made that exclude passenger service transactions of a specified kind or by a specified kind of booking service from the meaning of leviable passenger service transaction. It is intended to make regulations pursuant to this provision that enable booking services who solely offer certain pre-booked services to apply for an exemption from the levy.

Clause 244(3) makes clear who is to be treated as having taken a booking for the purposes of this clause, where an association arrangement is in place.

“Association arrangement” is defined in clause 4(1) to mean an arrangement, between booking services, that meets the prescribed requirements. The Bill allows for an on-demand booking service provider (associated booking service) to enter into an association arrangement with an authorised on-demand booking service (principal booking service). Clause 27(2) provides that a provider of an associated booking service does not need to be authorised to provide the service if they have an association arrangement with a principal booking service.

The ability to enter into association arrangements in lieu of becoming authorised to provide an on-demand booking service will likely be most relevant to self-employed drivers of on-demand vehicles authorised to provide rank or hail services – i.e. taxi drivers. Similar to existing arrangements under the Taxi Act where drivers and taxi

operators affiliate with different booking services, the association arrangements provided for by the Bill will allow drivers who take bookings directly from hirers for on-demand passenger transport services, to do so without being authorised to provide an on-demand booking service.

This clause specifies that if the provider of an associated booking service takes a booking for an on-demand vehicle to be used in providing an on-demand passenger transport service, the provider of the principal booking service under the association arrangement is, for the purposes of this Division, taken to have taken that booking in place of the provider of the associated booking service. This means that the responsibility for the levy in respect of that booking, will rest with the principal booking service.

Clause 244(4) provides that the clause does not apply to bookings for on-demand passenger transport services in vehicles that are equipped to seat more than 12 people (including the driver). In most cases, on-demand services provided in vehicles of this size are booked in advance of the service and are not considered a key competitor of taxi and casual charter services.

As the levy only applies to bookings for on-demand passenger transport services, it will not apply to regular or tourism passenger transport services that are not on-demand in nature.

Regular passenger transport services and tourism passenger transport services that are available to the public according to a set timetable or publicly available itinerary determined by the provider are not considered a key competitor of the taxi and charter industry, and are therefore not subject to the levy.

245. On-demand passenger transport levy

Clause 245 provides for the levy to be called the on-demand passenger transport levy, and states that it is payable in relation to leviable passenger service transactions. Leviable passenger service transaction is defined in clause 244.

Clause 245(2) provides that the levy is payable in accordance with this Division.

Clause 4 of the *Transport (Road Passenger Services) Amendment Bill 2018* (the Levy Amendment Bill) proposes to amend clause 245 to insert subclause (3), which will impose the levy.

Clause 4 of the Levy Amendment Bill will also insert subclause (4) which will provide for the amount of levy payable in respect of each leviable passenger service transaction to be calculated by reference to the fare paid for the on-demand passenger transport service. The levy will be 10% of the 'levy fare' to a maximum of \$10 per transaction.

246. When levy payable

Clause 246 sets out when the levy is payable.

Clause 246(1) provides that an on-demand booking service provider is liable to pay the levy for each leviable passenger service transaction by the provider that occurred

during an assessment period, on or before the 'specified day'. Pursuant to clause 246(2), the 'specified day' is the last day of the following assessment period, or any other day that is specified by the CEO.

"Assessment period", in relation to a prescribed class of on-demand booking service or prescribed class of provider of an on-demand booking service, is defined in clause 241 to mean the period determined by the CEO for that class of service or provider for the purposes of this Division.

Prescribing classes of on-demand booking service providers pursuant to the definition of 'assessment' will enable the CEO to set longer assessment periods for smaller on-demand booking service providers, meaning such providers will not have to lodge a return as frequently as a larger provider who has higher revenues.

The amount of the levy payable for the assessment period is to be calculated in accordance with clause 245.

Clause 246(4) makes provision regarding when a passenger service transaction is considered to have 'occurred'.

Clause 246(2) provides that 'specified day', for the purposes of subclause (1), is the last day of the following assessment period, or any other day that is specified by the CEO.

Clause 246(3) provides that if the CEO specifies a date for payment of the levy pursuant to clause 246(2), it cannot be earlier than the day on or before which the return for the relevant assessment period is to be provided pursuant to clause 250. This will ensure that any levy payable for an assessment period can only be due for payment on or following the date on which a return for that period is due.

Clause 246(4) provides that for the purposes of this Division, a leviable passenger service transaction occurs when the on-demand passenger transport service to which the booking relates is completed. This is relevant to when the levy is payable pursuant to clause 246(1).

This clause also operates in connection with clause 257(1) which provides that the levy is not payable for any passenger service transaction that occurs on or after the levy repeal day. This means that if the booking was taken prior to the levy repeal day, but the passenger service to which the booking related is not completed until after the levy repeal day, it is not leviable.

Clause 246(5) provides that for the purposes of this Division, a prescribed passenger service transaction occurs at the prescribed time. If there is a need to prescribe any transactions to be leviable passenger service transactions, the kind of transaction that is prescribed will need to inform when the transaction is to be taken to have occurred.

Clause 246(6) provides that this Division does not apply in relation to any booking made before the commencement of this Division. This makes clear that even if an on-demand passenger transport service that is a relevant journey occurs after the commencement of the levy provisions, the booking for that journey is not leviable unless the booking was also taken after the commencement of the levy provisions.

Clause 246(7) provides that a person who is liable to pay the levy must pay it within the required time period. Failure to do so may result in a fine of up to \$5,000.

247. Calculation on estimated basis if amount based on actual transactions cannot be determined

Clause 247(1) provides for estimates when it may not be reasonably practicable to determine the whole or part of the amount of levy payable based on actual levy fares or leviable passenger service transactions, or both, during an assessment period. This may occur due to loss or corruption of key data held by a person liable to pay the levy for example, or where a person who took a booking for a relevant journey (such as an associated provider) and provided an on-demand passenger service as a result of that booking, fails to provide the booking service liable to pay the levy with all of the data relevant to determine the levy. In such circumstances, the amount payable may be calculated on an estimated basis in accordance with the regulations.

For example, where an on-demand booking service provider has data about the start and finish locations of a relevant journey for which it took a booking, but the actual levy fare in respect of the journey is unknown, regulations could be made to specify that the provider may estimate the levy fare based on the metered per kilometre rates for the journey that are specified in the regulations.

Clause 247(2) specifies that the CEO is to determine whether or not it is reasonably practicable to determine the whole or part of the amount of levy payable based on actual levy fares or leviable passenger service transactions, or both, during an assessment period.

Clause 247(3) provides that the CEO may issue written guidelines for the purpose of 247(2) for use by people who may be liable to pay the levy.

248. Passenger service transactions for which levy is not payable

Clause 248(1) provides that a person is not liable to pay the levy for taking a booking for an on-demand passenger transport vehicle used in the provision of an on-demand passenger transport service if the passenger service is not provided for any reason, or if another provider is already liable to pay the levy for taking a booking to provide the service.

Clause 248(2) makes clear that the taking of a booking for an on-demand passenger transport service to transport more than one passenger, or that results in the passengers being transported to different locations, is taken to be one leviable passenger service transaction, unless separate fares are charged.

If separate fares are charged, the on-demand booking service provider would be considered to have taken a booking in respect of each person who paid a separate fare in respect of the journey.

Regulation 10 of *Taxi Regulations 1995* and regulation 5 of the *Country Taxi-cars (Fares and Charges) Regulations 1991* make provision for a 'multiple hiring', where two or more passengers who are not accompanying each other agree to share the hire of the taxi and pay separate fares. In a multiple hiring, each separate hirer may

be charged no more than 75% of the metered fare at their respective destinations. This clause ensures that each separate hiring in the context of a multiple hiring is a leviable passenger service transaction.

Subdivision 3 — Miscellaneous

249. Registration of liable persons

Clauses 249(1) and (2) specify that a provider of an on-demand booking service who is liable to pay the levy must apply to the CEO in the approved form and in accordance with the regulations, to be registered as a taxpayer for the purposes of this Division.

Non-compliance with this provision is an offence, with a maximum fine of \$20,000.

Clause 249(3) provides that the registration of a person as a taxpayer for the purposes of this Division may be cancelled by the CEO, if the CEO is satisfied that the person is not, or is no longer, liable to pay the levy. This will ensure that a person who is not, or is no longer, carrying out leviable passenger service transactions can have their registration cancelled and will not be required to submit nil returns for the duration of the levy period.

250. Returns

Clause 250 stipulates that a person who is registered as a taxpayer for the purposes of this Division, or a person who is required to apply for registration under clause 249, must lodge a return with the CEO for each assessment period, in accordance with the regulations.

Clause 246 addresses when the levy in respect of an assessment period is payable.

This provision will require a return to be lodged even if the return is a nil return – this will assist with compliance monitoring in respect of the levy, as without a nil return from a registered on-demand booking service provider, it will not be clear whether failure to lodge a return is because of a nil return or due to the provider forgetting or seeking to avoid payment on the levy.

Failure to lodge a return is an offence with a maximum fine of \$5,000.

Clause 250(2) provides that the return for an assessment period must be lodged on or before the last day of the following assessment period, or another specified by the CEO.

Clause 250(3) provides that a day specified by the CEO pursuant to clause 250(2) for the lodgement of a return must not be less than a month after the end of the assessment period to which the return relates – this means that persons liable to pay the levy will have at least one month to prepare and lodge a return.

251. Keeping of records

This clause provides that a person who is registered as a taxpayer for the purposes of paying the levy under this Division, or who is required to apply for registration under clause 249, must keep the records that are prescribed for the purposes of this clause

and any other records necessary to enable the CEO to determine the person's liability to pay the levy.

Failure to keep the necessary records is an offence with a maximum fine of \$20,000.

252. Information sharing

Clause 252 permits the sharing of information relevant to the levy between the CEO and the Commissioner of State Revenue (the Commissioner).

Clause 329 of this Bill will amend the *Taxation Administration Act 2003* (WA) (TAA) to prescribe Part 9 Division 2 as a taxing Act for the purposes of that Act. Clause 243(1) provides that the TAA is to be read with this Division as if they formed a single Act.

This clause will ensure effective administration of the levy. For example, if the Commissioner exercises powers under Part 8 of the TAA in order to investigate matters relevant to the levy, this clause will ensure that the Commissioner may share that information with the CEO to enable the CEO to use it in the administration and, if necessary, the enforcement of the levy.

Clause 252(1) provides that the CEO may enter into an arrangement with the Commissioner of State Revenue in order to share information held by either entity that is necessary to ascertain the liability for or payment of the levy, or is otherwise connected with the levy.

Clause 252(2) provides that each party to the arrangement, despite any other provision of this Bill or other law of the State, is authorised to:

- request and receive information held by the other party to the arrangement; and
- disclose information to the other party or a person specified in the arrangement, but only to the extent that the information is sought or disclosed to assist in the administration and collection of the levy.

Clause 252(3) makes clear that this clause does not limit the operation of any law under which the CEO or the Commissioner is authorised or required to disclose information to another person or body.

253. Functions of CEO

Clause 329 of this Bill will amend the *Taxation Administration Act 2003* (WA) (TAA) to prescribe Part 9 Division 2 as a taxing Act for the purposes of that Act.

Making Part 9 Division 2 of this Bill a taxing Act for the purposes of the TAA will see the levy subject to an established administration regime for State taxing laws. Consistency across taxes and their administration, and a regime that will be familiar to some taxpayers liable to pay the levy, will be beneficial to taxpayers and their advisers, and improve administrative efficiency. This is also important given the short-term nature of the levy and the need to minimise its impact on stakeholders.

Clause 253(1) provides that the CEO may exercise any functions delegated to the CEO by the Commissioner of State Revenue (the Commissioner) under the TAA in relation to this Division.

Given the CEO's expertise with respect to the on-demand passenger transport industry, it is intended that the CEO will administer all aspects of the TAA relevant to the on-demand passenger transport levy, pursuant to a delegation from the Commissioner, apart from functions in Part 2 and Part 8 of the TAA. Part 2 of the TAA provides for tax administration generally, including matters such as delegation and appointment of tax investigators. Part 8 provides for investigations of certain matters relevant to taxation Acts. With respect to the latter, clause 254 empowers an authorised officer under this Bill, to exercise the functions conferred under Part 8 of this Bill for the purpose of determining liability for the levy and other matters related to the payment or collection of the levy, enabling the CEO to manage the enforcement of the levy provisions on a day to day basis.

Clause 253(2)(a) provides that a function that is delegated to the CEO under the TAA in relation to this Division is taken, while the delegation is in effect, to be a function of the CEO.

Clause 253(2)(b) provides that a function that is delegated to the CEO under the TAA in relation to this Division is taken, while the delegation is in effect, not to be a function of the Commissioner under the TAA to the extent that it relates to this Division.

As the CEO will have responsibility for the day to day administration of the levy, this will ensure that the levy is administered in a consistent manner and makes clear who persons liable for the levy need to deal with in respect of the levy.

Clause 253(3) provides that despite clause 253(2)(b) providing that a function delegated by the Commissioner to the CEO will not be a function of the Commissioner while the delegation is in force, the Commissioner or an investigator under the TAA will not be prevented from exercising any function under

- (a) Part 8 of the TAA in relation to this Division (which relates to investigations); or
- (b) Part 2 of the TAA (which addresses tax administration generally, including matters such as delegation and appointment of tax investigators) that is required or convenient to be exercised in relation to the exercise of the functions under Part 8 of the TAA in relation to this Division.

This will ensure that in administering the levy, the CEO will still be able to draw on the Commissioner's expertise with taxation matters where required, including by seeking the assistance from the Commissioner and/or and investigators appointed by the Commissioner for the purposes of the taxation Acts to conduct the more complex revenue investigations.

Clause 253(4) provides that the CEO may delegate any functions that are delegated to the CEO under the TAA to any person to whom the CEO may delegate a function under clause 284. This means that the CEO may delegate any such function to a person employed in or engaged by the Department of Transport or a person in a class of person approved by the Minister.

254. Powers of authorised officers

Clause 254(1) empowers an authorised officer under this Bill, to exercise the functions conferred under Part 8 of this Bill for the purpose of determining liability for the levy and other matters related to the payment or collection of the levy.

Part 8 sets out the purposes for which the enforcement powers of that Part can be used. Clause 254(2) provides that any reference in Part 8 to a purpose (for which a function can be exercised), applies as though it was a reference to the purpose specified in clause 254(1) – being the purpose of determining liability for the levy and other matters related to the payment or collection of the levy.

255. Conditions

Clause 255 specifies that it is a condition of authorisation of the provider of an on-demand booking service who is liable to pay the levy, that the provider pays the levy in accordance with this Division and the regulations under this Division.

Clause 28 makes it an offence for a provider of an on-demand booking service to fail to comply with any conditions of authorisation. The maximum fine for non-compliance is \$40,000 for an individual, and \$200,000 for a body corporate.

Failure to comply with conditions of an authorisation is also grounds for suspension or cancellation of an on-demand booking service authorisation pursuant to clause 42(1)(b)(i).

Clause 42(1)(f) of the Bill also provides that the CEO may make an order suspending or cancelling an on-demand booking service authorisation if the provider of the service has failed to —

- (i) lodge a return with the CEO in accordance with section 250; or
- (ii) pay the on-demand passenger transport levy in accordance with Part 9 Division 2.

256. Recovery of amounts of fares allocated for levy

Clause 256(1) provides that a person who is liable to pay the levy may give reasonable instructions to an on-demand driver or other person who collect amounts paid for fares that relate to leviable passenger service transactions, as to the collection or payment of any amount of fare allocated for the levy.

Should amounts to recover the cost of the levy be built into any fares payable for related on-demand passenger transport services, this will ensure that the booking service provider liable to pay the levy can give a person involved in the collection of those fares instructions that will enable the provider to meet their liability in respect of the levy.

Clauses 256(2) and (3) provide that a person who is liable to pay the levy may recover any amount allocated for the levy in a fare that relates to a leviable passenger service transaction from the on-demand driver or other person who collects the amounts paid

for fares. The amount may be recovered in a court of competent jurisdiction as a debt owing to the person liable to pay the levy.

This clause makes clear that a person liable to pay the levy can recover any monies owing, in a court of competent jurisdiction, any amount of a fare that is intended to recover the cost of a levy.

The person that a fare for an on-demand passenger transport service is paid to, who keeps the fare revenue and how much of it they are entitled to keep, will vary between booking service providers, or may vary according to how the booking was taken. In some cases the booking service will be paid the fare, and a percentage of that fare will be paid to the provider of the passenger service in respect of the booking, or the driver or provider of the service may get a flat fee. In other cases, the driver or provider of the service will receive the fare revenue in full and will pay a portion of this to the booking service involved in the passenger service.

Where a driver or other person collects a fare that has an amount built into it in order to recover the costs of the levy, this will need to be addressed in the arrangements in place between that person and the on-demand booking service provider for the relevant journey. The booking service will be able to recover any monies owing as a debt in a court of competent jurisdiction.

Clause 256(4) states that this clause applies to the payment or recovery of an amount allocated to the levy in a fare whether the amount of levy payable was calculated on the basis of the actual levy fare or on an estimated basis in accordance with clause 247.

Clause 247 provides for estimates when it may not be reasonably practicable to determine the whole or part of the amount of levy payable based on actual levy fares during an assessment period. This may occur due to loss or corruption of key data held by a person liable to pay the levy for example, or where a person who took a booking for a relevant journey (such as an associated provider) and provided an on-demand passenger service as a result of that booking, fails to provide the booking service liable to pay the levy with all of the data relevant to determine the levy.

Should the associated provider fail to keep or report details of the actual fare to the on-demand booking service provider who is liable to pay the levy, but there is sufficient evidence that a leviable passenger service transaction occurred involving the associated provider, it is reasonable to allow the principal booking service to recover an amount for the levy based on an estimated fare.

257. Cessation of levy

Clause 257(1) states that the levy is not payable for any leviable passenger service transaction that occurs on or after the levy repeal day.

Clause 246(4) provides that for the purposes of this Division, a leviable passenger service transaction occurs when the on-demand passenger transport service to which the booking relates is completed. This means that if the booking was taken prior to

the levy repeal day, but the passenger service to which the booking related is not completed until after the levy repeal day, it will not be leviable.

Clause 257(2) provides for the levy repeal day to be specified by the Minister, by notice published in the *Gazette*. The levy will be repealed once the cost of the buyback and net loss payment scheme in Part 9 Division 2 has been recovered – this is expected to occur approximately four years after the date of the commencement of the levy.

The levy is proposed to commence in 2019, shortly after the provisions of the Bill applicable to the provision of on-demand booking services have commenced, and providers have had an opportunity to apply for authorisation.

Clause 257(3) provides that a notice under this clause cannot be amended or revoked after the levy repeal day specified in the notice. This means that once the Gazetted levy repeal day has occurred, the levy cannot be reinstated by a subsequent notice that seeks to vary or amend the repeal day.

Division 3 — Adjustment assistance grants

Taxi-car operators in the Murray and Mandurah districts that provide booking services will be required to collect the levy to fund the voluntary buyback scheme. Mandurah and Murray districts are included in the levy area due to their close proximity of operation with the Perth metropolitan area.

This Division provides for holders of country taxi-car licences, issued under the *Transport Co-ordination Act 1966*, for the local government districts of Mandurah and Murray, to apply for an adjustment assistance grant in respect of each licence for those districts that they hold.

Under the relevant provisions, a person will be eligible to apply for a grant provided they currently hold the licence, and either:

- became the holder of the licence before 17 March 2018; or
- if they became the licensee on or after 17 March 2018, provided they had applied under regulation 11(2) of the *Transport (Country Taxi-car) Regulations 1982* to be transferred the licence before that date.

17 March 2018 coincides with the Minister for Transport's announcement of the Government's intention to provide financial assistance to licensees within the Mandurah and Murray local government districts.

Successful applicants will receive a grant of \$10,000 per licence held.

The adjustment assistance grants will assist licensees to adjust to the new operating environment and increased competition in these regions.

258. Terms used

Clause 258 defines terms used in this Division of the Bill.

Eligible licensee – this term is relevant to who may apply for an adjustment assistance grant pursuant to clause 259. It is defined to mean a person who is the

holder of a “relevant licence”. Relevant licence is defined in this clause to mean a licence that was issued under Part IIIB of the *Transport Co-ordination Act 1966* to operate a taxi-car in the Mandurah or Murray local government district and is not a temporary taxi-car licence as defined in regulation 4 of the *Transport (Country Taxi-car) Regulations 1982*. To fall within the definition of ‘eligible licensee’, the person must be the current licensee, and must have obtained the relevant licence either:

- before 17 March 2018 (pursuant to paragraph (b)(i)); or
- on or after 17 March 2018 provided the application under regulation 11(2) of the *Transport (Country Taxi-car) Regulations 1982* for the transfer of the licence to that person was made before that day and subsequently approved.

This date coincides with the Minister for Transport’s announcement of the Government’s intention to provide financial assistance to licensees within the Mandurah and Murray local government districts.

Given the adjustment assistance grant is intended to assist licensees in the industry to adjust to the new operating environment, a person who was previously a licensee, but is no longer a licensee for a relevant licence, will not fall within the definition of ‘eligible licensee’, and therefore will not be eligible for an adjustment assistance grant.

Relevant licence – this term is used in the meaning of ‘eligible licensee’. It means a licence that was issued under Part IIIB of the *Transport Co-ordination Act 1966* to operate a taxi-car in the Mandurah or Murray local government district and that is not a temporary taxi-car licence as defined in regulation 4 of the *Transport (Country Taxi-car) Regulations 1982*.

Only holders of these kinds of licences may be eligible for the adjustment assistance grant (depending on when they became a licensee). The Mandurah and Murray districts have faced increased competition in recent years. They have also been included in the levy area due to their close proximity of operation with the Perth metropolitan area.

259. Application for adjustment assistance grant

Clause 259(1) provides that an eligible licensee may apply for an adjustment assistance grant in respect of a relevant licence. ‘Eligible licensee’ is defined in clause 258 to mean a person who is currently the licensee, provided that person was also the licensee of the licence prior to 17 March 2018, or had submitted the application under regulation 11(2) of the *Transport (Country Taxi-car) Regulations 1982* for the transfer of the licence before that date, and was subsequently successful. ‘Relevant licence’ licensee’ is defined in clause 258 to mean a licence that was issued under Part IIIB of the *Transport Co-ordination Act 1966* to operate a taxi-car in the Mandurah or Murray local government district and that is not a temporary taxi-car licence as defined in regulation 4 of the *Transport (Country Taxi-car) Regulations 1982*.

A licensee will be able to apply for an adjustment assistance grant in respect of each relevant licence for which the licensee falls within the definition of ‘eligible licensee’.

Clause 259(2) provides that an application for an adjustment assistance grant must be made to the CEO in the approved form on or before the prescribed day. It is proposed to make regulations prescribing the day on or before which applications must be received. This will ensure the approved form and any associated administrative arrangements can be put in place to facilitate prompt receipt and processing of the applications. It will also ensure that the scheme will be available for a finite period, as its intention is to provide assistance to licensees due to circumstances currently faced by industry.

Clause 259(3) makes specific provision for applications in respect of relevant licences owned by 2 or more eligible licensees in partnership.

Pursuant to clause 261(3), only one grant may be paid in respect of the same licence. Accordingly, this clause provides that those partners who fall within the definition of 'eligible licensee' must apply jointly for the grant. This is intended to ensure that all members of a partnership who are eligible for the grant are aware of the application in respect of the licence, and that they act together in applying for the grant.

Clause 259(4) provides that the applicant must provide any additional information required by the CEO for the proper consideration of the application for the adjustment assistance grant. This is intended to ensure that the CEO can verify any information provided in an application, if necessary, in order to be satisfied that the application can be granted.

Clause 259(5) provides that the CEO may require any information provided with an application to be verified by a statutory declaration. This may be required to add further rigour to the administrative processes associated with the processing of applications for adjustment assistance grants, and to deter the provision of false or misleading information in any such applications.

260. Requirement to grant adjustment assistance

This section provides that the CEO must, by notice in writing, grant an application for an adjustment assistance grant if she or he is satisfied that:

- the applicant, or each applicant (in the case of a joint application, which is required by clause 259(3) in relation to an application by 2 or more eligible licensees in a partnership), is the eligible licensee of the licence plates. 'Eligible licensee' is defined in clause 258 to mean a person who:
 - is currently the holder of a 'relevant licence', which is defined in clause 258 to mean a licence issued under Part IIIB of the *Transport Co-ordination Act 1966* to operate a taxi-car in the Mandurah or Murray local government district and that is not a temporary taxi-car licence as defined in regulation 4 of the *Transport (Country Taxi-car) Regulations 1982*; and
 - obtained the relevant licence prior to 17 March 2018, or had submitted the application under regulation 11(2) of the *Transport (Country Taxi-car) Regulations 1982* for the transfer of the licence before that date, and was subsequently successful; and

- no other application for an adjustment assistance grant in respect of the same licence has been granted, in line with clause 261(3), which provides that no more than one grant may be paid in relation to the same licence.

If these criteria are met, the application must be granted.

261. Amount of adjustment assistance grant

Clause 261(1) sets the amount of an adjustment assistance grant at \$10,000 per relevant licence.

Clause 261(2) provides for whom an adjustment assistance grant is to be paid. This is limited to:

- (a) the applicant – under clause 259(1) this is limited to the eligible licensee of the licence in respect of which the application is being made; or
- (b) if the application specifies a person who is to receive the grant on behalf of the eligible licensee, that person.

This allows the eligible licensee to nominate to whom payment is to be made. This may be relevant where a licence is held by two or more persons in partnership and will enable the eligible licensees to nominate to whom payment is to be made. Once the grant has been paid to the person nominated in the application, how it is to be distributed will be a private matter for the eligible licensees.

Clause 261(3) provides that only one grant may be paid in relation to the same licence.

PART 10 — REVIEW OF DECISIONS

262. Term used: Reviewable decisions

Clause 263 provides that a person aggrieved by a reviewable decision made by the CEO or the Minister may request the decision-maker in writing, to reconsider the decision. Clause 264 provides for when a person may apply to the State Administrative Tribunal for review of a reviewable decision.

This clause sets out the decisions in respect of which an affected person has a right of review.

Clause 262(a)(i) provides a right of review to a person who applied for the grant of an on-demand booking service provider authorisation and whose application was refused by the CEO on the grounds that:

- each person nominated as a responsible officer by the applicant is not a responsible officer of the applicant;
- the applicant has not complied with the requirements of clauses 29(4)(a) to (e), or has provided any further information relevant to the application requested by the CEO; or
- the applicant does not comply with prescribed criteria.

Clause 262(a)(ii) provides a right of review to a person who applied for the grant of an on-demand booking service provider authorisation and whose application was refused by the CEO on the grounds that:

- the CEO is satisfied that the applicant is not a fit and proper person to be authorised to provide an on-demand booking service;
- the applicant, a person nominated as a responsible officer by the applicant, or a close associate of the applicant, has previously held an on-demand booking service authorisation, or an equivalent authorisation in another State or a Territory, and that authorisation has been cancelled;
- the applicant, a close associate of the applicant, or a person nominated as a responsible officer by the applicant has been charged with a disqualification offence; or
- a close associate of the applicant has been convicted of a disqualification offence.

Clause 262(a)(iii) provides a right of review to a person who applied for the grant of passenger transport driver authorisation and whose application was refused by the CEO on the grounds that the CEO is not satisfied that the applicant:

- has complied with the requirements of clauses 95(3)(a) and (b) or has provided any further information relevant to the application requested by the CEO; or
- complies with any prescribed criteria.

Clause 262(a)(iv) provides a right of review to a person who applied for the grant of passenger transport driver authorisation and whose application was refused by the CEO on the grounds that the CEO is satisfied that the applicant is not a fit and proper person to be authorised to drive a vehicle for the purpose of transporting passengers for hire or reward.

Clause 262(a)(v) provides a right of review to a person who applied for the grant of passenger transport vehicle authorisation and whose application was refused by the CEO on the grounds that the CEO is not satisfied that:

- the applicant has complied with the requirements of clauses 124(3)(a) to (c), or has provided any further information relevant to the application requested by the CEO; or
- the requirements of clause 126 have been met (which provides that the CEO must not authorise a vehicle under Part 6 Division 3 unless the vehicle meets the requirements specified in the regulations).

Clause 262(a)(vi) provides a right of review to a person who applied for the grant of passenger transport vehicle authorisation and whose application was refused by the CEO on the grounds that the CEO is satisfied that the applicant is not a fit and proper person to hold the authorisation.

Clause 262(b) provides a right of review to a person in relation to the imposition by the CEO of a condition on an on-demand booking service provider authorisation, a passenger transport driver authorisation or a passenger transport vehicle authorisation. A review might be sought because the CEO has refused to impose a particular condition sought by the person, or because the CEO has imposed a condition in respect of which the person is aggrieved.

Clause 262(c) provides a right of review to a person who has applied for a variation to the conditions on their on-demand booking service provider authorisation, passenger transport driver authorisation or passenger transport vehicle authorisation, and whose application was refused by the CEO.

Clause 262(d) provides a person with a right of review in relation to the variation by the CEO or, in the case of a regular passenger transport service provider authorisation, the Minister, of a condition or conditions on the person's on-demand booking service provider authorisation, regular passenger transport service provider authorisation, passenger transport driver authorisation or a passenger transport vehicle authorisation where the variation is made at the CEO's or Minister's initiative and not as a result of an application by the person.

Clause 262(e) will provide an authorisation holder with a right of review if the CEO refuses to grant an application under clause 132 to vary a passenger transport vehicle authorisation to add or remove a category of passenger transport service.

Clause 262(f) will provide a person with a right of review when the CEO or, in the case of a regular passenger transport service provider authorisation, the Minister makes a suspension order that suspends the person's on-demand booking service provider authorisation, regular passenger transport service provider authorisation, passenger transport driver authorisation or passenger transport vehicle authorisation in certain circumstances.

Clause 262(g) will provide a person with a right of review when the CEO or, in the case of a regular passenger transport service provider authorisation, the Minister makes a cancellation order that cancels the person's on-demand booking service provider authorisation, regular passenger transport service provider authorisation, passenger transport driver authorisation or passenger transport vehicle authorisation in certain circumstances.

Clause 262(h) will provide a person with a right of review if an authorised officer issues them with an improvement notice pursuant to clause 209.

Clause 262(i) will provide for regulations to prescribe additional reviewable decisions for the purposes of this clause. This will ensure that any decisions provided for in the regulations that should attract a right of review, can be subject to clauses 263 and 264.

263. Reconsideration of reviewable decisions

Clause 263(1) provides that a person aggrieved by a reviewable decision made by the CEO or the Minister may provide the decision-maker with a written request to reconsider the decision.

Clause 263(2) requires a person seeking a review of a decision to make the request for review within 28 days after the day on which the decision-maker gives the person notice of the decision, or a longer period allowed by the decision maker.

Clause 263(3) provides that the request for reconsideration must state the decision that the person wants the decision-maker to make after reconsideration, and outline why the decision-maker should make that decision.

Pursuant to clause 263(4), if a person writes to the decision-maker under clause 263(1) within the required timeframe, requesting reconsideration of a decision, the decision-maker must reconsider the decision and may confirm that the decision stands, or amend the decision, or revoke the decision and make a new decision.

Clause 263(5) requires the decision-maker to give written notice of the result of the reconsideration to the person who made the request. If the decision-maker does not make the decision sought by the person, the notice must state the reasons for the decision made on reconsideration, and that the person may apply to the State Administrative Tribunal for a review of the decision.

Clause 264 makes provision for applications to the State Administrative Tribunal for review of decisions under this Bill.

264. Application to State Administrative Tribunal for review

Clause 264(1) provides that a person who is aggrieved by a reviewable decision or the decision made by the decision-maker under clause 263(4) on reconsideration of the reviewable decision, may apply to the State Administrative Tribunal for a review of the decision.

Clause 264(2) requires a person seeking a review of a decision to make the request for review within 28 days after the day on which the decision-maker gives the person notice of the decision for which a review is sought.

PART 11 — REGULATIONS

Division 1 — General

265. Regulations

Clause 265(1) provides a general regulation-making power, empowering the making of any regulations that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Bill.

Clause 265(2), without limiting the general regulation making power in clause 265(1), specifies particular regulation-making powers. Clause 265(2)(a) stipulates that regulations may be made in relation to the matters set out in this Part.

Clause 265(2)(b) empowers the making of regulations prescribing the accessibility of passenger transport services to different classes of passengers.

Clause 265(2)(c) provides for regulations in relation to forms for the purposes this Bill.

Clause 265(2)(d) authorises the making of regulations prescribing the fees and charges payable in relation to any matter under this Bill including applications, the grant of authorisations (including by way of renewal), the variation of authorisations or conditions of authorisations, the issue or replacement of authorisation documents and any other documents issued under this Bill, the provision of information to vary an authorisation and matters relating to the issue or management of vehicle number plates.

Clause 265(2)(e) specifies that regulations may be made conferring functions or discretionary authority on the CEO.

Clause 265(2)(f) empowers the making of regulations exempting any person, class of person, or matter from the requirements of this Bill, including imposing conditions on an exemption.

Clause 265(2)(g) provides for the creation of offences in the regulations with maximum penalties not exceeding a fine of \$12,000 for an individual and \$40,000 for a body corporate.

266. Regulations may refer to published documents

Clause 266(1) provides for the meaning of terms used in this clause.

Code means a code, standard, rule, specification or other document, published in or outside Australia, that does not by itself have legislative effect in this State.

Subsidiary legislation includes rules, regulations, instructions, local laws and by-laws.

Clause 266(2) specifies that the regulations to this Bill may adopt, either in full or in part, or with modifications, any code or any subsidiary legislation made, determined or issued under any other Act or under any Act of the Commonwealth, another State or a Territory.

Clause 266(3) provides that the codes or subsidiary legislation may be adopted in the regulations by incorporating the text of the code or subsidiary legislation into the regulations, or by incorporating the code or subsidiary legislation by reference.

Clause 266(4) states that if the regulations adopt the code or subsidiary legislation by reference, other than any subsidiary legislation to which section 41 of *Interpretation Act 1984* applies, the subsidiary legislation or code is adopted as existing or in force, when the regulations are made. Any amendments to the code or subsidiary legislation subsequent to the making of the regulations have no legal effect as part of the regulations, unless they are specifically adopted by later regulations or a later amendment to the regulations. This provides Parliament with the ability to scrutinise the adopted code or subsidiary legislation as it is in force. Any subsequent amendments to the adopted code or subsidiary legislation have no effect unless adopted in later regulations or via amendment to the regulations, upon which further Parliamentary scrutiny may be applied.

Clause 266(5) specifies that if the regulations reference subsidiary legislation that is specified in section 41 of the *Interpretation Act 1984*, the subsidiary legislation is adopted as existing, or in force, from time to time. This provision recognises that Parliament may already scrutinise any changes to adopted subsidiary legislation that is specified in section 41 of the *Interpretation Act 1984*.

Clause 266(6) provides that clause 266(4) and (5) do not apply if regulations state that a particular text is adopted.

If the regulations adopt a code or subsidiary legislation by reference, to which clause 266(4) applies, clause 266(7) requires the CEO to:

- a) ensure that a copy of the code or subsidiary legislation, including any amendments made to it from time to time that have been adopted, is available, without charge, for public inspection; and
- b) if the code or subsidiary legislation, or any part of the code or subsidiary legislation, is in a language other than English, ensure that an accurate English translation of the code or subsidiary legislation, or of the relevant part, is also available, without charge, for public inspection; and,
- c) publish a notice in the *Gazette* giving details of where those documents may be inspected or obtained.

This ensures that the public has access to codes or subsidiary legislation that form part of the law, where the text of those codes or subsidiary legislation is not incorporated in the regulations.

Division 2 — Safety standards

267. Safety standards for providers of on-demand booking services

Clause 267(1) provides that the regulations may specify safety standards for providers of on-demand booking services.

Accordingly, clause 267(2) provides that safety standards may be specified in relation to any of the following:

- drivers, including:
 - driving authorisation and licence requirements
 - competence and qualifications
 - driving records and criminal records
 - identification
 - fitness and medical requirements
 - reporting of changes in health and other matters relating to health;
- on-demand vehicles used in the provision of on-demand passenger transport services, including:
 - safety of vehicles

- vehicle authorisation and licensing requirements
- maintenance and security and other requirements;
- insurance;
- the payment of fares, as well as the form of payment;
- reporting of safety incidents and accidents;
- records relating to vehicles, drivers and bookings;
- provision of information to passengers; and
- safety management systems.

Clause 267(3) provides that 267(2) does not limit the matters for which safety standards may be specified.

268. Safety standards for providers of passenger transport services

Clause 268(1) provides that the regulations may specify the safety standards for the providers of passenger transport services.

Clause 268(2) stipulates that safety standards may be specified for any of the following:

- drivers, including:
 - driving authorisation and licence requirements
 - competence and qualifications
 - driving records and criminal records
 - identification
 - fitness and medical requirements
 - reporting of changes in health and other matters relating to health;
- vehicles used in the provision of passenger transport services, including:
 - safety of vehicles
 - vehicle authorisation and licensing requirements
 - maintenance and security and other requirements;
- insurance;
- the payment of fares, as well as the form of payment;
- reporting of safety incidents and accidents;
- records relating to vehicles, drivers and bookings;
- provision of information to passengers; and,
- safety management systems.

Clause 268(3) provides that 268(2) does not limit the matters for which safety standards may be specified.

269. Safety standards for drivers of vehicles used to transport passengers for hire or reward

Clause 269(1) provides that the regulations may specify safety standards for the drivers of vehicles used for the purpose of transporting passengers for hire or reward.

Clause 269(2) specifies that safety standards may be specified in relation to any of the following:

- matters relating to drivers, including:
 - driving authorisation and licence requirements
 - competence and qualifications
 - driving records and criminal records
 - identification
 - fitness and medical requirements
 - reporting of changes in health and other matters relating to health;
- reporting of safety incidents and accidents;
- compliance with the safety requirements established by the providers of on-demand booking services, providers of passenger transport services and providers of passenger transport vehicles; and,
- provision of information to providers of on-demand booking services, provider of passenger transport services and providers of passenger transport vehicles.

Clause 269(3) provides that 269(2) does not limit the matters for which safety standards may be specified.

270. Safety standards for providers of passenger transport vehicles

Clause 270(1) provides that the regulations may specify safety standards for the providers of passenger transport vehicles.

Clause 270(2) provides that safety standards may be specified in relation to any of the following:

- vehicles used in the provision of passenger transport services, including:
 - safety of vehicles
 - vehicle authorisation and licensing requirements
 - maintenance and security and other requirements;
- drivers, including:
 - driving authorisation and licence requirements
 - competence and qualifications

- driving records and criminal records
- identification
- fitness and medical requirements
- reporting of changes in health and other matters relating to health;
- reporting of changes of ownership or other arrangements in relation to vehicles or of other matters;
- records relating to vehicles;
- insurance;
- reporting of safety incidents and accidents;
- compliance with safety requirements established by providers of on-demand booking services or passenger transport services; and
- provision of information to providers of on-demand booking services, providers of passenger transport services and passenger transport drivers.

271. Safety standard offences

Clause 271(1) specifies that regulations may make it an offence for the provider of an on-demand booking service, the provider of a passenger transport service, the provider of a passenger transport vehicle or a driver of a vehicle operated for the purpose of transporting passengers for hire or reward to contravene a safety standard specified by the regulations. Pursuant to clause 271(2), the regulations may make it an offence for any such person to fail to ensure that a safety standard specified in the regulations (whether or not it is specified for that person) is complied with.

Clause 271(3) provides that the same safety standard may be specified for more than one class of person.

Pursuant to clause 271(4) regulations may provide a defence of a kind analogous to the reasonable steps defence in clause 24 to an offence referred to in this clause.

Division 3 — Passenger transport authorisations

272. Passenger transport authorisations

Clause 272(1) provides for the meaning of words used in this clause.

Document includes a criminal record check, a traffic record check and, in the case of a passenger transport driver, an approved medical report. These terms are defined in clause 4(1).

Clause 272(2) empowers the making of regulations in relation to passenger transport authorisations. Clause 4(1) provides that a passenger transport authorisation means an on-demand booking service authorisation, a regular passenger transport authorisation, a passenger transport driver authorisation or a passenger transport vehicle authorisation.

The regulations may provide the following in relation to passenger transport authorisations:

- the requirements to be met by applicants for authorisations, including:
 - the information to be provided in and with an application
 - requiring an applicant to provide any document or information that is relevant to whether the applicant is a fit and proper person
 - in the case of an application for an on-demand booking service authorisation, the requirements for responsible officers
 - requiring an applicant for an on-demand booking service authorisation to provide any document or information that is relevant to whether a responsible officer of the applicant is a fit and proper person
 - requiring an applicant for a passenger transport service driver authorisation to provide any approved medical reports to the CEO; and
 - in the case of an application for a passenger transport vehicle authorisation, requirements for licensing, insurance and roadworthiness of vehicles;
- in the case of an application for a passenger transport vehicle authorisation, enabling applications to be made for authorisations for more than one vehicle;
- conferring power on the CEO to conduct any check (including a criminal record check or a traffic record check) into the character and background of a person to determine if:
 - the person is a fit and proper person to hold or to continue to hold an authorisation
 - in the case of a person nominated as a responsible officer by an applicant for, or the holder of, an on-demand booking service authorisation, the person is a fit and proper person to be a responsible officer
 - in the case of an applicant for, or the holder of, an on-demand booking service authorisation, a close associate of the person has previously held an on-demand booking service authorisation or an equivalent authorisation in another State or a Territory that has been cancelled or has been charged with or convicted of a disqualification offence;
- matters that may be considered in determining whether a person is a fit and proper person to hold an authorisation or to be a responsible officer;
- grant of authorisations, including categories of authorisations;
- conditions of authorisations;
- duration of authorisations;
- renewal of authorisations, including:

- requirements to be met by applicants for renewal
- applications for renewal
- the information to be provided in and with an application
- requiring an applicant to provide any document or information that is relevant to whether the applicant is a fit and proper person to hold an authorisation
- grant of renewal;
- variation of authorisations or conditions of authorisations, including requiring an applicant for a variation to provide any document or information relevant to whether the variation is appropriate in the circumstances;
- changes to any information provided in connection with an application for authorisation;
- replacement or addition of responsible officers, including notification to the CEO of persons ceasing to be responsible officers and applications and criteria for acceptance of replacement or additional responsible officers;
- requiring the holder of a passenger transport authorisation to provide from time to time any document or information that is relevant to whether the holder or, in the case of an on-demand booking service, a responsible officer is a fit and proper person to hold an authorisation or whether the conditions of an authorisation are appropriate;
- the issue or replacement of authorisation documents or any additional documents identifying the holders of authorisations or the specification of criteria for identification documents to be held or displayed in vehicles;
- the surrender of authorisations;
- requiring a person to surrender any document issued to the person in relation to an authorisation; and
- requiring the information to be provided in or in relation to an application or authorisation to be verified by statutory declaration.

273. Disqualification offences

Clause 273(1) empowers the making of regulations prescribing disqualification offences for providers of on-demand booking services, responsible officers and close associates of providers of on-demand booking services, and passenger transport driver authorisations.

Clause 273(2) specifies that the regulations may prescribe:

- different disqualification offences for providers of on-demand booking services, responsible officers and close associates of providers of on-demand booking services and passenger transport drivers

- different disqualification offences for different categories of on-demand booking services and passenger transport drivers, and
- circumstances in which an offence is or is not a disqualification offence.

The offences that will be prescribed as disqualification offences for the providers of on-demand booking services will in some cases be different to the offences that will be prescribed in respect of the person nominated by the providers of the on-demand booking service given the different roles of each. Further, the person nominated as the responsible officer will be a natural person, which may not necessarily be the case for the provider of an on-demand booking service.

Division 4 — Operation of on-demand booking service

274. On-demand booking services

Clause 274 provides for the making of regulations in relation to on-demand booking services, including:

- customer complaints handling processes, and the requirements of those processes;
- the provision of information to the CEO by the provider of the service on matters specified in the regulations including:
 - reporting to the CEO of safety incidents involving on-demand vehicles
 - prescribing classes of conduct of on-demand drivers to be reported to the CEO, the reporting process and the information to be provided
 - reporting to the CEO of drivers and on-demand vehicles withdrawn from use or engagement by the service; and,
 - the required times for the provision of information;
- the collection and keeping by the provider of the service of information (including camera footage and audio material) specified in the regulations and requiring the information to be made available to the CEO or an authorised officer;
- insurance requirements for providers of on-demand booking services;
- advertising by providers of on-demand booking services;
- association arrangements between providers of on-demand booking services, including specifying the authorised on-demand booking service that is the principal on-demand booking service for an associated on-demand booking service;
- regulating the circumstances in which the provider of an on-demand booking service must or must not facilitate the transport of animals, including assistance animals, in on-demand vehicles for which an on-demand booking service is provided; and,
- regulating the manner in which information is to be provided.

Division 5 — Operation of passenger transport service

275. Passenger transport services

Clause 275 provides for the making of regulations in relation to passenger transport services, including:

- customer complaints handling processes and the requirements of the complaints handling processes;
- the provision of information to the CEO by the provider of the service on matters specified in the regulations including:
 - reporting to the CEO of safety incidents involving passenger transport vehicles
 - prescribing classes of conduct of drivers to be reported to the CEO, the reporting process and the information to be provided
 - reporting to the CEO of drivers and vehicles withdrawn from use or engagement by the service
 - the required times for the provision of information;
- the collection and keeping by the provider of the service of information (including camera footage and audio material) specified in the regulations and requiring the information to be made available to the CEO or an authorised officer;
- insurance requirements for providers of passenger transport services;
- advertising by providers of passenger transport services;
- association arrangements between providers of on-demand booking services, including specifying the authorised on-demand booking service that is the principal on-demand booking service for an associated on-demand booking service;
- regulating the circumstances in which the provider of a passenger transport service must or must not facilitate the transport of animals, including assistance animals, in vehicles in which a passenger transport service is provided; and,
- regulating the manner in which information is to be provided.

Division 6 — Passenger transport drivers and use of passenger transport vehicles

276. Passenger transport drivers

Clause 276 provides that regulations may, in relation to passenger transport drivers, make provision for:

- requirements for the display of identification of passenger transport drivers and authorisation information;

- requirements for a passenger transport driver to produce the driver's passenger transport driver authorisation or driver's licence to an authorised officer on request;
- requirements for a passenger transport driver to report incidents involving passenger transport vehicles;
- prohibiting or regulating methods of plying for hire;
- prohibiting or regulating ways in which a trip or fare may be procured;
- regulating the conduct and behaviour of passenger transport drivers in relation to the driving of passenger transport vehicles, including:
 - circumstances in which a driver may, or must not, refuse to accept a passenger or terminate the provision of a passenger transport service
 - the conduct and behaviour of a driver towards passengers
 - the route that a driver must drive to reach any destination;
- regulating the circumstances in which a driver must or must not transport animals, including assistance animals, in passenger transport vehicles; and,
- regulating the transport of goods, including luggage, in passenger transport vehicles.

277. Safety, security and order

Clause 277 provides that regulations may make provision in relation to the safety, security and good order of passengers and the safety and security of passenger transport drivers, including the following:

- matters relating to the safety, security and good order of passengers, including prohibiting conduct in or on passenger transport vehicles or on premises used for a passenger transport service; and
- authorising passenger transport drivers and authorised officers to eject passengers who do not comply with the regulations.

Division 7 — Passenger transport vehicles

278. Passenger transport vehicles

Clause 278 provides that the regulations may make provision for, or in relation to, passenger transport vehicles including the following:

- prohibiting or restricting the use of vehicles as passenger transport vehicles if they do not meet the required standards;
- requirements for roadworthiness inspections of vehicles;
- requirements for maintenance of vehicles;
- requirements relating to the identification signage and other signs and notices to be used or displayed in or on vehicles;

- number plate requirements, including:
 - requiring a vehicle to be fitted with number plates issued under the *Road Traffic (Vehicles) Act 2012*
 - providing for the status or return of taxi plates issued under the *Taxi Act 1994* or number plates issued under the *Transport Co-ordination Act 1966*
 - empowering authorised officers to seize and take possession of taxi plates or number plates issued under the *Road Traffic (Vehicles) Act 2012*, the *Taxi Act 1994* or the *Transport Co-ordination Act 1966*
 - providing for an offence in relation to a failure to return number plates in accordance with the regulations;
- requirements to be complied with in relation to vehicles, including:
 - the provision of fare schedules to passengers
 - the standards for installation, maintenance and operation of, and access to, camera surveillance equipment and the collection, keeping, sharing and use of the camera footage and audio material created
 - the use of meters and the display of metered fares
 - the livery to be displayed on and inside the vehicle
 - the equipment to be used, and
 - accessibility;
- specifications and requirements for wheelchair accessible vehicles, including:
 - structural requirements
 - accessibility requirements
 - vehicle examination requirements
 - signage requirements
 - equipment requirements
 - number plate requirements, and
 - conditions on use.

With respect to the latter point, a wheelchair accessible vehicle means an on-demand vehicle that is used or intended to be used for the transport of persons who have a disability and any wheelchairs and other aids required by those persons.

Division 8 — Fares and subsidies

279. Fares

Clause 279 provides that regulations may regulate fares and charges (including payment surcharges) for or in connection with the use of passenger transport vehicles,

on-demand booking services or for the provision of passenger transport services, including:

- pre-payment, collection, provision of estimates, publication and display of fares, the requirements for receipts and the information to be included in receipts;
- requirements for fare schedules;
- processes for calculating fares for the provision of on-demand passenger transport services, including the transparency and availability of those processes;
- regulating surge pricing and queue jumping for the use of on-demand vehicles at specified times; and,
- regulating charges on transactions involving payment of a fare or part of a fare by way of a subsidy.

280. Subsidies

Clause 280 provides for the making of regulations in relation to subsidies. The road passenger transport service industry is strategically placed to meet the challenges of transport disadvantage, particularly amongst people with a disability. Accordingly, the practical and proper utilisation of subsidy schemes within the passenger transport industry requires consideration in this Bill.

The making of regulations pursuant to this clause may:

- provide for the payment of grants and subsidies for the use of passenger transport vehicles in specified circumstances including:
 - the persons (including members of the public) to or for whom subsidies are payable
 - when subsidies must be accepted as payment or part payment of fares
 - what form subsidies may be in
 - prohibiting the improper or fraudulent use of subsidies
 - imposing penalties for the improper or fraudulent use of subsidies
 - the recovery of subsidies by the CEO in a court of competent jurisdiction as a debt due to the Crown;
- impose duties on the provider of an on-demand booking service, regular passenger transport service or a passenger transport driver to:
 - facilitate the payment or part payment of fares by the provision of a subsidy or by a person who is eligible for a subsidy for the fare
 - keep the required records in relation to subsidies
 - report to the CEO on specified matters relating to subsidies; and
 - take the required steps to prevent the improper or fraudulent use of subsidies.

Division 9 — On-demand passenger transport levy

281. On-demand passenger transport levy

This Bill provides for the establishment of a levy on bookings for relevant journeys conducted within the defined levy area, in order to fund the voluntary buyback of owned taxi plates. Clause 281 provides for the making of regulations in relation to the levy, including the following matters:

- the provision of information by providers of on-demand booking services, providers of on-demand passenger transport services, providers of on-demand vehicles and drivers of on-demand vehicles for the purpose of determining the levy payable by an on-demand booking service;
- assessments and reassessments of liability for the levy;
- the manner in which amounts are allocated for the levy in fares that relate to leviable passenger service transactions and how those amounts are dealt with;
- rebates of levy;
- the manner of lodging a return under clause 250 or making a payment of the levy including the lodging of a return or the payment of the levy by electronic means.

PART 12 — MISCELLANEOUS

Division 1 — Giving of documents

282. Giving of documents generally

Clause 282(1) provides that a document required or authorised under this Bill to be given to a person may be given to the person by:

- (a) giving it to the person personally;
- (b) sending it to the person by prepaid post (including document exchange), using either the address provided by the person for the giving or service of documents, or if no address is provided to the CEO, the last known address of the person;
- (c) leaving it at the person's usual or last known place of residence or business;
- (d) emailing it to an email address or faxing it to a fax number provided by the person for the giving or service of documents, or if no email address or fax number was provided, to the email address or fax number appearing on recent correspondence addressed by or on behalf of the person to the CEO, or otherwise notified to the CEO or published by the person;
- (e) communicating it in some other way agreed with the person; or
- (f) in the case of a corporation or of an association of persons (whether incorporated or not), by delivering or leaving it, or posting it as a letter

addressed, in each case, to the corporation or association at its principal place of business or principal office in the State.

Clause 282(2) specifies that a document which is required to be given by the CEO to a partnership is taken to be given to all members of the partnership if it is given to any member of the partnership utilising the methods outlined in clause 282(1).

Clause 282(3) stipulates that a document which is required to be given by the CEO to the provider of an on-demand booking service is taken to have been given to the provider if it has been given to a responsible officer of the provider of the booking service, in accordance with clause 282(1).

A 'responsible officer' of an on-demand booking service provider is defined by clause 4(1) to mean a person nominated by the provider to represent the provider, and who meets the criteria set out in clause 30.

Clause 30 requires, amongst other things, that a responsible officer must be directly involved in the day to day management of the on-demand booking service. Pursuant to clause 29(4)(d)(ii), an applicant for an on-demand booking service provider authorisation must provide a declaration acknowledging that documents given to the responsible officer on behalf of the provider under this Act are taken to be given to provider of the service. This ensures that the booking service provider is aware of the effect of this clause at the time of their initial application.

Clause 29(5) requires at least one of the responsible officers for an on-demand booking service provider to be a resident of the State of Western Australia. This is intended to ensure that even if the on-demand booking service provider is not located in, or does not have their principal place of business in this State, there is still a person in the State who can oversee, identify and address safety matters relevant to the operation of the on-demand booking service. This also ensures that there is a person in the State that the regulator can deal with in respect of the on-demand booking service provider, including to serve documents on the provider where required.

Clause 282(4) provides that the use of a particular method for giving a document to a specific person does not prevent the giving of other document to the same person in a different way. The type of document and the circumstances relevant to its issue will be relevant to the method of service in each case.

Clause 282(5) provides that this clause does not apply to a document which section 117 of the *Taxation Administration Act 2003* (TAA) applies.

Clause 329 of this Bill will amend the *Taxation Administration Act 2003* (WA) (TAA) to prescribe Part 9 Division 2 as a taxing Act for the purposes of that Act. Making Part 9 Division 2 of this Bill a taxing Act for the purposes of the TAA will see the levy subject to an established administration regime for State taxing laws.

Clause 243(1) provides that the TAA is to be read with Part 9 Division 2 as if they formed a single Act, meaning that some documents required or authorised under Part 9 Division 2 of this Bill will be subject to section 117 of the TAA. That section provides for how documents or notices to be served under a taxation Act may be served on a

person. This clause ensures that one consistent regime for giving of documents applies to matters relevant to the levy.

283. Time when document given

Clause 283(1) provides that, in the absence of proof to the contrary, a document that is emailed or faxed to a person under clause 282(1)(d) or delivered or left for a person under clause 282(1)(f), it is taken to be given on the next business day after the document was emailed, faxed, delivered or left.

Clause 283(2) provides that, in the absence of proof to the contrary, a document that is sent by prepaid post to an address within Australia, is taken to be given to the person at the time the document would have been delivered in the ordinary course of the post. For an address outside of Australia, the document is taken to be given on the day that is 11 business days after the document was posted.

These provisions will make clear when documents are taken to be given for the purpose of clauses of this Bill that provide a person a certain period time to do a specified thing after they have been given notice of a specified kind. For example, pursuant to clause 283(3), a person aggrieved by a reviewable decision may request the decision-maker to reconsider the decision, provided the request is made within 28 days of when the decision-maker gave the person notice of the decision.

Division 2 — General

284. Delegation

Clause 284(1) empowers the CEO to delegate any of the CEO's powers or duties, conferred on the CEO under another provision of the Bill, to a person employed or engaged by the Department or a person or class of person approved by the Minister.

Clause 284(2) requires any delegation to be in writing signed by the CEO, for that delegation to be valid. A delegation may set out specific circumstances in which a delegated power or duty may be exercised or performed.

This power will enable the CEO to delegate relevant powers and duties to appropriate persons, which will be necessary as the CEO will not be able to personally to perform or exercise all of the duties and powers conferred on the CEO by the Bill.

Clause 284(3) provides that a person to whom the CEO has delegated a power or duty is not permitted to delegate that power or duty to another person. This provision will ensure that the CEO retains control over who may perform a duty or exercise a power of the CEO.

Clause 284(4) addresses where the CEO has made a delegation subject to terms that the CEO considers appropriate or necessary. The clause creates a legal presumption that, unless proven otherwise, the delegate is taken to have exercised the delegated power or performed the delegated duty in accordance with the terms of the delegation.

Should a delegate's actions require consideration, for example, in the course of the review of a reviewable decision by the State Administrative Tribunal or in other proceedings, this ensures that a delegate does not have to prove that their actions

occurred in accordance with the terms of the delegation. However, an aggrieved party may give evidence that may prove that the delegate's actions were not in accordance with the terms of the delegation.

Clause 284(5) provides that this clause does not limit the CEO's ability to perform a function through an officer or agent. This would include where the CEO:

- authorises an officer of the Department of Transport to perform a function on the CEO's behalf; or
- enters into an agreement pursuant to clause 285 with another party, under which the other party performs the functions described in the agreement on behalf of the CEO as an agent of the CEO.

285. CEO may enter into agreements for performance of functions

Under this Bill the CEO will be the authority responsible for most aspects of the regulation of road passenger transport services.

The CEO may exercise powers and duties conferred on the CEO under this Bill themselves, or pursuant to this clause determine that it is appropriate for another person to exercise some of those powers or to perform some of those duties and to delegate those powers or duties accordingly.

Clause 285(1) provides that the CEO may enter into an agreement with a third party providing for the CEO's functions under this Act that are described in the agreement to be performed on behalf of the CEO in accordance with the terms of the agreement.

This clause provides the CEO with additional means of ensuring that the CEO's powers are exercised and the CEO's duties are suitably performed.

Clause 285(2) makes clear that the CEO's functions include any functions delegated to the CEO under the *Taxation Administration Act 2003 (WA)* (TAA).

Clause 329 of this Bill will amend the TAA to prescribe Part 9 Division 2 as a taxing Act for the purposes of that Act. Making Part 9 Division 2 of this Bill a taxing Act for the purposes of the TAA will see the levy subject to an established administration regime for State taxing laws. Pursuant to clause 253(1), the CEO will be able to exercise any functions delegated to the CEO by the Commissioner of State Revenue (Commissioner) under the TAA in relation to this Division.

Pursuant to clause 253(2), a function that is delegated to the CEO under the TAA in relation to Part 9 Division 2 is taken, while the delegation is in effect, to be a function of the CEO and not to be a function of the Commissioner under the TAA to the extent that it relates to this Division.

As the CEO will have responsibility for the day to day administration of the levy, this will ensure that the levy is administered in a consistent manner and makes clear who persons liable for the levy need to deal with in respect of the levy.

Making clear that the CEO may enter into an agreement with a third party, providing for any of the CEO's functions in respect of the levy to be performed on behalf of the

CEO in accordance with the terms of the agreement, provides the CEO with additional means of ensuring that the CEO's powers and duties in respect of the levy are suitably performed.

Pursuant to clause 285(3) an agreement may be entered into with the Commissioner of Police, a local government, or any other person or body whether or not the person or body has itself functions of a public nature. It makes clear that there is no restriction upon with whom the CEO may enter into such an agreement.

Clause 285(4) permits the CEO to stipulate, in such an agreement, how a function the subject of the agreement is to be performed and to set out terms and conditions to which the agreement is subject.

Clause 285(5) provides that if the performance of a function the subject of an agreement is dependent upon the opinion, belief or state of mind of the CEO, it may be performed under the agreement on the opinion, belief or state of mind of the person or body with whom the agreement is made (or another person provided for in the agreement).

Clause 285(6) specifies that the effect of a function being performed by an agent pursuant to an agreement is no different than the effect of that same function being performed by the CEO.

286. Protection from personal liability

Under clause 286(1), a person, such as a person employed or engaged by the Department of Transport, who performs a function under the provisions of this Bill, will not be able to be sued for damages arising from a loss suffered by another person as a result, provided the person performed the function in good faith.

Performing a function in good faith involves doing it honestly and sincerely.

Similar protections are commonly provided in other comparable statutes in Western Australia. Without them, employees and contractors of State Government agencies could be reluctant or unwilling to undertake responsibilities that could lead to them being personally sued.

Clause 286(1) will not prevent a person employed or engaged in the performance of a function under this Bill from being held criminally responsible, if the person's actions, or inaction, constitute a criminal offence.

Clause 286(2) will extend the protection from liability that is the subject of clause 286(1) to the Minister responsible for the administration of this Bill and to the State of Western Australia. It provides that, where a person employed or engaged in the performance of a function under the provisions of this Bill performs that function in good faith, neither the Minister nor the State of Western Australia may be held vicariously liable for any loss suffered by another person as a result of the performance of that function.

Vicarious liability concerns circumstances in which, for example, an employer may be held responsible for the actions of an employee and ordered to pay damages arising from those actions.

Similar protections are commonly provided in other comparable statutes in Western Australia. They are intended to protect the community by preventing civil claims, in circumstances in which an employee or contractor acted honestly and sincerely. Without such protection, the State's capacity to ensure the provision of services and facilities required by the Western Australian community, at a reasonable cost, would be uncertain and precarious.

Clause 286(3) expresses that the protections provided pursuant to this clause will apply, even if the actions of the person employed or engaged by the Department of Transport could have been done, regardless of whether the provisions of this Bill existed or not. This will ensure that protection will exist in the unlikely event that, in the case of an action performed by such a person, there also exists in another enactment a power to undertake the same action, or the action did not require legislative authority.

Clause 286(4) makes clear that in this clause, a reference to the doing of includes a reference to an omission to do anything.

Clause 286(5) provides that, to avoid doubt, that the protections provided pursuant to this clause apply where a function is performed pursuant to an agreement made under clause 285 between the CEO and another party.

Clause 285 provides that the CEO may enter into an agreement with a third party providing for the CEO's functions under this Act that are described in the agreement to be performed on behalf of the CEO in accordance with the terms of the agreement.

287. Protection of people testing or examining or giving certain information

Clause 286 provides general immunity from civil liability to a person, such as a person employed or engaged by the Department of Transport, who performs a function under the provisions of this Bill. The immunity ensures that the person will not be able to be sued for damages arising from a loss suffered by another person as a result, provided the person performed the function in good faith.

Clause 287 provides a more specific immunity for people who have administered a test for the purposes of the Bill.

Clause 287(1) makes clear that the immunity the subject of this clause is in addition to the immunity provided by clause 286.

Clause 287(2) provides that a person will not be able to be charged with an offence as a result of providing to the CEO, in good faith, an opinion which the person has formed as a result of the person administering a test for the purposes of this Bill. Doing something in good faith involves doing it honestly and sincerely.

Clause 287(3) provides that a person will not be able to be sued, or to be charged with any offence, for giving or for reporting to the CEO, in good faith, information that discloses or suggests that:

- another person may not be a fit and proper person to hold a passenger transport authorisation; or
- it may be dangerous to:
 - grant a passenger transport authorisation to another person; or
 - allow another person to hold a passenger transport authorisation; or
 - vary, or not to vary, the conditions of passenger transport authorisation.

The protection the subject of clause 60(3) might, for example, be relied upon by a family member or medical practitioner of a person authorised under this Bill, who provides information to the CEO regarding the person's physical or mental fitness.

Similar protections are commonly provided in other comparable statutes in Western Australia. Without them, people could be reluctant or unwilling to perform responsibilities relating to the administration of tests or to provide information to the CEO that might be in the public interest for the CEO to possess, but which may result in the CEO taking action to suspend or cancel a passenger transport authorisation or to vary the conditions of a passenger transport authorisation.

288. False or misleading information

The CEO and other persons performing functions under this Bill will require a range of information. It is essential that this information is accurate in order for the Bill to be effectively administered.

Clause 288 specifies that a person commits an offence if the person provides information they know to be false or misleading in a material particular to the CEO under this Bill, or to any other person performing a function under this Bill.

The penalty for this offence is a fine of \$5,000. In the case of an offence by a body corporate, pursuant to clause 218, an officer of the body corporate may be held liable if the officer failed to take all reasonable steps to prevent the commission of the offence by the body corporate.

289. Compensation not payable

Clause 289(1) provides that compensation is not payable by or on behalf of the State because of:

- (a) the variation, suspension or cancellation of a passenger authorisation under this Bill; or
- (b) any statement or conduct relating to the variation, suspension or cancellation of an authorisation under this Bill; or
- (c) the removal of any right, by or under this Bill, conferred on a person pursuant to the *Taxi Act 1994* (for example a right to own or lease taxi plates), the

Transport Co-ordination Act 1966 (for an example the authority to operate a vehicle pursuant to an omnibus or country taxi-car licence) or the *Road Traffic (Authorisation to Drive) Act 2008* (for example, the right to drive a vehicle to carry passengers for hire or reward).

Clause 289(2) defines certain terms used within this clause.

Authorisation means a passenger transport authorisation. Passenger transport authorisation is defined in clause 4(1) to mean

Compensation includes damages or any other form of monetary consideration.

Conduct includes an act or omission and statement includes a representation of any kind.

This clause makes clear that no monetary consideration is required to be paid to any person because of the effect of a change to the status of, or statement or conduct relevant to the status of, an authorisation issued under this Bill, or the removal of any existing right by or under this Bill. This includes rights conferred pursuant to current passenger transport related legislation repealed or amended by this Bill.

Authorisations granted under this Bill are not intended to be treated as the personal property of the authorised person. They will permit the holder to carry out certain activities but are subject to the holder meeting relevant conditions and requirements.

Under existing laws, existing licences, leased plates, authorisations and endorsements are similarly not intended to be treated as the personal property of the authorised person. They will permit the holder to carry out certain activities but are subject to the holder meeting relevant conditions and requirements.

Owned plates issued pursuant to the *Taxi Act 1994* can also be subject to forfeiture pursuant to relevant provisions of that Act and a plate owner does not have an absolute right of ownership in respect of their plates. Buyback payments are to be made available to plate owners pursuant to Part 9 Division 1 of the Bill due to the circumstances specific to these plates – in particular the cost at which they were acquired and the impact of Government reform and increased competition on plate owners in recent years.

290. Exemptions

Clause 290(1) provides that the Minister may, by order published in the *Gazette*, grant exemptions from the provisions of Parts 4 and 6 of this Bill. Part 4 provides for the authorisation of regular passenger transport service providers and Part 6 provides for the authorisation of providers of passenger transport vehicles.

Subsection 19(2) of the *Transport Co-ordination Act 1966* (WA) (TCA) currently provides that the Minister may by order published in the *Gazette* grant exemptions from the provisions of Part III. Part III of that Act includes Division 2 which provides for the licensing of omnibuses. Specifically, this power has been used to exempt certain types of vehicles from the requirement to hold an omnibus licence, including certain kinds of school buses.

Part 14 Division 2 Subdivision 10 of this Bill will remove provision for the regulation of omnibuses from the TCA, which will occur upon the commencement of Part 6 of this Bill.

This clause will maintain the ability of the Minister to make similar orders to that in section 19 of the TCA, with respect to Parts 4 and 6 of the Bill, ensuring that services such as school buses can be exempt from certain provisions of the Bill where appropriate.

Clause 290(2) provides that an order may be amended or revoked by the Minister by an order published in the *Gazette*.

Clause 290(3) applies sections 43(7), (8) and (9) of the *Interpretation Act 1984* to an order made under this clause as though the order were subsidiary legislation. This provides additional powers for the making of orders under this clause that are consistent with those used in making subsidiary legislation.

Division 3 — Review of Act

291. Review of Act

Clause 291(1) requires that the Minister must carry out a review of the operation and effectiveness of this Bill, as soon as is practicable after the fifth anniversary of the date of commencement of this clause.

Clause 291(2) directs that in carrying out the review, the Minister must have regard to the attainment of the objects of the Bill, the administration of this Bill, the effectiveness of the operation of the Department in relation to this Bill and any other matters that appear to the Minister to be relevant.

Clause 291(3) requires the Minister to prepare a report on the review and table it before Parliament as soon as is practicable after its preparation.

PART 13 — TRANSITIONAL PROVISIONS

292. Terms used

Clause 292(1) defines some terms used in Part 13.

'F' or 'T' endorsed driver's licence is defined to mean a driver's licence that is endorsed with an extension F or T in accordance with regulations made under the *Road Traffic (Authorisation to Drive) Act 2008* (WA).

This definition is necessary in respect of clauses 293 and 294 of this Part.

Clause 293 makes provision for the disclosure of information about the status of a driver's licence that is endorsed with an extension F or T in certain circumstances.

Clause 294 makes provision in respect of the transitional arrangements for persons who hold a driver's licence that is endorsed with an extension F or T upon the commencement of Part 5 of this Bill. Part 5 provides for passenger transport driver

authorisations and will replace the existing regime for the regulation of driving to carry passengers for reward in the *Road Traffic (Authorisation to Drive) Act 2008*.

on-demand rank or hail vehicle authorisation is defined to mean a passenger transport vehicle authorisation that authorises the operation of the vehicle to provide an on-demand rank or hail passenger transport service.

This definition is necessary in respect of the operation of clauses 295, 296 and 297 of this Part, which provide the transitional arrangements for persons who own or lease taxi plates under the *Taxi Act 1994*, or who hold a country taxi-car licence under the *Transport Co-ordination Act 1966*, upon the commencement of Part 6 of this Bill. Part 6 provides for passenger transport driver authorisations and will replace the existing regime for the regulation of vehicles operated as taxis in the *Taxi Act 1994* and the *Transport Co-ordination Act 1966*.

293. Disclosure of information about drivers and vehicles

Clause 293(2) specifies that the CEO may disclose the following information about driver's licences to providers of on-demand booking services, passenger transport services and passenger transport vehicles in accordance with the regulations:

- (a) whether a particular driver's licence is in force under the *Road Traffic (Authorisation to Drive) Act 2008*; and
- (b) whether a particular 'F' and 'T' endorsed driver's licence is in force under the *Road Traffic (Authorisation to Drive) Act 2008*.

Clause 293(1) defines 'disclose' to include to provide, to release and to give access to.

The ability to share details as to whether or not a person is authorised to drive a vehicle to transport passengers for hire or reward will assist providers of services and vehicles in meeting their safety duties under this Bill. This provision is intended to ensure such information is available to relevant providers from the commencement of Part 3 (requiring authorisation of on-demand booking service providers pursuant to the Bill), but prior to the end of the period for 'F' and 'T' endorsed driver's licences to transition to passenger transport driver authorisations pursuant to clause 294 of this Bill.

The information to be disclosed pursuant to this clause is intended to be limited to the status of the particular driver's licence and will not include the name or other personal information of the person who holds the driver's licence. To enable appropriate driver validation, it is intended that the person requesting the information will also be required to provide prescribed information about the person who holds the relevant driver's licence such as the person's name and date of birth.

In order to determine who holds the driver's licence about which the information is disclosed, the on-demand booking service provider or the passenger transport vehicle provider would need to have further information. This is expected to occur where, for example, a particular driver has or proposes to enter into an arrangement with a vehicle provider to use their vehicle, or an on-demand booking service provider to accept bookings from their service. As part of this the driver may have provided a copy

of their driver's licence to the other person - the relevant provider could then use this information to confirm the driver's authorisation status.

From the commencement of Part 5, similar provision will be made by clause 153 in respect of the sharing of information about the status of passenger transport driver authorisations. However, in the case of clause 153 additional people may be able to obtain information about the authorisation status of a driver. Applicants for passenger transport driver authorisations will be informed of this at the point of their initial application.

Clause 293(3) provides that the CEO may disclose information about a passenger transport vehicle on the Department's website or to any member of the public or any other person including:

- (a) the number plate of the vehicle;
- (b) whether or not a vehicle licence is in force in relation to the vehicle under the *Road Traffic (Vehicles) Act 2012*;
- (c) whether or not an omnibus licence is in force in relation to the vehicle under the *Transport Co-ordination Act 1966*;
- (d) whether or not a country taxi-car licence is in force in relation to the vehicle is subject to a under the *Transport Co-ordination Act 1966* and the district in which the licence permits the operation of the vehicle;
- (e) whether or not the vehicle is authorised to operate as a taxi under the *Taxi Act 1994* and whether that operation is subject to conditions restricting the operation of the taxi to specified times or areas.

Clause 293(1) defines 'disclose' to include to provide, release and give access to.

The ability to share details as to whether or not a vehicle is authorised will assist providers of services and vehicles as well as drivers, in meeting their safety duties under this Bill. This provision is intended to ensure such information is available to relevant providers from the commencement of Part 3 (requiring authorisation of on-demand booking service providers pursuant to the Bill), but prior to the commencement of Part 6 of the Bill providing for passenger transport vehicle authorisations.

The information to be disclosed pursuant to this clause is intended to be accessed by reference to the vehicle number plate only. The information disclosed will not include the name or other person information of the person who holds the vehicle licence.

From the commencement of Part 6, similar provision will be made by clause 154 in respect of the sharing of information about the status of passenger transport vehicle authorisations.

294. 'F' and 'T' endorsed driver's licences

Clause 294(1) defines 'commencement day' for the purposes of this clause, to mean the day on which Part 5 comes into operation. From the commencement of Part 5 of

this Bill, persons who drive vehicles for the purpose of transporting passengers for hire or reward will be required to hold a passenger transport driver authorisation that is in force.

Clause 294(2) specifies that a person who holds a 'F' or 'T' endorsed driver's licence under the *Road Traffic (Authorisation to Drive) Act 2008 (WA)* (RTADA) may, on and from the commencement of Part 5 of this Bill, drive a vehicle for the purpose of transporting passengers for hire and reward without the required authorisation, until the grant of a passenger transport driver authorisation to the person, or until the end of the prescribed transition period for the licence, whichever occurs first.

Clause 292 defines “‘F' or 'T' endorsed driver's licence” to mean a driver's licence that is endorsed with an extension F or T in accordance with regulations made under the RTADA.

This clause will allow a person who has been operating under the existing regime for authorisation of drivers carrying passengers for hire or reward, to continue to do so for a certain period following the commencement of Part 5. This will provide existing drivers with time to transition to a passenger transport driver authorisation under this Bill. By the end of the prescribed period, the holder of an 'F' or 'T' endorsed driver's licence must have applied for, and been granted, a passenger transport driver authorisation pursuant to Part 5 in order to continue to drive vehicles to transport passengers for hire or reward.

It is intended to make transitional regulations that provide for any medical reports provided by existing drivers to be recognised or relied upon as part of the transition to a passenger transport driver authorisation, where those reports were carried out within a specified time period prior to the application for the new authorisation. This will minimise the impact of the transition on existing drivers.

Clause 294(3) provides that clause 294(1) does not apply to a driver's licence while the driver's licence or the 'F' or 'T' endorsement of the driver's licence is not in force. This aligns with clause 104(5) of the Bill, which provides that a passenger transport driver authorisation is not in force to permit the driving of a vehicle during any period that the holder of the authorisation is not authorised under the RTADA to drive the vehicle.

This ensures that if a person's driver's licence under the RTADA is suspended or cancelled, whether as a result of demerit points, a decision of the CEO under that Act or otherwise, the person's authorisation to drive for hire or reward pursuant to this clause also not in force.

Further, if a driver is transporting passengers for hire or reward while driving a class of vehicle for which they are not authorised to drive to pursuant to the RTADA, their authorisation to drive for hire or reward pursuant to this clause would also be of no effect at that time.

If a person's driver's licence does not authorise the person to drive a vehicle at a particular time, or a particular type of vehicle, it is reasonable and appropriate in the interests of safety, that the person not be authorised to drive a vehicle to transport

passengers for hire or reward during any such time, or while driving that particular kind of vehicle.

Under clause 294(4), the *Road Traffic (Authorisation to Drive) Act 2008* as in force before the commencement of Part 5 of this Bill, with respect to 'F' and 'T' endorsed driver's licences, continues to apply to an 'F' or 'T' endorsed driver's licence until the end of the prescribed transition period for the licence despite the amendment of that Act by this Bill.

295. Owned taxi plates

Clause 295(1) defines certain terms used in this clause.

Commencement day means the day on which Part 6 comes into operation. This definition is relevant to the time from when the transitional arrangements provided for by this clause will have effect.

Owned taxi-plates means taxi plates owned by an eligible owner (buyback) as defined in clause 226(1).

Owner, in relation to a vehicle, has the same meaning as it has in section 5 of the *Road Traffic (Administration) Act 2008* as if this Part were a road law referred to in that section.

Relevant vehicle means a vehicle that immediately before commencement day:

- was operated under owned taxi plates; or
- would have been operated under owned taxi plates if a grant of a buyback payment had not been made under Part 9 Division 1 before commencement day.

Taxi plates has the same meaning as it has in Part 9 Division 1. Clause 226(1) of Part 9 Division 1 defines 'taxi plates' to mean a set of taxi number plates issued or acquired under the *Taxi Act 1994*, but does not include taxi plates held under a lease within the meaning of that Act.

Clause 295(2) provides that a person who, immediately before commencement day, is the owner of a relevant vehicle, or has the written consent of the owner of the relevant vehicle to operate the vehicle, is taken on and from commencement day until the prescribed day to be the holder of on-demand rank or hail vehicle authorisation for the vehicle. The person taken to be the holder of the authorisation will be subject to any conditions imposed on the authorisation pursuant to clause 129 of the Bill.

Clause 292 defines an 'on-demand rank or hail vehicle authorisation' as a passenger transport vehicle authorisation that authorises the operation of the vehicle for use in providing an on-demand rank or hail passenger transport service. 'Rank or hail service' is defined in clause 4(1) to mean an on-demand passenger transport service under which a person can hail or hire an on-demand vehicle while it is standing or plying or touting for hire on a road or in another place accessible to the public – this is the only passenger transport service that is authorised to operate as a taxi under the Bill.

Clause 295(2) ensures that a vehicle that is equipped to, and has been operating as a taxi pursuant to owned plates up to and immediately before the commencement of Part 6 of this Bill (which provides for the operation and authorisation of passenger transport vehicles), can continue to do so for the prescribed transitional period. The person who will be entitled to operate the vehicle as an on-demand rank or hail passenger transport vehicle during the transitional period, will be either:

- the owner of the vehicle; or
- a person who has the consent of the owner.

This person may or may not be the person who was the owner of the taxi plates that the vehicle was operated pursuant to under the *Taxi Act 1994*.

If the plate owner has participated in the buyback, the vehicle will still be able to be operated to provide rank or hail service by the vehicle owner, ensuring continuity of taxi services during the transition period.

As the ownership rights of plate owners will cease upon the granting of a buyback payment, as provided for by clause 230(2), former plate owners who participated in the buyback will not be provided with any transitional rights in connection with the commencement of Part 6 of the Bill (unless they also happen to be the owner of the vehicle that was operated pursuant to the plates, or have the consent of that person).

Clause 295(3) makes transitional provision in respect of a plate owner who has not participated in the buyback. Pursuant to clause 295(3), a person who is the eligible owner (buyback) of taxi plates immediately before commencement day for which no grant of a buyback payment has been made under Part 9 Division 1 before commencement day and to whom clause 295(2) does not apply (meaning they are not the owner of the vehicle that was operated pursuant to the plates, or do not have the consent of the vehicle owner), is taken on and from commencement day until the prescribed day to be the holder of an on-demand rank or hail vehicle authorisation for a “nominated vehicle”.

Clause 295(4) provides that a nominated vehicle is a vehicle nominated to the CEO before commencement day by the owner of the taxi plates, that complies with the prescribed requirements. The Department of Transport will communicate with plate owners ahead of the commencement of Part 6 to ensure that they are aware of this transitional arrangement.

These provisions ensure that, from the commencement of Part 6, with the cessation of the regime for operation of taxis pursuant to taxi plates issued under the Taxi Act, plate owners who did not participate in the buyback will have an entitlement to hold an on-demand rank or hail vehicle authorisation in respect of a vehicle. A plate owner who does not nominate a vehicle that complies with the prescribed requirements in will not be transitioned to the new regime – if, at a later date, they wish to be authorised to provide a vehicle use in the provision of on-demand passenger transport services, they will need to apply to the CEO in accordance with Part 6.

Clause 295(5) makes clear that an on-demand rank or hail vehicle authorisation referred to in this clause may be suspended or cancelled under Part 6 Division 4.

Although the person will not have been issued an authorisation by the CEO, they are taken to hold one, meaning that the provisions of Part 6, including the ability of the CEO to suspend or cancel the authorisation, will apply. This is necessary given that the provisions of the Taxi Act that were applicable to the vehicle being operated pursuant to the plates, will no longer apply.

296. Leased taxi plates

Clause 296(1) defines certain terms used in this clause:

commencement day means the day on which Part 6 comes into operation.

This definition is relevant to the time from when the transitional arrangements provided for by this clause will have effect.

lessee has the meaning it has in the *Taxi Act 1994* section 3(1).

This definition is relevant to who is to be taken to hold a passenger transport vehicle authorisation pursuant to this transitional provision.

relevant date means the first of either the prescribed date, or the first anniversary after commencement day of the date for payment of the annual fee for taxi plates under the *Taxi Act 1994* (WA) (Taxi Act) that occurred before commencement day.

This definition is relevant to when the transitional arrangements provided for by this clause will cease to have effect.

Clause 296(2) provides that a person who is the lessee of taxi plates for a taxi under the Taxi Act immediately before commencement day is taken on and from commencement day until the relevant date to be the holder of an on-demand rank or hail vehicle authorisation for a 'nominated vehicle' (as per subclause (3)). The person taken to be the holder of the authorisation will be subject to any conditions imposed on the authorisation pursuant to clause 129 of the Bill.

Clause 292 defines an 'on-demand rank or hail vehicle authorisation' as a passenger transport vehicle authorisation that authorises the operation of the vehicle for use in providing an on-demand rank or hail passenger transport service. 'Rank or hail service' is defined in clause 4(1) to mean an on-demand passenger transport service under which a person can hail or hire an on-demand vehicle while it is standing or plying or touting for hire on a road or in another place accessible to the public – this is the only type of passenger transport service that is authorised to operate as a taxi under the Bill.

Clause 296(3) provides that for the purposes of clause 296(2), a 'nominated vehicle' is:

- the taxi referred to in clause 296(2) – being the taxi operated pursuant to lease plates immediately before the commencement of Part 6; or
- a vehicle nominated to the CEO by the lessee of the taxi plates that complies with the requirements of the regulations – regulations will require a nominated vehicle to meet the prescribed requirements for vehicles that are to be authorised for the

category of on-demand rank or hail passenger transport service. If the lessee is not the owner of the nominated vehicle, they will also be required to obtain authorisation from the owner of that vehicle. (Under the Taxi Act, plates can only be leased to a person where the person - or in the case of a partnership, one member of the partnership - is the owner (and principal driver) of the vehicle operated as a taxi using the plates. Accordingly, if a vehicle other than the vehicle that was operated pursuant to the lease plates is nominated to the CEO, it is possible that another person may be the owner, and their authorisation will therefore be required.)

Clauses 296(2) and (3) will ensure that a vehicle that is equipped to, and has been operating as a taxi pursuant to leased plates up to and immediately before the commencement of Part 6 of this Bill (which provides for the operation and authorisation of passenger transport vehicles) can continue to do so for the transitional period, prior to the person leasing the plates having applied for and being granted an authorisation pursuant to Part 6. The person who is taken to hold the vehicle authorisation will also be able to nominate a replacement vehicle during the transition period if required – for example, this may be necessary in connection with a vehicle upgrade.

The transitional period will end on the ‘relevant date’ being the first of either the prescribed date, or the first anniversary after commencement day of the date for payment of the annual fee for taxi plates under the Taxi Act that occurred before commencement day.

Under section 19(1) of the Taxi Act, a prescribed annual fee is payable by plate holders in respect of taxi plates. It is intended that the transitional period provided for by this clause will operate for up to 12 months.

Clause 296(4) makes clear that an on-demand rank or hail vehicle authorisation referred to in this clause may be suspended or cancelled under Part 6 Division 4. Although the person will not have been issued an authorisation by the CEO, they are taken to hold one, meaning that the provisions of Part 6, including the ability of the CEO to suspend or cancel the authorisation, will apply. This is necessary given that the provisions of the Taxi Act that were applicable to the vehicle being operated pursuant to the plates, will no longer apply.

297. Licensed taxi-cars

Clause 297(1) defines the term ‘commencement day’ to mean the day on which Part 6 comes into operation.

This definition is relevant to the time from when the transitional arrangements provided for by this clause will have effect.

Clause 297(2) provides that, subject to clause 297(3), a person who is the holder of a taxi-car licence under Part IIIB of the *Transport Co-ordination Act 1966* (TCA) immediately before commencement day is taken on and from commencement day to be the holder of an on-demand rank or hail vehicle authorisation for the vehicle for the remainder of the term for which the licence was issued.

Clause 292 defines an ‘on-demand rank or hail vehicle authorisation’ as a passenger transport vehicle authorisation that authorises the operation of the vehicle for use in providing an on-demand rank or hail passenger transport service. ‘Rank or hail service’ is defined in clause 4(1) to mean an on-demand passenger transport service under which a person can hail or hire an on-demand vehicle while it is standing or plying or touting for hire on a road or in another place accessible to the public – this is the only type of passenger transport service that is authorised to operate as a taxi under the Bill.

Country taxi-car licences are valid for one year, and are subject to annual renewal. This means that holders of country taxi-car licences will have to apply for and obtain a passenger transport vehicle at different times, depending on the date on which their licence would have been due for renewal under the TCA. Some licensees will need to apply soon after the commencement of Part 6, and others may have almost a full 12 months before they will be required to transition. The Department of Transport will communicate with existing licensees in advance of the transition date to ensure they are aware of when they need to have obtained a passenger transport vehicle authorisation.

Under the TCA, the Minister may suspend a country taxi-car licence in certain circumstances. Clause 297(3) deals with the status of a country taxi-car licence that was suspended at the time of the commencement of this clause. It provides that during the transitional period, the licensee is not taken to hold an on-demand rank or hail vehicle authorisation for the remaining period for which the licence was suspended, or if the remainder of the term for which the licence was issued expires during the period of suspension. When the remainder of the term for which a licence was suspended under the TCA ends, if the term of licence would not have yet expired, then from that time until the remainder of the term for which the licence was issued, the person who was the licensee will be taken to hold an on-demand rank or hail vehicle authorisation.

Clause 297(4) provides that an on-demand rank or hail passenger transport vehicle authorisation provided for pursuant to clause 297(2) may be suspended or cancelled under Part 6 Division 4. Although the person will not have been issued an authorisation by the CEO, they are taken to hold one, meaning that the provisions of Part 6, including the ability of the CEO to suspend or cancel the authorisation, will apply. This is necessary given that the provisions of the *Transport Co-ordination Act 1966* that were applicable to the vehicle being operated pursuant to the licence, will no longer apply.

298. Licensed omnibuses

Clause 298(1) defines the term ‘commencement day’ to mean the day on which Part 6 comes into operation.

This definition is relevant to the time from when the transitional arrangements provided for by this clause will have effect.

Through the use of licence conditions, two categories of omnibus licence have been issued under the *Transport Co-ordination Act 1966 (WA)* (TCA) – charter, and regular passenger transport omnibus licences.

Charter licences apply to services that are essentially on-demand in nature, but do not authorise use of the vehicle to stand or ply for hire, or operate on a rank or hail basis in the manner of a taxi, or to provide a regular passenger transport (RPT) service. Charter omnibus licences are also used in the provision of services that would fall within the meaning of tourism passenger transport services in clause 7 of this Bill. Under this Bill, most charter services will be regulated as on-demand charter passenger transport services, except where they are not on-demand in nature and fall within the meaning of a tourism passenger transport service, in which case they will be regulated as a tourism service. (Clause 4(1) defines such a service as an on-demand passenger transport service that does not include a rank or hail service. On-demand passenger service is defined in clause 5. Tourism passenger transport service is defined in clause 7.)

RPT omnibus licences issued under the TCA authorise the use of the vehicle to provide RPT services, which are services that operate according to regular routes and timetables, with predefined stopping places for the picking up and setting down of passengers. These kinds of services are generally available on a non-exclusive basis to members of the public. RPT omnibus licences also authorise use of the vehicle to provide charter services, as well as services that would fall within the meaning of tourism passenger transport services in clause 7 of this Bill. Under this Bill, RPT services will continue to be regulated as RPT services except where they also fall within the meaning of an on-demand passenger transport service or tourism passenger transport service, in which case they will be regulated accordingly. (Clause 6 defines an RPT service. On-demand passenger service is defined in clause 5. Tourism passenger transport service is defined in clause 7.)

Clauses 298(2) and (3) provide for the transition of holders of omnibuses licences under the TCA to the new passenger transport vehicle authorisation required by Part 6. The passenger transport vehicle authorisation provided for as part of this transitional arrangement will authorise each licensed vehicle to continue to be used to provide the kind of passenger transport service – charter and/or RPT – that it was authorised to provide under the TCA.

These clauses only provide for transition to the passenger transport vehicle authorisation - the booking service provider in respect of the on-demand charter passenger transport services that a transitioned vehicle is used to provide, and regular passenger transport service provider in respect of the regular passenger transport services that a transitioned vehicle is used to provide, will still need to be authorised pursuant to Parts 3 and 4 of the Bill.

Clause 298(2) applies to a person who is the holder of a licence under Part III Division 2 of the TCA for an omnibus immediately before commencement day that prohibits the use of the vehicle to provide a regular passenger transport service. It provides that the person is taken on and from commencement day to hold a passenger transport vehicle authorisation that authorises the operation of a vehicle to provide an on-demand charter passenger transport service or a tourism passenger transport service for the remainder of the term for which the licence was issued.

Clause 298(3) applies to a person who is the holder of a licence under Part III Division 2 of the TCA for an omnibus immediately before commencement day that does not prohibit the use of the vehicle to provide a regular passenger transport service. The person is taken on and from commencement day to be the holder of a passenger transport vehicle authorisation that authorises the operation of a vehicle to provide a regular passenger transport service, an on-demand charter passenger vehicle service or a tourism passenger transport service for the remaining term of the licence.

The Department of Transport will communicate with existing licensees in advance of the transition date to ensure they are aware of when they need to have obtained a passenger transport vehicle authorisation.

Under the TCA, the Minister may suspend an omnibus licence in certain circumstances. Clause 298(4) deals with the status of an omnibus licence that was suspended at the time of the commencement of this clause. It provides that during the transitional period, the licensee is not taken to hold a passenger transport vehicle authorisation pursuant to clause 298(2) or (3) for the remaining period for which the licence was suspended, or if the remainder of the term for which the licence was issued expires during the period of suspension. When remainder of the term for which a licence was suspended under the TCA ends, if the term of licence would not have yet expired, then from that time until the remainder of the term for which the licence was issued, the person who was the licensee will be taken to hold the relevant kind of passenger transport vehicle authorisation provided for in clauses 298(2) or (3).

Clause 298(5) provides that a passenger transport vehicle authorisation provided for pursuant to this clause may be suspended or cancelled under Part 6 Division 4. Although the person will not have been issued an authorisation by the CEO, they are taken to hold one, meaning that the provisions of Part 6, including the ability of the CEO to suspend or cancel the authorisation, will apply. This is necessary given that the provisions of the TCA that were applicable to the vehicle being operated pursuant to the licence, will no longer apply.

299. Taxi Industry Development Account

Clause 299 provides that on day of the repeal of the *Taxi Act 1994 (WA)* (Taxi Act), as provided for by clause 303, the Taxi Industry Development Account established under the Taxi Act is abolished and all money standing to the credit of that Account is to be credited to the Consolidated Account.

As the Taxi Act is to be repealed pursuant to clause 303, this clause is necessary to abolish the account and make clear how the monies credited to the Account are to be dealt with.

300. Bond provisions continue to apply

Section 36 of the *Taxi Act 1994 (WA)* (Taxi Act) provides for the regulation of monies paid or payable by a driver to a taxi operator under that Act, as security for payment of any amount which is, or may become payable by the driver to the operator – these are referred to as bonds.

Where a taxi operator requires a driver to pay a bond, section 36 sets out how the operator is to receipt and manage the bond and how the bond may be applied and or returned.

Clause 303 of this Bill will repeal the Taxi Act. That clause is intended to commence at the same time as Part 6 of the Bill, which provides for the operation and authorisation of passenger transport vehicles.

It is no longer intended to provide for Government regulation of such bonds. These are considered private matters that can be managed pursuant to agreements between the relevant parties. However, given existing bonds were likely entered into with the provisions of section 36 of the Taxi Act in mind, this clause provides that from the date of, and despite, the repeal of the Taxi Act pursuant to clause 303, section 36 of the Taxi Act and the regulations applying to that section will continue to apply in relation to any bond paid to a taxi operator under that section before commencement day.

The relevant provisions of the Taxi Act will continue to apply to any such bond until the bond, or the relevant amount of bond, and interest are paid to the driver in accordance with section 36(8) of the Taxi Act. Section 36(8) requires a taxi operator to return any amount of bond that has not been applied in accordance with the section, to the driver together with interest, within 14 days of the driver ceasing to be contracted, engaged or employed to drive a taxi operated by the operator.

301. Transitional regulations

Clause 301 specifies that the regulations may contain provisions that are necessary or convenient for dealing with matters concerning the transition from the provisions of any existing written laws applying before the commencement of specified provisions of this Bill and associated regulations made under this Bill, applying after the commencement of those provisions.

Transition from one set of laws to another can be complex. This regulation making power will ensure that regulations can be made to address any unforeseen issues associated with the transition to the provisions of the Bill. Similar provision is commonly made in other statutes in Western Australia that address the introduction of a new or amended legislative framework for the regulation of a matter.

PART 14 — REPEALS AND CONSEQUENTIAL AMENDMENTS

Division 1 — Repeals

302. *Taxi Act 1994* Part 3 Division 2 deleted

The *Taxi Act 1994* (WA) (Taxi Act) regulates the operation of vehicles as taxis within the control area to which the Act applies.

Part 3 Division 2 provides for the registration of Taxi Dispatch Services under that Act. Clause 302 provides for the deletion of the registration requirement for Taxi Dispatch Services. Clauses 330 to 333 of the Bill make provision for related amendments to various provisions of the Taxi Act as a result of the deletion of Part 3, Division 2.

It is intended to commence provisions of the Bill relevant to the authorisation of on-demand booking services prior to the commencement of the provisions of Parts 4, 5 and 6 relating to regular passenger transport, driver and vehicle authorisations.

Clause 302, along with clauses 330 to 333, is intended to commence operation at the same time as the provisions of Part 3 of this Bill, which provide for the authorisation of on-demand booking services. As taxi dispatch services will be captured by the definition of on-demand booking service provider, registration as a TDS will no longer be necessary.

As the remaining provisions of the Taxi Act will need to remain in force until the commencement of Part 6 of the Bill, which is to occur at a later date, separate provision is made for the deletion of Part 3 Division 2.

303. *Taxi Act 1994* repealed

The *Taxi Act 1994* regulates the operation of vehicles as taxis within the control area to which the Act applies.

This clause will repeal the *Taxi Act 1994*. This is intended to commence at the same time as Part 6 of the Bill, which provides for the operation and authorisation of passenger transport vehicles.

304. *Taxi Drivers Licensing Act 2014* repealed

The *Taxi Drivers Licensing Act 2014* was intended to establish a dedicated occupational licensing law for taxi drivers. Although the Act received Royal Assent it was not proclaimed to commence due to the rapid change in the industry at the time.

This clause will repeal the *Taxi Drivers Licensing Act 2014*. Taxi drivers will be regulated under this Bill as passenger transport vehicle drivers pursuant to Part 5.

Division 2 — Consequential amendments

Subdivision 1 — *Constitution Acts Amendment Act 1899* amended

305. Act amended

This clause provides that the *Constitution Acts Amendment Act 1899* is amended. That Act establishes the structure of the State Government, Parliament, and the Judiciary, including statutory and judicial offices.

306. Schedule V Part 3 amended

Schedule V of the *Constitution Acts Amendment Act 1899* sets out the offices and bodies to which Part I Division 3 of that Act applies. Part I Division 3 regulates who may be a member of the Legislative Council or the Legislative Assembly – a person's role in relation to an office or body set out in Part I Division 3 is relevant for that purpose.

This clause deletes the reference to the Taxi Industry Board from Schedule V. The Taxi Industry Board is established under the *Taxi Act 1994*, which is to be repealed pursuant to clause 303.

Subdivision 2 — *Criminal Code Act Compilation Act 1913* amended

307. Act amended

This clause provides that subdivision 2 amends *The Criminal Code*.

308. Section 297 amended

Section 297 of *The Criminal Code*, creates the offence of causing grievous bodily harm, the maximum penalty applicable is imprisonment for 10 years. Section 297(4) provides that if the offence is committed against certain specified persons, who are performing functions or providing services that are public in nature the offender is liable to imprisonment for 14 years.

The increased penalty currently applies where the offence is committed in respect of, among other specified persons, the driver or person operating or in charge of 'a taxi, as defined in section 3(1) of the *Taxi Act 1994* or an omnibus as defined in section 4(1) of the *Transport Co-ordination Act 1966*'. The persons covered by this provision include all metropolitan taxi drivers and all drivers of vehicles used to carry passengers for hire or reward but excludes country taxi drivers as the definition of omnibus excludes taxis in country districts.

This clause will amend section 297(4)(c)(iii) to instead refer to the driver or person operating or in charge of 'a passenger transport vehicle as defined in the *Transport (Road Passenger Services) Act 2018* section 4(1).' This will include all drivers or persons operating or in charge of passenger transport vehicles, including vehicles authorised to provide an on-demand rank or hail service irrespective of where the vehicle is operating in the State.

Clause 4(1) of the Bill defines 'passenger transport vehicle' to mean a vehicle used or intended be used in providing a passenger transport service.

'Passenger transport service' is defined in clause 4(1) to mean:

- (a) an on-demand passenger transport service; or
- (b) a regular passenger transport service; or
- (c) a tourism passenger transport service; or
- (d) a prescribed passenger transport service.

309. Section 318 amended

Section 318 of *The Criminal Code*, creates offences for assaulting certain specified persons who are performing functions or providing services that are public in nature. These assaults are considered to be serious assaults, and accordingly, an offender is liable to more serious penalties than for a common assault (maximum penalty of imprisonment for 10 years if armed or in company or 7 years otherwise). The section currently applies where the offence is committed in respect of, among other specified persons, the driver or person operating or in charge of 'a taxi, as defined in section 3(1) of the *Taxi Act 1994* or an omnibus as defined in section 4(1) of the *Transport Co-ordination Act 1966*'. The persons covered by this provision include all metropolitan

taxi drivers and all drivers of vehicles used to carry passengers for hire or reward but excludes country taxi drivers as the definition of omnibus excludes taxis in country districts.

This clause will amend section 318(1)(g)(iii) to instead refer to the driver or person operating or in charge of 'a passenger transport vehicle as defined in the *Transport (Road Passenger Services) Act 2018* section 4(1).' This will include all drivers or persons operating or in charge of passenger transport vehicles, including vehicles authorised to provide an on-demand rank or hail service irrespective of where the vehicle is operating in the State.

Clause 4(1) of the Bill defines 'passenger transport vehicle' to mean a vehicle used or intended be used in providing a passenger transport service.

'Passenger transport service' is defined in clause 4(1) to mean:

- (a) an on-demand passenger transport service; or
- (b) a regular passenger transport service; or
- (c) a tourism passenger transport service; or
- (d) a prescribed passenger transport service.

Subdivision 3 — *Road Traffic Act 1974* amended

310. Act amended

This clause provides that this Subdivision amends the *Road Traffic Act 1974*.

The *Road Traffic Act 1974* regulates the behaviour of drivers on roads, providing offences and some enforcement powers for police.

Some provisions in that Act make specific provision in respect of persons who drive or operate taxis, country taxi-cars and omnibuses, or who are driving a vehicle to carry passengers for hire or reward.

311. Section 64A amended

Section 64A of the *Road Traffic Act 1974* (WA) (RTA) creates an offence for certain persons driving with a blood alcohol content of or above 0.02. Subsection 64A(5) provides that this is an offence for persons driving the following kinds of motor vehicles, if, at the relevant time, the vehicle is carrying passengers:

- a vehicle that is equipped to seat more than 12 adult persons, whether or not the passengers are being carried for hire or reward for hire and reward (64A(5)(a));
- an omnibus as defined in the *Transport Co-ordination Act 1966* if the passengers are being carried for hire or reward (64A(5)(b)); and
- a vehicle on which taxi plates issued under the *Taxi Act 1994* are being used, or in respect of which a taxi-car licence has been issued under the *Transport Co-ordination Act 1966* if the passengers are being carried for hire or reward (64A(5)(c)).

Section 64AAA(2) further provides that any of these persons commit an offence for driving with any blood alcohol content.

Clauses 303, 341 and 342 of this Bill will repeal the *Taxi Act 1994*, and the Parts of the *Transport Co-ordination Act 1966* applicable to omnibuses and country taxi cars, respectively.

Part 5 of this Bill will regulate the driving of vehicles for hire or reward. Clause 11 of the Bill makes clear certain circumstances in which the transport of passengers under this Bill will or will not be considered to be for hire or reward.

In order to ensure that persons who drive vehicles that are being used to transport passengers for hire or reward are subject to the zero blood alcohol restriction in the RTA, this clause will amend section 64A(5) of that Act. Existing paragraphs (b) and (c), which apply to taxis, licensed country taxi-cars and vehicles within the meaning of 'omnibus', will be replaced with new paragraph (c) which will apply the requirement to persons driving a motor vehicle, that is transporting passengers for hire or reward as defined in clause 11 of this Bill, with the exception of clause 11(2). Clause 311(a) will also amend paragraph 64A(5)(a), to make clear that the reference to hire or reward in that paragraph also has the meaning in clause 11 of this Bill, with the exception of clause 11(2).

Clause 11(2) provides that the circumstances in which a person will be considered to be driving a vehicle for the purpose of transporting passengers for hire or reward, include when it is being used to stand, ply or tout for hire for that purpose. It has been excluded in order to maintain the current effect of the RTA, under which the zero blood alcohol limit only applies to drivers who are currently subject to 64A(5)(a), (b) and (c), while the vehicle is carrying passengers.

312. Section 79D amended

Part V Division 4 of the *Road Traffic Act 1974* (WA) (RTA) deals with the impounding and confiscation of vehicles for certain offences. Section 79D of the RTA makes provision for the release of an impounded vehicle in certain circumstances. Pursuant to 79D(2)(h) and (i), this includes where:

- the impounded vehicle is a taxi that is operated pursuant to plates under the *Taxi Act 1994* or pursuant to a country taxi-car licence under the *Transport Co-ordination Act 1966* (TCA), or is a licensed omnibus under the TCA; and
- the person who allegedly committed the impounding offence was driving the vehicle:
 - in the case of a taxi – pursuant to an agreement with the taxi operator under which the driver pays the operator in order to drive the vehicle for reward (section (79(2)(h) refers); or
 - in the case of an omnibus, in their capacity as an employee or contractor of the licensee and with the consent of the licensee (section 79(2)(i) refers).

Clause 312(1) and (2)

Clause 312(1) will delete the existing definitions of *taxi* and *taxi operator* in section 79D(1), and clause 312(2) will replace them with the following definitions:

- ***passenger transport vehicle*** means a passenger transport vehicle for which a passenger transport vehicle authorisation has been issued under the *Transport (Road Passenger Services) Act 2018* whether or not, at the relevant time, the vehicle is standing or plying for hire or transporting passengers for reward. [Part 6 of the Bill provides for the authorisation of passenger transport vehicles. In the Bill passenger transport vehicle means ‘a vehicle used or intended to be used in providing a passenger transport service’];
- ***provider of a passenger transport vehicle*** has the meaning given in the *Transport (Road Passenger Services) Act 2018* section 4(1). (Clause 4(1) of the Bill defines this to mean ‘a person who carries on the business of providing one or more vehicles for use in providing a passenger transport service but does not include a person in a prescribed class of person’).

Clause 312(3)

Clause 312(3) deletes existing sections 79D(2)(h) and (i) and replaces them with new 79D(2)(h)(i) as part of the transition to this Bill. The new sections provide for the release of an impounded “passenger transport vehicle” where the person who allegedly committed the offence was driving the vehicle:

- pursuant to an agreement with the provider of the vehicle under which the driver pays the provider in order to drive the vehicle for reward (proposed new 79D(2)(h)); or
- in their capacity as an employee or contractor of the provider of the passenger transport vehicle (proposed new 79(2)(i)).

It is not just taxi services in which the driver may enter into an agreement with the vehicle operator or provider under which the driver pays the provider in order to drive the vehicle for reward. As such, the amendments will facilitate the early release of an impounded vehicle in circumstances where a person other than the responsible person for the vehicle committed the alleged offence while the vehicle was in that other person’s custody pursuant to a commercial or trade-related arrangement, regardless of the category of passenger transport vehicle authorisation that the vehicle used in connection with the alleged offence may be subject to.

Clause 312(4) and (5)

Clause 312(4) will remove the reference to 79D(2)(i) in section 79D(4), and clause 312(5) will delete existing section 79D(5). Those provisions currently require the relevant taxi operator or person who consented to the employee or contractor driving the vehicle to ensure that the driver has a driver’s licence that authorises them to drive the vehicle, and that the driver has been instructed to obey the law when driving the vehicle.

Clause 312(5) will insert new subsections 79D(5) and (5A), which will impose the same requirements, in connection with the new 79D(2)(h) and (i), on the provider of a passenger transport vehicle (or agent) who enters into an agreement with a driver of a passenger transport vehicle, or who consents to an employee or contractor driving the passenger transport vehicle.

Subdivision 4 — *Road Traffic (Administration) Act 2008* amended

313. Act amended

Clause 313 provides that this subdivision amends the *Road Traffic (Administration) Act 2008* (RTAA).

The RTAA provides for the administration and enforcement of the *Road Traffic Act 1974*, the *Road Traffic (Authorisation to Drive) Act 2008* and the *Road Traffic (Vehicles) Act 2012* and for other matters relating to road traffic.

These amendments are necessary as a consequence of some provisions of this Bill.

314. Section 12 amended

Section 12 of the *Road Traffic (Administration) Act 2008* (RTAA) provides for the exchange of information between the CEO for the RTAA (road traffic CEO) and the Commissioner of Police (the Commissioner). Section 12(4) sets out information that the Commissioner is required to disclose to the road traffic CEO – this includes offence information about a person who has applied for an authorisation such as a driver's licence or a vehicle licence. In section 12(1), 'offence information' is defined to include details the instances in which a person has paid a penalty under an infringement notice.

Subsection 12(5) of the RTAA provides that the information disclosed under section 12(4) may be used in the performance of the CEO's functions under a road law or the *Motor Vehicle Drivers Instructors Act 1963* but not for any other purpose.

Clause 314 will amend section 12(5) to provide that the road traffic CEO may also use information disclosed by the Commissioner of Police pursuant to section 12(4) in the performance of the road traffic CEO's functions under Part 7 of this Bill. Clause 158 of Part 7 of this Bill requires the road traffic CEO to disclose certain information to the CEO for the purposes of this Bill, including traffic infringement notice information obtained by the road traffic CEO from the Commissioner of Police under a road law.

This amendment will ensure that traffic infringement notice information can be shared as intended by clause 158.

315. Section 14 amended

Section 14 of the *Road Traffic (Administration) Act 2008* (RTAA) provides for the disclosure of specified information gathered pursuant to that Act, and the related road laws that it operates in connection, for an authorised purpose.

Section 14(3) makes it an offence for persons to whom that information is disclosed, to use the information for a purpose other than the authorised purpose for which it was

disclosed. The penalty for this offence is a fine of 100 PU (penalty units) or imprisonment for 12 months.

Clause 315 will amend section 14(3) to increase the pecuniary penalty from 100PU to 240PU. Pursuant to section 7(b) of the RTAA, a penalty unit is currently set at \$50.00 per unit, meaning the maximum pecuniary will be increased from \$5,000 to \$12,000, which is commensurate with the penalty to be imposed by clause 151(1) of the Bill in respect of a breach of the confidentiality requirements in that clause.

An increase in the pecuniary penalty connected with this offence is appropriate given the personal and sensitive nature of some of the information that is subject to the provisions. Consistent penalty provisions in respect of offences applicable to unauthorised use of information in both the RTAA and this Bill is also appropriate given that, to an extent, they apply to the same kinds of information.

Clauses 316 and 318 will make corresponding changes to sections 15 and 143A of the RTAA, which contain similar offences in relation to unlawful disclosure of information in connection with the road laws.

316. Section 15 amended

Section 15 of the *Road Traffic (Administration) Act 2008* (RTAA) provides for the disclosure of specified information gathered pursuant to that Act, and the related road laws that it operates in connection, for road safety purposes.

Section 15(3) makes it an offence for persons to whom that information is disclosed, to use the information for a purpose other than the road safety purpose for which it was disclosed. The penalty for this offence is a fine of 100 PU (penalty units) or imprisonment for 12 months.

Clause 316 will amend section 15(3) to increase the pecuniary penalty from 100PU to 240PU. Pursuant to section 7(b) of the RTAA, a penalty unit is currently set at \$50.00 per unit, meaning the maximum pecuniary will be increased from \$5,000 to \$12,000, which is commensurate with the penalty to be imposed by clause 151(1) of the Bill in respect of a breach of the confidentiality requirements in that clause.

An increase in the pecuniary penalty connected with this offence is appropriate given the personal and sensitive nature of some of the information that is subject to the provisions. Consistent penalty provisions in respect of offences applicable to unauthorised use of information in both the RTAA and this Bill is also appropriate given that, to an extent, they apply to the same kinds of information.

Clauses 315 and 318 will make corresponding changes to sections 14 and 143A of the RTAA, which contain similar offences in relation to unlawful disclosure of information in connection with the road laws.

317. Section 110 amended

Section 110 of the *Road Traffic (Administration) Act 2008* (RTAA) provides for certificates stating certain matters, to be evidence of the facts stated in the certificate.

Section 110(1) provides that for the purposes of a prosecution for an offence under a road law (amongst other purposes), the CEO or a person authorised by the CEO may issue a certificate stating that a fact specified in the certificate appears in or is derived from the driver's licence register or another record kept by the CEO or the Commissioner for Main Roads under a road law.

Clause 314 will amend section 110 by inserting new section 110(1A), which will provide that in section 110(1), the term 'road law' includes the *Transport (Road Passenger Services) Act 2018*. This will ensure that a certificate of evidence produced pursuant to section 110(1) of the RTAA can be used for the purposes of a prosecution for an offence under this Bill.

318. Section 143A amended

Section 143A(1) of the *Road Traffic (Administration) Act 2008* (RTAA) provides that a person who is or has been engaged in the performance of functions under a road law must not, directly or indirectly, record, disclose or make use of information obtained under a road law except in specified circumstances. The penalty for an offence under this subsection is a fine of 100PU or imprisonment for 12 months.

Clause 318 will amend section 143A(1) to increase the pecuniary penalty from 100PU to 240PU. Pursuant to section 7(b) of the RTAA, a penalty unit is currently set at \$50.00 per unit, meaning the maximum pecuniary will be increased from \$5,000 to \$12,000, which is commensurate with the penalty imposed by clause 151(1) of the Bill in respect of a breach of the confidentiality requirements in that clause.

An increase in the pecuniary penalty connected with this offence is appropriate given the personal and sensitive nature of some of the information that is subject to the provisions. Consistent penalty provisions in respect of offences applicable to unauthorised use of information in both the RTAA and this Bill is also appropriate given that, to an extent, they apply to the same kinds of information.

Clauses 315 and 316 will make corresponding changes to sections 14 and 15 of the RTAA, which contain similar offences in relation to unlawful disclosure of information in connection with the road laws.

Subdivision 5 — *Road Traffic (Authorisation to Drive) Act 2008* amended

319. Act amended

Clause 319 provides that this subdivision amends the *Road Traffic (Authorisation to Drive) Act 2008* (WA) (RTADA).

The RTADA makes provision for the regulation of driver licensing.

320. Section 9 amended

Section 9 of the *Road Traffic (Authorisation to Drive) Act 2008* (WA) (RTADA) empowers the CEO (RTATD CEO) to require the provision of photographs for use in the production of driver licence documents.

Clause 320 is necessary because of clauses 102, 156 and 322 of this Bill.

If the CEO grants an application for a passenger transport driver authorisation, clause 102 requires the CEO to issue a driver authorisation document to the passenger transport driver. Clause 102(2)(a) empowers the CEO to determine the form of the document, including its size and content, however it must identify the driver and specify the authorisation number. This document could take the form of a paper or electronic document, or a plasticised card, similar to a driver's licence document.

Clause 156 will authorise the CEO to use a photograph, previously provided by a licensee to the RTATD CEO for use in the production of a driver's licence document, in the production of a passenger transport driver authorisation or other identification document for a person required under this Act. Other identification that might be required under this Act includes an identity document for a person who has been approved to access financial subsidies for passenger transport, under regulations that may be made pursuant to clause 280. An identity card may be used to assist driver's and booking service providers to verify that the person seeking to access a subsidised fare is the person who has been approved to receive a subsidy by the CEO. An identity document for such a person would likely be in the form of a plasticised card, similar to a driver's licence document.

To enable this to occur, clause 322 will amend the RTADA by inserting a new section 11E in the RTADA, that will empower the RTATD CEO to disclose those photographs to the CEO to use for purposes of the performance of the functions of the CEO under this Bill.

Photographs are provided to the RTATD CEO in respect driver's licence documents, pursuant to section 9 of the RTADA. Subsection 9(7) includes an offence for a person who reproduces by any means, or causes or permits another person to reproduce, photographs other than for the purpose for which they were provided, the penalty for breaches of which is imprisonment.

This clause will amend section 9 to provide that an offence is not committed under subsection 9(7) if a person reproduces a photograph provided to the RTATD CEO under section 9 for the purposes of Part 7 of this Bill.

321. Section 11B amended

Section 9 of the *Road Traffic (Authorisation to Drive) Act 2008* (WA) (RTADA) empowers the CEO (RTATD CEO) to require the provision of photographs for use in the production of driver licence documents.

This clause is necessary because of clauses 102, 156 and 322 of this Bill.

If the CEO grants an application for a passenger transport driver authorisation, clause 102 requires the CEO to issue a driver authorisation document to the passenger transport driver. Clause 102(2)(a) empowers the CEO to determine the form of the document, including its size and content, however it must identify the driver and specify the authorisation number. This document could take the form of a paper or electronic document, or a plasticised card, similar to a driver's licence document.

Clause 156 will authorise the CEO to use a photograph, previously provided by a licensee to the RTATD CEO for use in the production of a driver's licence document, in the production of a passenger transport driver authorisation or other identification document for a person required under this Act. Other identification that might be required under this Act includes an identity document for a person who has been approved to access financial subsidies for passenger transport, under regulations that may be made pursuant to clause 280. An identity card may be used to assist driver's and booking service providers to verify that the person seeking to access a subsidised fare is the person who has been approved to receive a subsidy by the CEO. An identity document for such a person would likely be in the form of a plasticised card, similar to a driver's licence document.

To enable this to occur, clause 322 will amend the RTADA by inserting a new section 11E in the RTADA that will empower the RTATD CEO to disclose those photographs to the CEO to use for purposes of the performance of the functions of the CEO under this Bill.

This clause will amend section 11B of the RTADA to insert a definition explaining what is meant by the term "CEO (road passenger services)". It will mean the person who is the CEO pursuant to this Bill.

322. Section 11E inserted

Section 9 of the *Road Traffic (Authorisation to Drive) Act 2008* (WA) (RTADA) empowers the CEO (RTATD CEO) to require the provision of photographs for use in the production of driver licence documents.

Clause 322 is necessary because of clauses 102, 156 and 322 of this Bill.

If the CEO grants an application for a passenger transport driver authorisation, clause 102 requires the CEO to issue a driver authorisation document to the passenger transport driver. Clause 102(2)(a) empowers the CEO to determine the form of the document, including its size and content, however it must identify the driver and specify the authorisation number. This document could take the form of a paper or electronic document, or a plasticised card, similar to a driver's licence document.

Clause 156 will authorise the CEO to use a photograph, previously provided by a licensee to the RTATD CEO for use in the production of a driver's licence document, in the production of a passenger transport driver authorisation or other identification document for a person required under this Act. Other identification that might be required under this Act includes an identity document for a person who has been approved to access financial subsidies for passenger transport, under regulations that may be made pursuant to clause 280. An identity card may be used to assist driver's and booking service providers to verify that the person seeking to access a subsidised fare is the person who has been approved to receive a subsidy by the CEO. An identity document for such a person would likely be in the form of a plasticised card, similar to a driver's licence document.

To enable this to occur, this clause will amend the RTADA by inserting a new section 11E in the RTADA that will empower the RTATD CEO to disclose those photographs

to the CEO to use for purposes of the performance of the functions of the CEO under this Bill.

Clause 321 will make a corresponding amendment to section 11B of the RTADA, to insert a definition to that section that explains what is meant by the term “CEO (road passenger services)”. It will mean the person who is the CEO pursuant to this Bill.

Subdivision 6 — *Road Traffic (Vehicles) Act 2012* amended

323. Act amended

Clause 323 provides this Subdivision amends the *Road Traffic (Vehicles) Act 2012* (WA), which provides for the licensing and standards of vehicles and for mass, dimension and loading requirements for vehicles used for transporting goods and passengers by road and for related matters.

324. Section 21 amended

Part 3 of the *Road Traffic (Vehicles) Act 2012* (WA) (RTVA) makes provision for motor vehicles from overseas when temporarily in Australia. Section 21 of that Act provides that the provisions of Part 3 do not affect the operation of certain provisions of the Act dealing with licensing of vehicles, or the *Transport Co-ordination Act 1966*, which also makes provision for licensing of vehicles in certain circumstances.

This Bill will be known as the *Transport (Road Passenger Services) Act 2018* when it is passed by Parliament and receives Royal Assent. Clause 324 provides for reference to the *Transport (Road Passenger Services) Act 2018* to be included in section 21 of the RTVA. This amendment will ensure that the provisions of the Bill will operate in respect of overseas vehicles temporarily in the State, notwithstanding anything in Part 3 of the RTVA.

325. Section 131 amended

Vehicles are required to have different classes of motor injury insurance according to the use that they are put, as the risks associated with the use of the vehicle depend on how it used. Section 131(1) of the *Road Traffic (Vehicles) Act 2012* (WA) (RTVA) provides that for the purposes of any contract of insurance, a motor vehicle is not taken to be used for the carriage of passengers for hire or reward by reason only of such use under a car pooling arrangement. One of the requirements for a vehicle to be authorised as a passenger transport vehicle under Part 6 of this Bill will be that it have a motor injury insurance class applicable to the transport of passengers for hire or reward.

Section 131(2) sets out what is considered to be a ‘car pooling arrangement’ in the section. It aligns with the meaning of ‘motor vehicle pooling arrangement’ in section 4(4) of the *Transport Co-ordination Act 1966* (TCA). Section 4(4) of the TCA defines motor vehicle pooling arrangement for the purpose of providing that use of a vehicle pursuant to such an arrangement is not considered to involve use of the vehicle to carry passengers for hire or reward, thereby excluding the vehicle from the requirement to be licensed as an omnibus under that Act.

From the commencement of Part 6 of this Bill, omnibuses will be regulated as passenger transport vehicles. Similar to existing provision made in the TCA, clause 11(4)(a) of the Bill provides that a person will not be considered to be providing a service for the transport of passengers by vehicle for hire or reward or to be driving a vehicle for the purpose of transporting passengers for hire or reward, if the passengers are transported under a vehicle pooling arrangement. Clause 11(5) sets out when passengers are transported under a vehicle pooling arrangement as follows:

- (a) the motor vehicle is provided by the driver; and
- (b) the driver would be undertaking the relevant journey in any event; and
- (c) the carriage is not the result of plying or touting for hire by the driver or another person; and
- (d) the maximum number of persons in the motor vehicle, including the driver, is 9; and
- (e) a payment by a passenger is limited to making a contribution to the costs incurred in making the journey and does not involve profit for the driver or any other person.

This definition is on similar terms to that currently included in the RTVA and the TCA, with the key changes being that the vehicle must be provided by the driver, and the number of passengers that may be carried at one time as part of the arrangement is 9. There is no cap imposed under existing provisions. If a person is carrying more than the number of people that can be seated in a vehicle such as a mini-van, it is reasonable that this no longer be deemed to be a vehicle pooling arrangement.

Accordingly, this clause will replace the meaning of car pooling arrangement in the RTVA so that it is consistent with the definition in clause 11(5) of this Bill. This will ensure that a vehicle that is treated as one which is used to carry passengers for hire or reward under this Bill, will also be treated in the same way for the purposes of motor injury insurance under the RTVA.

Subdivision 7 — *State Administrative Tribunal Act 2004* amended

326. Act amended

This clause provides that this subdivision amends the *State Administrative Tribunal Act 2004*. Amongst other matters, that Act empowers the State Administrative Tribunal to review certain administrative decisions and to make binding rulings.

Amendments are necessary to that Act as a consequence of the introduction of a new passenger transport regime pursuant to this Bill.

327. Schedule 1 amended

Schedule 1 of the *State Administrative Tribunal Act 2004 (WA)* (SAT Act) lists various Acts for the purpose of making those Acts a relevant Act for the purposes of section 105 of that Act. Under section 105, if the State Administrative Tribunal has reviewed and made a ruling regarding an administrative decision made under a relevant Act,

the applicant for the review may appeal the Tribunal's ruling, if dissatisfied with the ruling, either in the Court of Appeal or the Supreme Court.

Clause 303 of this Bill will repeal the *Taxi Act 1994*. Clause 327(1) will provide for deletion of the existing reference to the *Taxi Act 1994* from Schedule 1 of the SAT Act, which is necessary in connection with the proposed repeal of that Act.

This Bill will be known as the *Transport (Road Passenger Services) Act 2018* when it is passed by Parliament and receives Royal Assent. Clause 327(2) provides for reference to the *Transport (Road Passenger Services) Act 2018* to be included in Schedule 1 of the SAT Act, making it a relevant Act for the purposes of section 105.

Subdivision 8 — *Taxation Administration Act 2003* amended

328. Act amended

Clause 328 provides this subdivision amends the *Taxation Administration Act 2003* (WA) (TAA).

The TAA provides for the administration and enforcement of taxation Acts.

329. Section 3 amended

Section 3 of the *Taxation Administration Act 2003* (WA) (TAA) lists the taxation Acts to which that Act's functions and powers apply.

This Bill will be known as the *Transport (Road Passenger Services) Act 2018* when it is passed by Parliament and receives Royal Assent. Clause 329 will amend section 3 of that Act to insert reference to Part 9 Division 2 of the *Transport (Road Passenger Services) Act 2018*, which deals with the on-demand passenger transport levy, in order to make Part 9 Division 2 a taxation Act.

Clause 243(1) of this Bill provides that the TAA is to be read with Part 9 Division 2 as if they formed a single Act.

Making Part 9 Division 2 of this Bill a taxing Act for the purposes of the TAA will see the on-demand passenger transport levy subject to an established administration regime for State taxing laws. Consistency across taxes and their administration, and a regime that will be familiar to some taxpayers liable to pay the levy, will be beneficial to taxpayers and their advisers, and improve administrative efficiency. This is also important given the short-term nature of the levy and the need to minimise its impact on stakeholders.

Subdivision 9 — *Taxi Act 1994* amended

330. Act amended

Clause 330 provides that this subdivision amends the *Taxi Act 1994* (WA) (Taxi Act).

The Taxi Act regulates the operation of vehicles as taxis within the control area to which the Act applies. Part 3 Division 2 provides for the registration of Taxi Dispatch Services under that Act.

This clause is necessary because of clause 302, which provides for the deletion of the registration requirement for Taxi Dispatch Services from the Taxi Act. Clauses 331 to 333 of the Bill will make related amendments to various sections of the Taxi Act related to the registration of providers of taxi dispatch services, as a result of the deletion of Part 3, Division 2 pursuant to clause 302.

It is intended to commence the provisions of the Bill relevant to the authorisation of on-demand booking services prior to the commencement of the provisions of Part 4, 5 and 6 relating to regular passenger transport, driver and vehicle authorisations.

Clause 302, along with clauses 330 to 333, is intended to commence operation at the same time as the provisions of Part 3 of this Bill, which provides for the authorisation of on-demand booking services. As taxi dispatch services will be captured by the definition of on-demand booking service provider, registration as a TDS will no longer be necessary.

As the remaining provisions of the Taxi Act will need to remain in force until the commencement of Part 6 of the Bill, which is to occur at a later date, separate provision is made by clause 303 for the deletion of Part 3 Division 2.

331. Section 3 amended

This clause is necessary because of clause 302, which provides for the deletion of the registration requirement for Taxi Dispatch Services in Part 3 Division 2 of the *Taxi Act 1994* (WA) (Taxi Act).

Clause 331(1) will delete the definitions of 'registration' and 'taxi dispatch service' in section 3(1) of the Taxi Act.

Clause 331(2) will insert a new definition of taxi dispatch service which is to mean an on-demand booking service as defined in section 10 of this Bill.

Clause 331(3)(a) will remove reference in section 3(3) of the Taxi Act to an application for registration to provide a taxi dispatch service.

Clause 331(3)(b) will amend section 3(3) by inserting new paragraph (ba) which will provide that in this Act, a reference to the provider of a taxi dispatch service is a reference to the provider of an on-demand booking service as defined in this Bill.

The amendments to be made by clauses 331(2) and 331(3)(b) will ensure that during the transitional period from the commencement of Part 3 of the Bill, and the repeal of the Taxi Act (which will not occur until the commencement of Part 6 of the Bill at a later date), an obligation or requirement imposed on a taxi dispatch service in the *Taxi Act 1994* in respect of a taxi, will apply to any on-demand booking services involved or used in the operation of the taxi.

332. Section 33 amended

This clause is necessary because of clause 302, which provides for the deletion of the registration requirement for Taxi Dispatch Services in Part 3 Division 2 of the *Taxi Act 1994* (WA) (Taxi Act).

Clause 332 will delete the evidentiary provision in section 33(c) of the Taxi Act which provides that in any prosecution for an offence under that Act, an averment in the charge that a person is, or was, registered as the provider of a taxi dispatch service shall, in the absence of proof to the contrary, be taken as proved.

333. Section 37 amended

Clause 333 will amend section 37(1) of the *Taxi Act 1994* to delete various references to applications for and registration of taxi dispatch services.

These amendments correspond with the amendment to be made by clause 302, which will remove the registration requirement for Taxi Dispatch Services with the deletion of Part 3 Division 2 of the *Taxi Act 1994*.

Subdivision 10 — *Transport Co-ordination Act 1966* amended

334. Act amended

Clause 334 provides that this Subdivision amends the *Transport Co-ordination Act 1966* (WA) (TCA).

Division 2 of the TCA makes provision for the regulation of omnibuses. Part IIIB of the TCA also regulates use of country taxi-cars to carry passengers for reward outside of the Perth metropolitan taxi control area. These kinds of vehicles are now to be regulated as passenger transport vehicle's under this Bill.

335. Section 4 amended

Clause 335 amends section 4 of the *Transport Co-ordination Act 1966* (TCA) to delete the definition of *omnibus*. An omnibus is motor vehicle used or intended to be used as a passenger vehicle to carry passengers for hire or reward, but does not include vehicles operating as taxis under the *Taxi Act 1994* (Taxi Act) or taxi-cars under Part IIIB of the TCA.

Omnibuses will be regulated as passenger transport vehicles pursuant to this Bill. Passenger transport vehicles will be able to be authorised for one or more specific categories of passenger transport service, and may be used in the provision of any category for which the vehicle is authorised, anywhere in the State.

Clause 335 also provides for the deletion of sections 4(3) and (4), which operate in connection with the meaning of omnibus. These subsections provide that the use of a vehicle pursuant to a motor vehicle pooling arrangement is not considered to involve use of the vehicle to carry passengers for hire or reward - thereby ensuring such vehicles are not required to be licensed as an omnibus under the TCA by virtue of their use for that purpose. Similar provision is made in clause 11 of this Bill which makes provision as to when the transport of passengers is considered to be for hire or reward.

336. Section 15D inserted

Clause 336 inserts section 15D to the *Transport Co-ordination Act 1966*. This insertion replicates provisions in the existing section 27 of the Act, which is to be deleted by clause 341.

Section 27 currently permits the Minister to appoint stopping places and erect signage and shelters for any kind of omnibus. The rationale of this section is that for purposes of public safety, it is appropriate to permit passenger transport vehicles to stop at specified places where it has been deemed safe to do so.

The new section 15D will ensure the Minister retains these existing powers in respect to passenger transport vehicles.

337. Section 17 amended

Clause 337 amends section 17 of the *Transport Co-ordination Act 1966* (TCA).

Section 16 of the TCA enables the Minister to enter into negotiations or invite tenders, or both, for the provision of transport services. Section 17 addresses the conditions which the Minister may attach to tenders called pursuant to section 16.

This Bill will be known as the *Transport (Road Passenger Services) Act 2018* when it is passed by Parliament and receives Royal Assent.

The amendment to section 17 would insert 17(2A), to ensure that the Minister may impose conditions, restrictions and prohibitions on a regular passenger transport service provider authorisation granted to a tenderer under the *Transport (Road Passenger Services) Act 2018* Part 4 Division 2, in addition to any other conditions that may be imposed under that Division. This is in recognition of the fact that, with the regulation of omnibus and country taxi-car licensees moving to this Bill, a tenderer for the provision of transport services may be a person who is authorised to operate under this Bill rather than a licensee under the TCA.

Section 17(3) provides that where a tenderer who has been granted a licence subject to any conditions, restrictions or prohibitions including the execution of a bond, fails to meet such requirements, then, without prejudice to the right or power of the Minister under the TCA to cancel the licence granted to the tenderer, the Minister may take any proceedings at law or in equity in any court of competent jurisdiction to enforce payment under the bond against all or any of the persons thereby bound.

Clause 337(2) will make corresponding amendments to section 17(3) so that in addition to licences, it refers to authorisations, consistent with the terminology used in this Bill, and make clear that the Minister's ability to take proceedings to enforce payment under a bond is without prejudice to the right or power of the Minister under the TCA or this Bill, to cancel the licence or authorisation in question.

338. Section 19 amended

This clause amends section 19 of the *Transport Co-ordination Act 1966* (TCA). Section 19 is a component of Part III, Division 1 - General provisions relating to licensing of public vehicles.

Specifically, section 19 provides for the application of Part III, which applies the Part to every vehicle operated by any person, including by the Crown.

This clause inserts a new subsection 19(1A), excluding passenger transport vehicles from the licencing provisions of the TCA: 'This Part does not apply to a passenger

transport vehicle as defined in the *Transport (Road Passenger Services) Act 2018* section 4(1)'. This will ensure that a vehicle that is authorised under this Bill does not also need to be licensed under the TCA.

339. Section 20 amended

This clause amends section 20(2) of the *Transport Co-ordination Act 1966* (TCA). Section 20 is a component of Part III, Division 1 - General provisions relating to licensing of public vehicles.

Specifically, section 20 requires that every vehicle to which Part III of the TCA applies, is required to be licensed under this Part. Section 20(2) provides that this requirement does not apply to any journey made for reward by a motor vehicle that is not an omnibus in an emergency situation. As the regulation of omnibuses is to be removed from the TCA, this clause will delete the reference to 'omnibus'.

Omnibuses will be regulated as passenger transport vehicles pursuant to this Bill.

340. Section 21 amended

This clause amends section 21(1) of the *Transport Co-ordination Act 1966* (WA) (TCA). Section 21 provides fees for public vehicle licences.

Section 21(1)(a) addresses the fees payable in respect of an omnibus licence. As the regulation of omnibuses is to be removed from the TCA, this paragraph is to be deleted.

Omnibuses will be regulated as passenger transport vehicles pursuant to this Bill.

341. Part III Division 2 deleted

Part III Division 2 of the *Transport Co-ordination Act 1966* (TCA) provides for the licensing of omnibuses. Omnibuses will be regulated as passenger transport vehicles pursuant to this Bill.

Accordingly, this clause deletes Part III Division 2 of the TCA.

342. Part IIIB deleted

Part IIIB of the *Transport Co-ordination Act 1966* (WA) (TCA) regulates the operation of taxi-cars in country districts. Country taxi-cars will be regulated as passenger transport vehicles pursuant to this Bill, within the category of on-demand (rank or hail) passenger transport services.

Accordingly, this clause deletes Part IIIB of the TCA.

343. Section 55 deleted

Clause 343 deletes section 55 of the *Transport Co-ordination Act 1966* (WA) (TCA). Section 55 currently provides an evidentiary presumption that omnibus passengers were carried at separate fares.

Given that omnibuses are fully accommodated in the Bill as passenger transport vehicles, it is necessary to delete section 55 from the TCA.

344. Section 57 amended

Clause 344 deletes section 57(7) of the *Transport Co-ordination Act 1966* (TCA). Section 57 currently provides for the Minister to revoke or suspend a licence or permit. Section 57(7) excludes a licence under Part IIIB from the provisions of section 57.

Given that clause 342 results in the deletion of Part IIIB, it is necessary to delete section 57(7) from the TCA.

345. Section 60 amended

Clause 345 amends section 60 of the *Transport Co-ordination Act 1966*, which empowers the Governor to make regulations for the Act. Section 60(2) currently permits regulations to be made for omnibuses in relation to design and construction, maximum fares, the assessment of revenue and number plates, in subsections (c), (d), (e) and (ea), respectively.

Omnibuses will be regulated as passenger transport vehicles pursuant to this Bill. Accordingly, it is necessary to delete these subsections.

346. Section 63 amended

Clause 346 amends section 63 of the *Transport Co-ordination Act 1966*, which currently empowers the Minister to authorise payment of subsidies for the purposes of the Act.

This amendment ensures the Minister retains existing powers to authorise the payment of subsidies by also empowering the Minister to authorise the payment of subsidies for the purposes of this Bill. This would address situations where such subsidies under a common scheme relate to modes of transport under both Acts.