

# **Transport Legislation Amendment (Foundation Tax and Hire Car Reforms) Bill 2013**

## **Introduction Print**

### **EXPLANATORY MEMORANDUM**

#### **General**

The main purpose of the Transport Legislation Amendment (Foundation Tax and Hire Car Reforms) Bill 2013 is to make initial major reforms to the regulation of taxi and hire car services in Victoria as recommended by the Taxi Industry Inquiry in its final report titled "Customers First: Service, Safety, Choice".

#### **Background**

In March 2011, the Government announced a major independent inquiry into the Victorian commercial passenger vehicle industry. The Government appointed Professor Allan Fels to oversee the Inquiry.

The Government identified the key tasks for the inquiry as improving low levels of public confidence in taxi services, providing better security for drivers and safety for customers, and ensuring that drivers are properly trained and knowledgeable. The Inquiry was tasked to address long standing and deep-rooted problems and to recommend sweeping and enduring reforms to the industry and its regulation.

The **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Bill** was introduced on 31 May 2011, completed its passage through the Legislative Council on 30 June 2011 and received the Royal Assent on 5 July 2013. This Act provided the legislative basis and powers for the Inquiry. It was intended that an industry-wide review would ensure that the Inquiry's findings were able to address the systemic failures in the sector.

This statute reflected the Government's determination to pursue substantial structural and regulatory reform in response to longstanding problems in the commercial passenger vehicle sector, particularly those factors which have led to record low levels of customer satisfaction with the standard of taxi services.

Over 18 months, Professor Fels and his expert team conducted a comprehensive root and branch review of the taxi and hire car industry in Victoria. A draft report titled "Customers First: Service, Safety, Choice", containing extensive recommendations for reform, was released in May 2012.

The Inquiry received more than 1500 written submissions and met with people from all parts of Victoria who are part of the industry, use taxi and hire car services or represent community groups. The Inquiry conducted extensive research and analysis and commissioned specialist consumer and economic research. Public hearings were held, and draft proposals were reconsidered in light of issues and evidence presented in submissions.

The Minister for Public Transport tabled the Final report of the Inquiry in Parliament on 12 December 2012 and issued an invitation for members of the community to make written submissions about the final recommendations until 30 January 2013.

A total of 447 submissions were received by and reviewed by the Government. These submissions have informed the development of this Bill and the Government Response to the Taxi Industry Inquiry final report.

The final report makes 139 recommendations. A number of key recommendations provide the foundation for transforming the taxi and hire car industry in Victoria. These foundation recommendations—

- remove the regulatory restriction on licence numbers and enable issue of new licences "as a right" to approved applicants at prices set by legislation;
- set prices at levels that promote a measured increase in taxi and hire car numbers, allow an appropriate increase in the taxi driver's share of fare revenue and provide support for the equity and income positions of existing licence holders;
- cap the level of service fee for the electronic payment of fares;
- remove restrictions and red tape on pre-booked hire car services to enable a more diverse range of services to be provided;

- introduce an enhanced knowledge exam for new taxi drivers; and
- establish core objectives, functions and powers of the Taxi Services Commission (TSC), including new data collection powers.

The Bill demonstrates the Government's commitment to fundamental reform of small commercial passenger vehicle services as part of a staged approach to implementation of the Inquiry's recommendations.

The breadth and depth of the reforms recommended by the Inquiry mean that substantial changes to legislation and subordinate instruments are required and the total package will take several years to implement fully. It is ultimately proposed to repeal the taxi and hire car regulation provisions in the **Transport (Compliance and Miscellaneous) Act 1983** and to establish a new Taxi and Hire Car Reform Act.

### **Overview**

The following sections provide an overview of the content of the Bill.

#### ***Taxi and Hire Car Licensing***

The Bill defines four (4) taxi-cab zones as follows—

- Metropolitan Melbourne;
- Urban and Large Regional;
- Regional;
- Country.

Licence conditions set by the Bill explain the services the holder of a licence for a zone is permitted to provide. The Bill empowers the TSC to set zone boundaries.

The Bill removes the current restrictions on the number of taxi-cab licences that may be issued.

Taxi-cab licences to operate in a particular zone will now be available to any applicant, subject to the applicant being accredited as a taxi-cab operator and payment of the applicable annual licence fee.

The annual licence fee payable for a conventional taxi-cab licence or a wheelchair accessible taxi-cab licence for each zone is set by the Bill and provision is made for the amount of the fee to increase in line with the consumer price index less 0.5%.

While limitations on the number of taxi-cab licences are removed, the TSC (in its role as the licensing authority) is required by the Bill to—

- have regard to the interests of future and existing taxi-cab users before it may grant or refuse an application for a taxi-cab licence in the regional or country zones; and
- monitor the number of licenced taxi-cabs in operation in the Melbourne metropolitan and Urban and large regional zones and assess whether the number is excessive.

If the numbers of licenced taxi-cabs in operation is excessive and the further granting of licences is not in the interests of existing and future users of taxi-cabs, then the Bill confers the TSC with power to suspend the release of licences for a maximum of 12 months.

The power to suspend the release of licences is only available to be exercised within three years of the commencement of the taxi-cab licensing reforms contained in the Bill.

The holders of peak service taxi-cab licences and licences issued under the Greater Melbourne Taxi Licence Release scheme can convert their existing licences to the new taxi-cab licences and will become subject to the new terms and conditions of the new licences.

The Bill also makes important changes to the hire car licensing system.

The Bill establishes two hire car zones in Victoria: the Metropolitan Hire Car Zone and the Country Hire Car Zone. The two new zones align with the zones established for taxis. That is, the Metropolitan Hire Car Zone consists of the Melbourne Metropolitan Zone and the Urban and Large Regional Zone. The Country Hire Car Zone consists of the Regional Zone and the Country Zone.

The Bill also provides that the fee for a Metropolitan Hire Car licence reduces by \$20 000 to \$40 000.

Hire car licences will be available to any applicant, subject to the applicant being a "fit and proper" person and paying of the relevant licence fee.

The issue of a hire car licence in country areas will no longer be subject to a public interest test and instead the issue of a licence will be subject to a "consumer interest" test. That is, the TSC must have regard to the interests of future and existing hire car users before it may grant or refuse an application for a licence to operate a hire car in the country zone.

### *Taxi fares and taxi non-cash payment surcharges*

The Bill provides for the regulation of the surcharge added to the amount otherwise payable for the hiring of a taxi-cab because the payment was made by the use of a debit, credit or charge card.

The introduction of the provisions supports the Inquiry's view that the current surcharge of 10 per cent is excessive. The provisions are designed to sit alongside the Reserve Bank of Australia's regime for payment systems and complement the RBA's efforts in promoting efficiency and competition in merchant pricing of a surcharge.

The Bill provides that the maximum amount of the surcharge is five per cent until the Essential Services Commission makes a determination on the amount of the surcharge.

The TSC is provided with a wide range of sanctions and tools to ensure compliance with the new requirements. In particular, the Bill makes it a criminal offence to impose, whether directly or indirectly, a surcharge that exceeds the maximum amount of the surcharge.

The Bill provides that the Essential Services Commission determines maximum taxi fares. The Essential Services Commission must have regard to the Taxi Industry Inquiry's recommendations when making fare determinations for five years after commencement of the Bill.

The Bill makes both the taxi industry and the taxi non-cash payment transaction industry regulated industries for the purposes of the **Essential Services Commission Act 2001**.

### *Driver Agreements*

The Bill provides for the regulation of agreements between taxi-cab operators and taxi-cab drivers where the driver is in possession of the taxi-cab for the purpose of operating it.

The Bill provides that the TSC may specify the conditions to be implied in every driver agreement.

It is an offence to breach a condition that is implied in a driver agreement. The Bill sets a maximum penalty of 120 penalty units for natural persons and 600 penalty units for bodies corporate for the breach of this offence.

The Bill also provides for dispute resolution in relation to disputes concerning the conditions of a driver agreement. Any party to a driver agreement (i.e. a taxi-cab operator or driver) may seek a mediation, alternative dispute resolution, or advice in respect of any condition of a driver agreement by the Small Business Commissioner.

Alternatively, either party may seek a binding arbitration by the Victorian Civil and Administrative Tribunal in respect of the conditions of the driver agreement which are not implied conditions.

### ***Changes to the Taxi Services Commission***

The Taxi Services Commission (TSC) commences as the taxi and hire car industry regulator on 1 July 2013. The **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011** provides for the object, functions and powers, and governance arrangements of the TSC in its role as industry regulator.

The Bill changes the object, functions and powers of the TSC in line with the Taxi Industry Inquiry's final recommendations.

The Taxi Industry Inquiry final report identified some functions and powers that the TSC requires, including the power to obtain information from regulated parties, the power to share information with related enforcement authorities and the power to undertake investigations and inquiries into matters. The TSC is given these powers by the Bill.

The final report also recommends changes to governance arrangements for the TSC to maximise its operational independence. The Bill amends the **Transport Integration Act 2010** so that the Governor in Council appoints and removes Commissioners rather than the Minister.

### **Structure of the Bill**

The Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Bill 2013 is divided into 6 parts.

Part 1 sets out preliminary matters including the purpose of the Bill and definitions. Part 6 of the Bill provides for the repeal of the Bill.

Part 2 sets out the amendments to Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** that give effect to major reform to the licensing system for taxi-cabs and hire cars.

Part 3 provides for the regulation of taxi fares and taxi non-cash payment surcharges.

Part 4 provides for the regulation of the conditions of agreements between taxi-cab operators and taxi-cab drivers, and provides for the resolution of disputes over conditions through the Small Business Commissioner or the Victorian Civil and Administrative Tribunal.

Part 5 amends the **Transport Integration Act 2010**, the **Transport (Compliance and Miscellaneous) Act 1983**, and the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011** to provide for a new object, functions and powers for the TSC, the appointment of a Chief Executive Officer and to improve how the Commission's members are appointed. Amendments are also made to the **Road Safety Act 1986** to ensure that enforcement officers employed in the TSC can continue to exercise the powers they currently exercise as employees in the Department of Transport (in the business unit known as the Victorian Taxi Directorate).

### Clause Notes

#### PART 1—PRELIMINARY

Clause 1 sets out the main purpose of the Bill which is to—

- reform the licensing system for taxi-cabs and hire cars; and
- amend the object, functions and powers of the TSC, provide for the appointment of a chief executive officer and change how its members are appointed; and
- move from the Minister having the power to determine taxi fares to the Essential Services Commission having the power to determine the maximum charges for services provided by taxi-cabs; and
- enable the TSC to specify conditions that are to be implied in certain agreements between taxi-cab operators and taxi-cab drivers; and
- empower the Essential Services Commission to determine the maximum amount of a surcharge that may be imposed where payment of a taxi fare is made by using a debit, credit or charge card and provide various remedies to deal with excess surcharges.

Clause 2 provides for the commencement of the Bill.

Subclause (1) provides that Part 1 and Division 2 of Part 5 come into operation on the day after the day on which the Bill receives the Royal Assent.

Subclause (2) provides that Divisions 1, 3 and 4 of Part 5 come into operation on 1 July 2013.

Subclause (3) provides that, subject to subclause (4), the remaining provisions of the Bill come into operation on a day or days to be proclaimed.

Subclause (4) provides that if a provision referred to in subclause (3) does not come into operation before 30 June 2014, it comes into operation on that day. It is necessary to provide for a default date of 30 June 2014 in order to allow sufficient time to—

- develop taxi-cab and hire car zone boundaries to be determined under new section 143B(2) of the **Transport (Compliance and Miscellaneous) Act 1983**;
- develop conditions that are to be implied in every driver agreement under new section 162L(1) of the **Transport (Compliance and Miscellaneous) Act 1983**; and
- enable the ESC to be ready to make its first determinations under new Divisions 5A and 5B of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**.

## **PART 2—TAXI AND HIRE CAR LICENSING**

Part 2 of the Bill sets out the amendments to Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** that give effect to the proposed reforms to the licensing system for taxi-cabs and hire cars.

Part 2 of the Bill relates to the following recommendations of the Taxi Industry Inquiry (recommendations 1.1, 1.2, 1.3, 1.5, 1.6, 1.7, 1.8, 2.1, and 2.2).

Clause 3 inserts new definitions in section 86(1) of the **Transport (Compliance and Miscellaneous) Act 1983**. Of these, the only substantive definition is for *new taxi-cab licence* which is defined to mean a taxi-cab licence granted under section 143 of the **Transport (Compliance and Miscellaneous) Act 1983** on or after the commencement of clause 8(1). The meanings of the other terms are given in other provisions being inserted by the Bill.

- Clause 4 inserts new subsection (3) into section 139 of the **Transport (Compliance and Miscellaneous) Act 1983** which makes it clear that an application for a new taxi-cab licence that nominates either the Melbourne Metropolitan Zone or the Urban and Large Regional Zone cannot be made, and that such a licence cannot be granted, during a period when the granting of taxi-cab licences in that zone and accepting applications for such licences have been suspended under new section 143AA, being inserted by clause 9.
- Clause 5 inserts new subsections (1A) and (1B) into section 140 of the **Transport (Compliance and Miscellaneous) Act 1983** which require applicants for taxi-cab licences and hire car licences respectively to nominate in their applications the taxi-cab zone or hire car zone (as is applicable) that is proposed to be specified in the licence.
- Clause 6 makes a number of amendments to section 142 of the **Transport (Compliance and Miscellaneous) Act 1983** which relates to hire cars and special purpose vehicles.
- Clause 6 relates to recommendations 2.1 and 2.2 of the Taxi Industry Inquiry.
- Subclause (1) replaces subsection (1) with new subsections (1), (1AA), (1AB), (1AC) and (1AD).
- New subsection (1) defines the commencement of clause 6(1) as *the relevant date* for the purposes of the section.
- New subsection (1AA) requires the licensing authority to grant an application for a hire car licence received on or after the relevant date that complies with section 140 of the **Transport (Compliance and Miscellaneous) Act 1983** and nominates the Metropolitan Hire Car Zone, if the licensing authority is satisfied that the applicant is a fit and proper person to hold such a licence. (Hire car zones are explained below in relation to clause 7.)
- However, this requirement is subject to the provisions of the Act in the Division within which section 142 falls (Division 5 of Part VI).
- New subsection (1AB), also subject to Division 5, provides that, if the licensing authority receives an application for a hire car licence on or after the relevant date that complies with section 140 of the **Transport (Compliance and Miscellaneous)**

**Act 1983** and nominates the Country Hire Car Zone, the licensing authority must not grant the application unless the licensing authority is satisfied that the applicant is a fit and proper person.

However, new subsection (1AC), also subject to Division 5, provides that the licensing authority may refuse to grant an application covered by new subsection (1AB) if, after having had regard to the interests of existing and future users of hire car services in any particular district or districts in that Zone within which the service is proposed to be provided, the licensing authority considers that to grant the application would not be in the interests of those existing and future users of hire car services.

New subsection (1AD), also subject to Division 5, requires the licensing authority to grant an application for a special purpose vehicle licence received on or after the relevant date that complies with section 140 of the **Transport (Compliance and Miscellaneous) Act 1983** if the licensing authority is satisfied that the applicant is a fit and proper person to hold such a licence.

Subclause (2) inserts a provision that requires the licensing authority to specify in a hire car licence granted under section 142 only the zone specified in the application for the licence. This provision replaces an existing provision that will have no application under the new system.

Subclause (3) inserts new subsections (2A) and (2B) into section 142 which specify the hire car licence fees for the Metropolitan Hire Car Zone and the Country Hire Car Zone respectively.

Subclause (4) amends section 142(3), under which the Minister is currently empowered to determine the licence fee for both hire cars and special purpose vehicles, so as to limit its operation after these amendments to determining the licence fee for special purpose vehicles.

Subclause (5) inserts new subsections (9) and (10) into section 142.

New subsection (9) requires that an application for a hire car licence that is made, but is not determined, before clause 6(1) commences, must be dealt with and determined under section 142 as in force after that commencement.

New subsection (10) enables the licensing authority to require the applicant to provide any further particulars the licensing authority needs in order to deal with and determine the application on that basis.

Clause 7 inserts new section 142A into the **Transport (Compliance and Miscellaneous) Act 1983**. The new section relates to hire car zones. The hire car zone specified in a hire car licence in accordance with these amendments determines the licence fee payable for the licence and the area of operation of the hire car.

New section 142A relates to recommendation 2.2 of the Taxi Industry Inquiry.

New subsection (1) establishes two hire car zones—the Metropolitan Hire Car Zone and the Country Hire Car Zone.

New subsection (2) provides that the Metropolitan Hire Car Zone comprises all areas covered by the taxi-cab zones known as the Melbourne Metropolitan Zone and the Urban and Large Regional Zone, as in existence from time to time. (Taxi-cab zones are explained below in relation to clause 11.)

New subsection (3) provides that the Country Hire Car Zone comprises all areas covered by the taxi-cab zones known as the Regional Zone and the Country Zone, as in existence from time to time.

New subsections (4) and (5) contain transitional provisions for hire car licences issued before the commencement of this clause that specify an address from which the hire car primarily operates. On and after that commencement, the licence has effect as if it specified the new hire car zone within which that address is located.

New subsections (6) and (7) contain transitional provisions for hire car licences issued before the commencement of this clause that do not specify an address from which the hire car primarily operates. The licensing authority is empowered to alter the licence so as to specify a new hire car zone in these licences.

New subsection (8) makes it clear that a licence altered under new subsection (7) is subject to the implied conditions relating to how hire cars may operate in hire car zones inserted by clause 13(2).

Clause 8 makes a number of amendments to section 143 of the **Transport (Compliance and Miscellaneous) Act 1983** which relate to the granting of taxi-cab licences.

Clause 8 relates to recommendation 1.1 of the Taxi Industry Inquiry.

Subclause (1) replaces the existing subsections (1) and (2) of section 143 with five new subsections.

New subsection (1) defines the *relevant date* for the purposes of section 143 as the date of commencement of clause 8(1).

New subsection (1A) provides that if the licensing authority receives, on or after the relevant date, an application for a taxi-cab licence that complies with section 140 of the Act and that nominates either the Melbourne Metropolitan Zone or the Urban and Large Regional Zone, the licensing authority must grant the application. However, this requirement is subject to the provisions of the Act in the Division within which section 143 falls (Division 5 of Part VI).

This provision effectively removes the numerical restrictions for the issue of licences under the current licensing scheme in the Act.

New subsection (1B) provides that, also subject to Division 5, if the licensing authority receives, on or after the relevant date, an application for a taxi-cab licence that complies with section 140 of the Act but that nominates either the Regional Zone or the Country Zone, the licensing authority, before granting or refusing to grant the application, must have regard to the interests of existing and future users of taxi-cab services in any particular district or districts in the Zone within which the service is to be provided.

New subsection (1C) provides that, also subject to Division 5, the licensing authority may refuse to grant an application covered by new subsection (1B) if it considers that to grant it would not be in the interests of the existing and future users as described in new subsection (1B).

New subsection (2) provides that a new taxi-cab licence remains in force unless it is surrendered, suspended, cancelled or revoked in accordance with Division 5.

Subclause (2) amends section 143(2A) so as to preclude the licensing authority from granting a taxi-cab licence under section 143 unless the applicant is accredited under Division 4 of Part VI of the Act as a taxi-cab operator, rather than as a taxi-cab licence holder. This is necessary because, under a later amendment, new taxi-cab licences are not able to be assigned.

Subclause (3) repeals section 143(2B) which is not required following these amendments.

Subclause (4) inserts a provision that requires the licensing authority to specify in a taxi-cab licence granted under section 143 only the taxi-cab zone specified in the application for the licence. This provision replaces an existing provision that will have no application under the new system.

Subclause (5) inserts new subsections (4) and (5) into section 143. New subsection (4) replaces an existing subsection that also has no application under the new system.

New subsection (4) requires that an application for a taxi-cab licence that is made, but is not determined, before clause 8(1) commences, must be dealt with and determined under section 143 as in force after that commencement.

New subsection (5) enables the licensing authority to require the applicant to provide any further particulars the licensing authority needs in order to deal with and determine the application on that basis.

Clause 9 inserts new sections 143AA and 143AB into the **Transport (Compliance and Miscellaneous) Act 1983**.

New section 143AA relates to the temporary suspension of granting taxi-cab licences in certain zones.

New subsection (1) empowers the licensing authority to suspend the granting of taxi-cab licences in either the Melbourne Metropolitan Zone or the Urban and Large Regional Zone, and the acceptance of applications for such licences, if it is satisfied that the number of taxi-cab licences in which that Zone is specified is such that it is not in the interests of existing and future users of taxi-cab services in that Zone for any additional taxi-cab licences to be granted for a period.

New subsection (2) provides that in considering whether to exercise this power, the licensing authority must have regard to whether the financial viability of providers of taxi-cab services in the relevant Zone is diminished, but only to the extent to which that diminution has a significant negative impact on the interests of existing and future users of taxi-cab services in that Zone.

This provision reflects that there may be situations where both the financial viability of service providers and interests of consumers are not being met. The purpose of this provision is to ensure that the TSC has the appropriate tools to deal with such a situation.

New subsection (3) provides that the power conferred by subsection (1) is exercised by the licensing authority publishing notice of the suspension in the Government Gazette and on its website.

New subsection (4) provides that a suspension takes effect from the day on which it is published in the Government Gazette and continues in effect until the first anniversary of that day or any earlier day on which the licensing authority publishes notice of the cessation of the suspension in the Government Gazette.

This provision reflects that this power will only have effect for a maximum period of 12 months.

New subsection (5) provides that new section 143AA expires on the third anniversary of the commencement of clause 9.

New section 143AB specifies the nature of a new taxi-cab licence.

New section 143AB is related to recommendation 1.2 of the Taxi Industry Inquiry.

A new taxi-cab licence—

- is a mere permission for the taxi-cab to be operated on a highway;
- is not personal property;
- does not vest by operation of law in any other person;
- may be transferred in accordance with Division 5 of Part VI but cannot otherwise be dealt with by the person who holds it;

- cannot be assigned;
- may be surrendered, suspended, cancelled or revoked in accordance with Division 5 of Part VI.

This provision reflects the key characteristics of a new taxi-cab licence and reflect the new system of licensing of taxi-cabs.

Clause 10 makes a number of amendments to section 143A of the **Transport (Compliance and Miscellaneous) Act 1983**.

Clause 10 is related to recommendation 1.1 of the Taxi Industry Inquiry.

Subclause (1) inserts new subsection (1A) into section 143A which precludes the Minister from making an Order under section 143A on or after the commencement of clause 10(1).

Subclause (2) inserts new subsections (14) to (18) into section 143A. These new subsections contain transitional provisions for applications for a taxi-cab licence under section 143A made, but not determined before the commencement of clause 10(2). Under these provisions, such an application lapses on the commencement of clause 10(2) unless, within 14 days after that commencement, the applicant requests the licensing authority to treat the application as an application for the grant of a new taxi-cab licence. The provisions then enable the licensing authority to deal with and determine the application on that basis.

Clause 11 inserts new section 143B into the **Transport (Compliance and Miscellaneous) Act 1983** that relates to taxi-cab zones. The taxi-cab zone specified in a taxi-cab licence in accordance with these amendments determines the licence fee payable for the licence and the area or areas of operation of the taxi-cab.

Clause 10 is related to recommendation 1.6 of the Taxi Industry Inquiry. Clause 10 provides the TSC with the power to implement recommendations 1.7 and 1.8.

New subsection (1) establishes four taxi-cab zones; namely the Melbourne Metropolitan Zone, the Urban and Large Regional Zone, the Regional Zone and the Country Zone.

New subsection (2) empowers the licensing authority, by notice published in the Government Gazette, to determine and alter the boundaries of the zones.

New subsection (3) provides for the determination of zone boundaries so that there is an area of overlap between two adjoining zones.

New subsections (4) and (5) contain transitional provisions for taxi-cab licences issued before the commencement of this clause that specify an area within which the taxi-cab may accept a hail or rank hiring. On and after that commencement, the licence has effect as if it specified whichever of the new taxi-cab zones within which the old area falls, or if that area falls within more than one of the new zones, whichever of the new zones contains the greatest part of the old area.

New subsection (6) provides that, except for the purposes of new subsection (5), a taxi-cab zone proclaimed by an Order made under section 143A before the commencement of this clause ceases to exist on the commencement.

New subsections (7) and (8) contain transitional provisions for taxi-cab licences issued before the commencement of this clause that do not specify an area within which the taxi-cab may accept a hail or rank hiring. The licensing authority is empowered to specify in these licences a new taxi-cab zone that comprises an area within which the taxi-cab had previously been accepting hail or rank hirings.

New subsection (9) makes it clear that a licence that is altered to specify a new taxi-cab zone under new subsection (8) is subject to the implied conditions relating to areas of operation of taxi-cabs inserted by amendments made by clause 13(1).

Clause 12 inserts new subsection (4) into section 143D of the **Transport (Compliance and Miscellaneous) Act 1983** which provides that section 143D does not apply to a new taxi-cab licence. This is because new taxi-cab licences cannot be assigned and it is not intended that there should be any discretion to impose a condition preventing them from being transferred.

Clause 12 is related to recommendation 1.2 of the Taxi Industry Inquiry.

Clause 13 makes a number of amendments to section 144 of the **Transport (Compliance and Miscellaneous) Act 1983** which relates to conditions of commercial passenger vehicle licences.

Clause 13 relates to recommendation 1.2 of the Tax Industry Inquiry.

Subclause (1) inserts new paragraphs (ba) to (bd) into subsection (1) of section 144 which specifies a number of implied conditions of commercial passenger vehicle licences.

These new paragraphs specify conditions of operation for taxi-cabs on the following basis—

- Subject to the conditions outlined in the succeeding dot points, a taxi-cab may only pick up passengers (under both hail or rank and pre-booked hirings) in the taxi-cab zone specified in its licence.
- If the taxi-cab zone specified in the licence is the Melbourne Metropolitan Zone, the taxi-cab may also accept pre-booked hirings to pick up passengers in all other taxi-cab zones.
- If the taxi-cab zone specified in the licence is the Urban and Large Regional Zone, the taxi-cab may also accept pre-booked hirings to pick up passengers in the Regional Zone and the Country Zone.
- If the taxi-cab zone specified in the licence is the Regional Zone, the taxi-cab may also accept pre-booked hirings to pick up passengers in the Country Zone.

Subclause (2) inserts new paragraphs (be) to (bg) into subsection (1) of section 144.

New paragraph (be) specifies that, in the case of a hire car, it is an implied condition that the vehicle may only pick up, and drop off, passengers in the hire car zone specified in the licence and only if it has been pre-booked to do so.

New paragraph (bf) specifies that, in the case of a hire car the licence of which specifies the Melbourne Metropolitan Hire Car Zone, the hire car may also, if pre-booked to do so, pick up passengers in that Zone and drop them off in the Country Zone or pick up passengers in the Country Zone and drop them off in either Zone.

New paragraph (bg) specifies that, in the case of a hire car the licence of which specifies the Country Zone, the hire car may also, if pre-booked to do so, pick up passengers in the Melbourne Metropolitan Hire Car Zone and drop them off in the Country

Zone or pick up passengers in the Country Zone and drop them off in the Melbourne Metropolitan Hire Car Zone.

Subclause (3) inserts new subsections (1D) and (1E) into section 144 which empower the Governor in Council to make regulations prescribing conditions that are to be additional implied conditions of every new taxi-cab licence or every new taxi-cab licence of a specified class.

Providing for general conditions to be prescribed in regulations is consistent with recommendation 10.6 in the Taxi Industry Inquiry Final Report.

Subclause (4) inserts new subsections (2A), (2B) and (2C) into section 144.

New subsection (2A) provides that subsection (2), which empowers the licensing authority to attach specified conditions to commercial passenger vehicle licences, does not apply to a new taxi-cab licence.

New subsection (2B) empowers the licensing authority to attach to a new taxi-cab licence a condition of any kind that is not inconsistent with any implied condition of that licence.

New subsection (2C) precludes both the regulations and the licensing authority from making a new taxi-cab licence subject to a condition specifying or limiting the hours of operation of the taxi-cab.

Subclause (5) replaces subsection (5) of section 144 with a provision that ensures that, in addition to how that provision currently applies, if the regulations prescribe an implied condition for new taxi-cab licences providing for a late night surcharge or a holiday surcharge to be retained by the driver of a taxi-cab, the driver may retain such a surcharge despite any condition of any contract or agreement to the contrary.

Subclause (6) replaces subsection (6) of section 144 with a provision that provides that subsection (5) of that section applies irrespective of when the contract or agreement was entered into.

Subclause (7) makes a consequential amendment to subsection (7) of section 144 to clarify its operation.

Clause 14 inserts new subsection (3) into section 146 of the **Transport (Compliance and Miscellaneous) Act 1983** which makes it clear that nothing in that section affects the operation of new section 157A, inserted by clause 22, which gives the holder of a new taxi-cab licence the right to surrender the licence.

Clause 15 inserts new section 146AAA into the **Transport (Compliance and Miscellaneous) Act 1983** which gives the holders of taxi-cab licences, granted under section 143A in accordance with a number of specified Orders under that section, a right to convert those licences to new taxi-cab licences.

Clause 15 relates to recommendation 1.3 of the Taxi Industry Inquiry.

Clause 16 amends section 146C(1) of the **Transport (Compliance and Miscellaneous) Act 1983** so as to provide a right to apply to the Victorian Civil and Administrative Tribunal for review of a decision by the licensing authority to alter a taxi-cab licence by specifying a taxi-cab zone under new section 143B(8) or to alter a hire car licence by specifying a hire car zone under new section 142A(7) or to attach a condition to a new taxi-cab licence under new section 144(2B).

Clause 17 amends section 147A of the **Transport (Compliance and Miscellaneous) Act 1983** which relates to annual licence fees.

Clause 16 relates to recommendation 1.3 and 1.6 of the Taxi Industry Inquiry.

Subclause (1) inserts new subsections (2A) to (2E) into section 147A.

New subsection (2A) provides that subsection (1), which contains the current general obligation to pay annual licence fees for commercial passenger vehicles, does not apply to a new taxi-cab licence.

New subsection (2B) requires the holder of a new taxi-cab licence to pay the appropriate annual licence fee and specifies the annual licence fees payable for new taxi-cab licences. The amount of the fee depends on the taxi-cab zone specified in the licence and whether the taxi-cab is a conventional taxi-cab or a wheelchair accessible taxi-cab.

New subsection (2C) defines what is a conventional taxi-cab and what is a wheelchair accessible taxi-cab.

New subsection (2D) provides for an exemption from paying the annual fee to the holder of a new taxi-cab licence that was converted under new section 146AAA if the original licence had been granted in respect of a conventional taxi-cab in accordance with the Order specified in new section 146AAA(2)(h). This is because a substantial lump sum fee, rather than an annual fee, was payable in respect of those licences. The exemption runs for the balance of the period of 12 years from the date on which the original licence was granted.

New subsection (2E) gives the other holders of new taxi-cab licences that are converted under new section 146AAA, a right to have the unused balance of the annual fee paid in respect of the original licence for the year in which the new licence is issued, set off against the annual licence fee for the first year of the new licence.

Subclause (2) makes a minor amendment to subsection (3) of section 147A to clarify its intended operation.

Subclause (3) inserts new subsections (4) to (8) into section 147A.

New subsection (4) provides for the amount of an annual licence fee to be increased annually in accordance with the movements in the all groups consumer price index for Melbourne. However, the percentage change is to be reduced by 0.5% by way of a transitional factor.

New subsection (5) provides for rounding to the nearest whole dollar of a fee determined in accordance with new subsection (4).

New subsection (6) ensures that the amount of an annual licence fee is not reduced from year to year.

New subsection (7) provides for the effective application of any varied amounts.

New subsection (8) imposes an obligation on the Minister to publish in the Government Gazette notice of the annual licence fees applicable in a financial year before the beginning of that year.

Clause 18 makes a consequential amendment to section 147B(1)(a) of the **Transport (Compliance and Miscellaneous) Act 1983** empowering the licensing authority to determine the application fee referred to in new section 146AAA(3)(d).

Clause 19 amends section 149(3AA) of the **Transport (Compliance and Miscellaneous) Act 1983** so as to provide that the transferee of a new taxi-cab licence must be accredited under Division 4 of Part VI of the Act as a taxi-cab operator, but does not need to be accredited under that Division as a taxi-cab licence holder.

Clause 18 relates to recommendation 1.2 of the Taxi Industry Inquiry.

Clause 20 amends section 150 of the **Transport (Compliance and Miscellaneous) Act 1983** relating to assignments of the right to operate a vehicle under a taxi-cab licence.

Clause 20 relates to recommendation 1.2 and 1.5 of the Taxi Industry Inquiry.

Subclause (1) inserts new subsection (1B) into section 150 which provides that subsection (1), which enables the holder of a taxi-cab licence to apply for authority to assign the holder's right to operate a vehicle under the licence, does not apply to a new taxi-cab licence.

Subclause (2) amends subsection (4A) of section 150 so as to remove an existing requirement that assignments under the section must be for a fixed period of three years or less.

Subclause (3) repeals subsection (4B) of section 150, which was only necessary because of the imposition of the requirement removed by the amendment made by subclause (2).

Clause 21 amends section 156A of the **Transport (Compliance and Miscellaneous) Act 1983**.

Subclause (1) inserts new paragraph (ba) into subsection (4) which has the effect that, if the holder of a new taxi-cab licence is convicted of an offence against section 131 of the Act, the licence is revoked by force of that subsection.

Subclause (2) amends subsections (4)(c) and (5)(c) to make it clear that they do not apply to a new taxi-cab.

Subclause (3) inserts new paragraph (ba) into subsection (5) which has the effect that if the accreditation, under Division 4 of Part VI of the Act, of the holder of a new taxi-cab licence as a taxi-cab operator is cancelled, surrendered or expires, the licence is revoked by force of that subsection.

Clause 22 inserts new section 157A into the **Transport (Compliance and Miscellaneous) Act 1983** which gives the holder of a new taxi-cab licence the right to surrender the licence at any time.

Clause 22 relates to recommendation 1.2 of the Taxi Industry Inquiry.

### **PART 3—TAXI FARES AND TAXI NON-CASH PAYMENT SURCHARGES**

Clause 23 inserts the following definitions into section 86 (1) of the **Transport (Compliance and Miscellaneous) Act 1983**.

*prescribed amount* of a taxi non-cash payment surcharge is—

- the maximum amount of the surcharge as determined by the ESC under Division 5B of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**; and
- until the first such determination, 5% of the amount that would be payable in respect of the hiring if that amount were paid in cash.

The Taxi Industry Inquiry found that the 10 per cent service fee levied on the processing of electronic payments should be bought under regulation as part of taxi fares and set at a level that better reflects the resource costs of providing the service.

Recommendation 13.3 included in the Final Report of the Taxi Industry Inquiry is that this fee be set at five per cent of transaction value as a maximum amount that can be charged, until a determination is made by the Essential Services Commission.

*taxi non-cash payment surcharge* has the meaning given by section by section 144B, which is to be inserted into Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** in accordance with clause 26.

*taxi non-cash payment transaction* means payment by the use of a debit, credit or charge card of any amount due in respect of the hiring of a taxi-cab.

Clause 24 makes a number of amendments to section 144 of the **Transport (Compliance and Miscellaneous) Act 1983**.

Subclauses (1) and (2) insert new paragraphs in section 144(1) that make it an implied condition of all taxi-cab licences—

- to not collect a taxi non-cash payment surcharge of a kind described in section 144C(1). The new implied condition facilitates the implementation of recommendation 13.3 of the Final report of the Taxi Industry Inquiry;
- that the fares or hiring rates charged to do not exceed that permitted under a determination made by the ESC under Division 5A of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**. The new implied condition facilitates the implementation of recommendation 12.2 specified in the Final Report of the Taxi Industry Inquiry.

Subclause (3) inserts references to new subsection 144(1)(db) in section 144(1A) to make non-compliance with that implied condition an offence with a penalty of 10 penalty units for the first offence and 20 penalty units for a subsequent offence.

Subclause (4) replaces section 144(2)(d) of the **Transport (Compliance and Miscellaneous) Act 1983** with a subsection that enables the licensing authority to attach conditions relating to fares or hiring rates charged to commercial passenger vehicle licences that are not taxi-cabs. Specifically, the licensing authority may make it a condition that fares are as specified in the conditions.

The change specified in subclause (4) is necessary to facilitate the implementation of recommendation 12.2 of the Taxi Industry Inquiry. Section 144(2)(d) needs to be redrafted because it will be the ESC's responsibility to determine fares for taxi-cabs, instead of the Minister.

Subclause (5) makes two amendments to section 144(7) of the **Transport (Compliance and Miscellaneous) Act 1983**. These amendments makes it clear that section 144(2)(da) and section 144(3) of the **Transport (Compliance and Miscellaneous) Act 1983** apply to all taxi-cab licences.

Sections 144(2)(da) and 144(3) require that—

- any late night surcharge or holiday surcharge payable by a passenger in a taxi-cab is to be retained by the driver of a taxi-cab;
- wireless equipment capable of transmitting images or data obtained from the use of a surveillance camera installed in a taxi-cab must not be installed in the taxi-cab;
- equipment capable of making an audio recording, other than an emergency warning device, must not be installed in the taxi-cab.

These are existing requirements and the redrafting of the provision does not give effect to any change.

Subclause (6) repeals section 144(8) of the **Transport (Compliance and Miscellaneous) Act 1983**. Section 144(8) was previously needed to support the implementation of amendments included in the **Transport (Further Miscellaneous Amendments) Act 2002**. Section 144(8) is no longer required.

Subclause (7) replaces the existing definitions for holiday surcharge and late night surcharge contained in section 144(9) with the following—

- ***holiday surcharge*** means that part of a taxi-cab fare or hiring rate specified in a price determination made by the ESC under Division 5A as a surcharge payable for the provision of services on days, or parts thereof, specified as being a holiday period in the price determination;
- ***late night surcharge*** means that part of a taxi-cab fare or hiring rate specified in a price determination made by the ESC under Division 5A as a surcharge payable for the provision of services late at night.

The existing definitions needed to be replaced because they refer to section 144A, which the Bill repeals (refer to clause 25). Section 144A provides for the Minister to determine fares. In accordance with recommendation 12.2 specified in the Final Report of the Taxi Industry Inquiry, it will be the responsibility of ESC to determine fares, instead of the Minister. Continuing to define what is a holiday and late night surcharge preserves the

option for the ESC to determine surcharge levels but does not oblige the ESC to set any surcharges.

Clause 25 repeals section 144A of the **Transport (Compliance and Miscellaneous) Act 1983** which provides for the determination of taxi fares or hiring rates by the Minister. Through clause 28, the Bill provides for the regulation of maximum taxi fares by the Essential Services Commission, instead of the Minister. This change is needed to support the implementation of recommendation 12.2 specified in the Final report of the Taxi Industry Inquiry.

Clause 26 inserts new sections 144B to 144K in the **Transport (Compliance and Miscellaneous) Act 1983**. These new sections facilitate the implementation of recommendation 13.3 included in the Final Report of the Taxi Industry Inquiry.

Section 144B defines what is meant by taxi non-cash payment surcharge.

Subject to subsection (2), subsection (1) defines a taxi non-cash payment surcharge as being a fee or charge—

- added to the amount otherwise payable in respect of the hiring of a taxi-cab because the payment is made by means of a taxi non-cash payment transaction; or
- payable by the owner, operator or driver of the taxi-cab or by all or any of them because the payment of an amount payable in respect of the hiring of a taxi-cab is made wholly or partly by means of a taxi non-cash payment transaction.

Subsection (2) makes it clear that a fee or charge that is imposed—

- by a participant in a designated payment system within the meaning of the Payment System (Regulation) Act 1988 of the Commonwealth and in compliance with a standard in force under section 18 of that Act; or
- by a person acting consistently with a voluntary undertaking given by the person to, and accepted by, the Reserve Bank of Australia—

is not a taxi non-cash payment surcharge.

Banks and providers of credit services such as VISA and Mastercard are examples of participants in a designated payment system.

Subsection (3) explains that a fee or charge may be a taxi non-cash payment surcharge irrespective of whether it is—

- added for accepting or processing, or both accepting and processing, payment made by means of a taxi non-cash payment transaction or for any other reason; or
- set as a percentage of the amount otherwise payable in respect of the hiring of the taxi-cab or as a fixed amount or as an amount fixed on a sliding scale of any kind or on any other basis.

New section 144C makes it an offence to impose a surcharge that exceeds the prescribed amount.

Subsection (1) specifies that this section applies when there is a taxi non-cash payment surcharge that—

- exceeds the prescribed amount; or
- results in the prescribed amount being exceeded when that surcharge is added to any other such surcharge charged or collected, or to be charged or collected, by the same or any other person in respect of the same hiring of a taxi-cab, irrespective of whether the surcharges are payable by the same person or by two or more persons.

Subsection (2) prohibits a person—

- imposing a taxi non-cash surcharge of the type specified in subsection (1)
- initiating the collection of a taxi non-cash surcharge of the type specified in subsection (1).

A penalty of 240 penalty units applies to an offender who is an individual. A penalty of 1200 penalty units applies to an offender that is a body corporate. It is noted that directors of bodies corporate offending against this subsection may be liable under section 226A.

Subsection (3) provides that a person does not commit the offence specified in subsection (2) if—

- the person presents or points to evidence that suggests a reasonable possibility that the person did not know, and could not reasonably be expected to have known, that the another person had charged or collected, or was to charge or collect, a taxi surcharge in respect of that transaction that resulted in the prescribed amount being exceeded; and
- the contrary (that the person did know, or could reasonably be expected to have known) is not proven beyond reasonable doubt by the prosecution.

Subsection (4) clarifies that a reference to a person in the offence provision specified in subsection (2) includes—

- any person who provided or maintains the equipment installed in the taxi-cab that enables the taxi non-cash payment transaction to be made;
- any person who manages or administers the whole or any part of the system under which taxi non-cash payment transactions may be made; and
- the owner, operator and driver of the taxi-cab.

New section 144D makes it an offence for a taxi-cab licence holder, accredited taxi-cab operator, accredited provider of taxi-cab network services or holder of a permit relating to a taxi-cab to enter into or give effect to a contract, arrangement or understanding that would result in a taxi non-cash payment surcharge of the type specified in subsection 144C(1) being paid in respect of the hiring of a taxi-cab.

The maximum court awarded penalty that is applicable is 60 penalty units for a natural person and 300 penalty units for a body corporate

New section 144E provides that the TSC may apply to the Supreme Court and request that it impose a civil penalty as an alternative to criminal prosecution for contraventions of the offence to impose a surcharge of the type specified in subsection 144C(1). The new section provides that a civil penalty not exceeding \$1 000 000 can be imposed on a person who is found to be involved in specified types of conduct that relate to the

contravention of new section 144C(2). If the person is a body corporate an amount not exceeding \$5 000 000 may be imposed.

The provision of the capacity to take civil action is consistent with recommendation 10.7 in the Final Report of the Taxi Industry Inquiry which states that the TSC should be given powers to take administrative, civil and criminal actions as appropriate.

Subsection (1) makes it clear the Supreme Court must be satisfied (on the balance of probabilities) that a person has—

- contravened section 144C(2); or
- has attempted to contravene section 144C(2); or
- has aided, abetted, counselled or procured a person to contravene section 144C(2); or
- has induced, or attempted to induce, whether by threats, promises or otherwise, a person to contravene section 144C(2); or
- has been in any way , directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 144C(2); or
- has conspired with others to contravene section 144C(2)—

before it can order the person to pay to the State an amount equal to or less than the maximum amount of \$1 000 000 for a natural person or \$5 000 000 for a body corporate.

Subsection (2) specifies that an application to the Supreme Court to apply a civil penalty may be made within 6 years of the conduct covered by subsection (1).

Subsection (3) provides that a person, other than a body corporate, who has engaged in conduct of the type specified in subsection (1) may be excused from having to pay a financial penalty if the court finds that the person acted honestly and reasonably and, having regard to all the circumstances of the case, ought fairly be excused.

New section 144F provides for a circumstance in which the Supreme Court may consider it appropriate for a defendant to pay a civil penalty under new section 144E(1) and also compensation

(subject to an application being made under new section 144J) to a person who has suffered loss or damage. If the defendant does not have sufficient financial resources to pay both the civil penalty and the compensation then the Court must give preference to making an order for compensation.

New section 144G explains the interplay between civil penalties and criminal proceedings.

Subsection (1) specifies that an application seeking a civil penalty under 144E(1) cannot be made to the Supreme Court if the person has been convicted or acquitted of committing an offence constituted by conduct that is substantially the same as that to which the application relates.

Subsection (2) provides that a proceeding against a person seeking to apply a civil penalty must be placed on hold by the Supreme Court if a criminal proceeding has commenced against the person in relation to conduct that is substantially the same.

Subsection (3) provides that a proceeding placed on hold in accordance with subsection (2) must be dismissed if the person is convicted or acquitted of the offence but otherwise may be resumed.

Subsection (4) makes it clear that if an order or application has been made under new section 144E, it does not impede the commencement of criminal proceedings against a person for conduct that is substantially the same.

Subsection (5) provides that evidence provided by a person during proceedings against a person under new section 144E is not admissible in a proceeding against the person for an offence if the conduct alleged to constitute the offence is substantially the same.

Subsection (6) provides that subsection (5) does not apply to a proceeding in respect of false evidence given in proceedings under new section 144E.

New section 144H provides that any person who has paid a surcharge in excess of the prescribed amount may apply to a court to recover the amount in excess of the prescribed amount from the person to whom the surcharge was payable.

New section 144I enables a person, who has suffered loss or damage because a taxi non-cash payment surcharge in excess of the prescribed amount was charged, to apply to a court to recover the amount of the loss or damage from the person responsible for the conduct that resulted in loss or damage. The person who has suffered loss or damage may commence proceedings within 6 years of the day on which the conduct is alleged to have occurred.

New section 144J defines an injured person as being a person who has suffered, or is likely to suffer loss or damage due to the imposition of, or attempts to impose, a taxi non-cash payment surcharge in excess of the prescribed amount. The new section then provides that the Supreme Court may, on application of an injured person or the TSC on behalf of an injured person, make an order that the Court considers to be appropriate to compensate the injured person or prevent or reduce the loss or damage suffered, or likely to be suffered, by the injured person.

Subsection (3) enables an injured person to apply for a compensation order within 6 years of the day the conduct which caused the loss or damage was undertaken.

Subsection (4) enables an injured person to apply for a compensation order irrespective of whether any other proceeding (criminal or civil) has been commenced under this Division of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**.

Subsection (5) prohibits the TSC applying for a compensation order on behalf of an injured person without the injured person's written consent.

New section 144K provides the option to the TSC to apply to the Supreme Court for an injunction when a person—

- contravenes section 144C(2); or
- has attempted to contravene section 144C(2); or
- has aided, abetted, counselled or procured a person to contravene section 144C(2); or
- has induced, or attempted to induce, whether by threats, promises or otherwise, a person to contravene section 144C(2); or

- has been in any way , directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 144C(2); or
- has conspired with others to contravene section 144C(2)

Without limiting the terms of any injunction granted under subsection (1), subsection (2) provides that the Supreme Court may grant an injunction restraining a person from carrying on a business or supplying goods and services for a specified period or except on specified terms and conditions.

Subsection (4) clarifies that the Supreme Court may grant an injunction against a person irrespective of whether the Court believes the person intends to engage again, or continue to engage, in the conduct referred to in subsection (1) and irrespective of whether there is an imminent danger of damage to any other person.

Subsection (5) provides that the Supreme Court's power to grant an injunction requiring a person to do an act or thing may be exercised whether or not—

- it appears to the court that the person intends to refuse or fail to do that act or thing;
- the person has previously refused or failed to do that act or thing; and
- there is any imminent danger of damage if the person refuses or fails to do that act or thing.

Subsection (6) provides that the Supreme Court may grant an injunction by consent of the parties irrespective of whether or not the court is satisfied that the person that would be required to comply with the injunction has engaged in conduct referred to in subsection (1).

Subsection (7) enables the Supreme Court to grant interim injunctions provided that no party is required to give any undertakings as to damages as a condition of doing so.

Subsection (8) enables the Supreme Court to rescind or vary any injunction granted.

Clause 27 amends section 157 of the **Transport (Compliance and Miscellaneous) Act 1983** to enable the TSC to suspend or revoke a licence, accreditation or permit if the TSC is satisfied, on the balance of probabilities, that the holder has contravened new section 144D.

This will support the implementation of recommendation 13.3 in the Final Report of the Taxi industry Inquiry.

The holder of the licence, accreditation or permit must be given written notice and, in accordance with section 157(3), the holder must be given a reasonable opportunity to show cause why the licence, permit or accreditation should not be suspended or revoked.

Subclause (1) substitutes the heading to reflect the extended scope of the section.

Subclause (2) inserts a new subsection (2B) that makes it clear that the insertion of new subsection (2A) does not limit the operation of Subdivision 6 of Division 4 of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**, which provides for disciplinary action to be taken against accredited persons. This clarification is necessary because the scope of section 157 has been extended to cover accreditation.

Clause 28 inserts two new Divisions into Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** that provide for the regulation of maximum taxi fares and the regulation of maximum non-cash payment surcharges by the Essential Services Commission (ESC).

These new Divisions facilitate the implementation of recommendations 12.1, 12.2, 12.4, 12.5, 12.9 and 13.3 in the Final Report of the Taxi Industry Inquiry.

#### **Division 5A—Regulation of maximum taxi fares**

New section 162A—

- defines new Division 5A as being relevant legislation and the taxi industry as a regulated industry for the purposes of the **Essential Services Commission Act 2001**; and

- provides for the content of the Division 5A to prevail should there be any inconsistency between the Division and a provision of the **Essential Services Commission Act 2001**.

New section 162B specifies the objective of the ESC in relation to the taxi industry to be to promote the efficient provision and use of commercial passenger vehicle services.

New section 162C defines the services provided by taxi-cabs as prescribed services and the maximum charges for those services as being prescribed prices, for the purposes of Part 3 of the **Essential Services Commission Act 2001**. The effect of this is to provide the ESC with the power to make price determinations on maximum taxi fares using the powers provided in Part 3 of the **Essential Services Commission Act 2001**.

Subsection (2) clarifies that any surcharge payable for the provision of taxi-cab services late at night or on specified holidays is to be included in the maximum taxi fare or fares determined by the ESC. This does not oblige the ESC to set late night or holiday surcharges.

New section 162D, without limiting the general powers of the ESC to make price determinations, enables the ESC to determine different prices according to the matters specified in paragraphs (a) to (g), for example, maximum taxi-cab fares may vary according to the time of day, day of week or kind of day on which the service is provided. The intent is to provide the ESC with the flexibility to determine maximum fares in whatever way is necessary to support the implementation of Taxi Industry Inquiry recommendations.

New section 162E specifies some considerations that need to be made by the ESC, the time the ESC has to make an initial determination and the requirements to undertake reviews at least once every two years.

Subsection (1) requires the ESC to have regard to recommendations 12.1 to 12.9 and 13.1 to 13.5 in the Final Report of the Taxi Industry Inquiry. It should be noted that subsection (4) provides for this requirement to cease 5 years after the commencement of clause 28.

Subsection (2) requires the ESC to make an initial determination before the first anniversary of the day on which this Act receives the Royal Assent.

Subsection (3) specifies that the ESC must conduct and complete a review of a price determination no later than 2 years after it is made. This is intended to ensure that ESC considers changes to the cost of providing taxi services and other relevant factors at least once every two years.

It should be noted that the ESC may review a price determination with a view to amending or revoking and replacing it at any time, if the ESC determines that this is necessary to achieve the specified objective of the ESC.

#### **Division 5B—Regulation of maximum non-cash payment surcharges**

New section 162F—

- defines new Division 5B as being relevant legislation and the taxi non-cash payment transaction industry as a regulated industry for the purposes of the **Essential Services Commission Act 2001**; and
- provides for the content of Division 5B to prevail should there be any inconsistency between the Division and a provision of the **Essential Services Commission Act 2001**.

New section 162G specifies the objective of the ESC in relation to the taxi non-cash payment surcharge industry to be to promote efficiency by regulating the amount that may be imposed by way of a taxi non-cash payment surcharge.

Subsection (2) requires the ESC to ensure that persons facilitating the making of taxi non-cash payment transactions are able to recover the reasonable cost of accepting and processing such transactions.

Subsection (3) makes it clear that reasonable costs includes any fees payable for the acquisition of transactions involving the use of debit, credit or charge cards.

New section 162H defines taxi non-cash payment transactions to be prescribed services and the maximum amounts of taxi non-cash payment surcharges as being prescribed prices, for the

purposes of Part 3 of the **Essential Services Commission Act 2001**. The effect of this is to provide the ESC with the power to make determinations on maximum taxi non-cash payment surcharges using the powers provided in Part 3 of the **Essential Services Commission Act 2001**.

New section 162I specifies that the ESC must conduct and complete a review of a price determination no later than 2 years after it is made. This is intended to ensure that ESC considers changes to the cost of facilitating taxi non-cash payment transactions at least once every two years. New section 162I also ensures that the ESC has whatever flexibility it requires in making a price determination to ensure that all persons facilitating taxi non-cash payment transactions are able to recover the reasonable cost of accepting and processing such transactions.

It should be noted that the ESC may review a price determination with a view to amending or revoking and replacing it at any time, if the ESC determines that this is necessary to achieve the specified objective of the ESC.

Clause 29 repeals Division 9 of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**. This Division provides the Minister administering Part VI with the power to require the ESC to undertake an investigation into any matter relating to taxi-cab fares or hiring rates in the commercial passenger vehicle industry. This Division is no longer required because the ESC will be directly responsible for regulating taxi-cab fares, instead of the Minister.

Clause 30 provides that if a body corporate commits a specified offence, officers of the body corporate are also held to have committed the offence unless the officer is able to present or point to evidence that he or she has exercised due diligence to prevent the commission of the offence by the body corporate.

Subsection (2) specifies the offences as being section 144C(2) and section 144D.

Subsection (3) specifies that an officer does not commit a specified offence if he or she presents or points to evidence that he or she has exercised due diligence and the contrary is not proven beyond reasonable doubt.

Subsection (4) specifies that when a court is determining whether due diligence has been exercised regard must be had to the 3 matters specified in (a) to (c) as well as any other matter the court considers relevant.

Subsection (5) makes it clear that an officer can rely on any defence available to the body corporate, and bears the same burden of proof.

Subsection (6) provides that an officer may be prosecuted for an specified offence irrespective of whether or not the body corporate has been prosecuted for, or found guilty of the specified offence.

Subsection (7) defines what is meant by *body corporate* and *officer*.

Clause 31 makes amendments to the definition of *essential service* in the **Essential Services Commission Act 2001** to make it clear and avoid any doubt that the taxi industry and the taxi non-cash payment transaction industry are essential services and are able to be regulated by the Essential Services Commission. Subclauses (3) and (4) insert a definition for taxi non-cash payment transaction industry into section 3 of the **Essential Services Commission Act 2001**.

#### **PART 4—TAXI DRIVERS**

Respectively, the two Divisions of this Part set out—

- amendments to the **Transport (Compliance and Miscellaneous) Act 1983**; and
- amendments to the **Accident Compensation Act 1985**.

Division 1 of Part 4 of the Bill provides for the regulation of the conditions of an agreement between a taxi-cab operator and a taxi-cab driver. The TSC is conferred a power to set conditions that are implied in every agreement between a taxi-cab operator and a taxi-cab driver. The Bill makes it an implied condition of every driver agreement that at least 55 per cent of gross fares will accrue to the taxi-cab driver. The Bill makes it an offence to breach an implied condition of a driver agreement.

This change reflects that drivers, when entering into agreements with taxi operators, may not have equal bargaining power, and this provision ensures that taxi drivers receive fair working conditions. Part 4 of the Bill provides for the resolution of disputes over conditions of a driver agreement.

The Small Business Commissioner is conferred power to resolve any disputes in respect of conditions of driver agreements (including any conditions that are implied conditions). The Victorian Civil and Administrative Tribunal is given jurisdiction to make a binding arbitration of a dispute related to conditions, which are not implied conditions.

Division 2 of Part 4 of the Bill makes amendments to the **Accident Compensation Act 1985** to ensure that a taxi-cab driver engaged under a driver agreement is deemed to be a worker for the purposes of that Act.

Part 4 of the Bill implements recommendations 5.11, 5.12, 5.13, 5.14 and 5.16 of the Taxi Industry Inquiry final report recommendations.

### **Division 1—Amendment of Transport (Compliance and Miscellaneous) Act 1983**

Clause 32 inserts a new Division 5C before Division 6 of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** (new sections 162J to 162V) entitled "Driver agreements".

New Division 5C is set out in five subdivisions.

New Subdivision 1 (new sections 162J and 162K) is entitled "Preliminary".

New section 162J defines *driver agreement* when used in new Division 5C of Part VI as follows—

*Driver agreement* means an agreement made between the operator of a taxi-cab and another person (labelled as *the taxi-cab driver* for the purposes of the Division) under which the taxi-cab driver is permitted to have possession of the taxi-cab for the purpose of operating it but does not include an agreement for the purchase of the taxi-cab or a contract of employment or of service.

The definition of a driver agreement clarifies that a driver agreement does not include a contract of employment or of service. This means that a taxi-cab operator may reach alternative employment arrangements and consequently alternative arrangements on payment rates (such as a minimum hourly rate) with taxi drivers.

New section 162K provides that Division 5C applies to a driver agreement whether made before or after the commencement of section 32 of the **Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013**.

This provision reflects that all agreements between taxi drivers and taxi operators are to be regulated. This is consistent with recommendation 5.1 of the Taxi Industry Inquiry which recommended that bailment agreements should be replaced with a fairer driver agreement.

New Subdivision 2 (new sections 162L and 162M) is entitled "Conditions".

New section 162L provides for the setting of conditions of driver agreements.

New subsection (1) provides that the TSC may, by notice published in the Government Gazette, specify conditions that are to be implied in every driver agreement.

New subsection (2) provides that, without limiting section 162L(1), it is an implied condition of every driver agreement that at least 55 per cent of the gross fares that accrue when a taxi-cab is under the control of a driver are to be retained by, or paid to, the driver.

As stated in recommendation 5.12 of the final report, the Taxi Industry Inquiry recommended that the following matters should also form part of implied conditions of every driver agreement—

- That the driver must be allowed to take up to four weeks unpaid leave where he or she has worked regularly for 12 months or more for the permit holder.
- That the permit holder must maintain a third party property insurance policy. The permit holder will be required to indemnify his or her driver/s in relation to any vehicle damage (including to the taxi) arising out of the use of the permit holder's taxi. Any excess payable under an insurance policy for a claim involving a permit holder's vehicle should be paid by the permit holder, unless the driver has been wilfully negligent (refer also to Recommendation 5.21).
- The service standards with which the driver must comply.
- That the operator is responsible for all vehicle related operating and maintenance costs, including fuel.
- The basis on which either party may end the agreement.

New section 162M provides that a party to a driver agreement who breaches a condition of the agreement implied under section 162L commits an offence and is liable to a penalty not exceeding 120 penalty units for a natural person and 600 penalty units for a body corporate.

New section 162M relates to recommendation 5.14 of the Taxi Industry Inquiry.

New Subdivision 3 (new sections 162N to 162P) is entitled "Alternative dispute resolution".

Subdivision 3 provides a pathway for a party to a driver agreement to seek resolution of a dispute over any conditions that a driver agreement may contain. The parties to the agreement may seek either mediation or some other form of alternative dispute resolution by the Small Business Commissioner. This is consistent with recommendation 5.12.

New section 162N provides for the functions of the Small Business Commissioner in alternative dispute resolution.

New subsection (1) provides that the Small Business Commissioner appointed under the **Small Business Commissioner Act 2003** has as a function the making of arrangements to facilitate the resolution (either by mediation or another form of alternative dispute resolution) of disputes concerning driver agreement conditions.

New subsection (2) provides that the Small Business Commissioner may himself or herself conduct a mediation or other form of alternative dispute resolution and is entitled to be paid his or her fees and expenses for doing so, which must not be more than the maximum amount (if any) prescribed by the regulations.

New subsection (3) provides that the Small Business Commissioner is not subject to the Minister's control or direction in exercising functions under Subdivision 3.

New section 162O provides that, for the purposes of Subdivision 3, mediation and other forms of alternative dispute resolution are not limited to formal mediation procedures but extend to preliminary assistance in dispute resolution, such as the giving of advice designed to ensure that—

- the parties are fully aware of their rights and obligations; and
- there is full and open communication between the parties concerning the matter.

New section 162P provides for the referral of disputes to the Small Business Commissioner for alternative dispute resolution.

New subsection (1) provides that either party, or both parties, to a driver agreement, or a person proposing to enter into a driver agreement, may refer to the Small Business Commissioner a dispute concerning a condition of the agreement or proposed agreement.

New subsection (2) provides that the referral must be accompanied by a referral fee, which must not be more than the maximum fee (if any) prescribed by the regulations. The Bill notes that the parties may ask the Small Business Commissioner for preliminary assistance before referring the dispute in accordance with this section (section 162O).

New subsection (3) provides that the Small Business Commissioner may join any person that he or she considers it appropriate to join as a party to the matter.

New subsection (4) provides that the Small Business Commissioner must arrange for each dispute referred in accordance with this section to be the subject of mediation by a mediator, or another appropriate form of alternative dispute resolution by a suitably qualified person.

New subsection (5) provides that a party to a mediation or another form of alternative dispute resolution may be represented by a legal practitioner but the mediator or person conducting the other form of alternative dispute resolution may, if he or she considers it appropriate to do so, meet with the party (alone or together with any other party) without their legal representative being present.

New subsection (6) provides that the costs of, and associated with, mediation by a mediator, or another form of alternative dispute resolution by a suitably qualified person (including the fees and expenses of the mediator or person conducting the other form of alternative dispute resolution) are to be determined by the mediator or that other person and paid by the parties in the

proportions that they agree among themselves or, if they cannot agree, in equal shares.

New subsection (7) provides that a mediator or person conducting another form of alternative dispute resolution is not civilly or criminally liable in respect of the performance, in good faith, of the functions of a mediator or such a person under section 162P.

New Subdivision 4 (new sections 162Q to 162T) is entitled "The Tribunal".

Subdivision 4 provides a pathway for any party to a driver agreement to seek a binding arbitration over the conditions that a driver agreement may contain. The Victorian Civil and Administrative Tribunal will be the agency responsible for this function. This is consistent with recommendation 5.12.

New section 162Q provides for the jurisdiction of the Victorian Civil and Administrative Tribunal (VCAT).

New subsection (1) provides that, subject to subsection (2), VCAT has jurisdiction to hear and determine an application by a party, or both parties, to a driver agreement seeking resolution of a dispute relating to a condition of the driver agreement other than one implied under section 162L.

New subsection (2) provides that VCAT's powers on an application under subsection (1) are subject to section 162T which provides that each party to the application is to bear their own costs.

New subsection (3) provides that a dispute may be the subject of an application under subsection (1) whether or not it has been referred to the Small Business Commissioner in accordance with section 162P.

New section 162R provides that the parties to a proceeding before VCAT on an application under section 162Q(1) are the applicant, the other party to the dispute and any person VCAT considers it appropriate to join as a party to the proceeding.

New section 162S provides for the orders that VCAT can make.

New subsection (1) provides that VCAT may, in a proceeding under Subdivision 4, make one or more orders—

- determining the terms of any condition other than one implied under section 162L; or
- requiring a party to pay money, by way of restitution or compensation or otherwise, to a specified person; or
- requiring anything else to be done that it is—
  - empowered to require to be done under Subdivision 4 or the **Victorian Civil and Administrative Tribunal Act 1998**; or
  - considers it necessary or desirable to resolve the matter concerned.

New subsection (2) provides that in ordering the payment of a sum of money by a party, VCAT may order the payment of interest on that sum by the party at the rate fixed from time to time under section 2 of the **Penalty Interest Rates Act 1983** or at any lesser rate it thinks appropriate.

New section 162T provides that each party to a proceeding bears their own costs.

New subsection (1) provides that despite anything to the contrary in Division 8 of Part 4 of the **Victorian Civil and Administrative Tribunal Act 1998**, each party to a proceeding before VCAT under Subdivision 4 is to bear their own costs in the proceeding.

New subsection (2) provides that at any time VCAT may make an order that a party pay all or a specified part of the costs of another party in the proceeding but only if VCAT is satisfied that it is fair to do so because—

- the party conducted the proceeding in a vexatious way that unnecessarily disadvantaged the other party to the proceeding; or
- the party refused to take part in or withdrew from mediation or other form of alternative dispute resolution under Subdivision 3.

New subsection (3) provides that *costs* includes fees, charges and disbursements.

New Subdivision 5 (new sections 162U and 162V) is entitled "Miscellaneous".

New section 162U provides that a statement or admission made in the course of mediation or another form of alternative dispute resolution under Subdivision 3 is not admissible in proceedings before VCAT under Subdivision 4 or in any other legal proceedings.

New section 162V provides that the Governor in Council may make regulations for or with respect to prescribing—

- the maximum amount of fees and expenses payable to the Small Business Commissioner for conducting a mediation or other form of alternative dispute resolution; or
- the maximum fees payable on the referral of a dispute to the Small Business Commissioner in accordance with section 162P.

#### **Division 2—Amendment of Accident Compensation Act 1985**

Clause 33 inserts new subsection 7(1A) after section 7(1) of the **Accident Compensation Act 1985** to provide that a reference to a contract of bailment in section 7(1) includes a reference to a driver agreement within the meaning of Division 5C of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**.

Clause 33 is related to recommendation 5.16 of the Taxi Industry Inquiry.

The change ensures a taxi driver engaged under a driver agreement is covered by the provisions of the **Accident Compensation Act 1985**.

#### **PART 5—TAXI SERVICES COMMISSION**

Respectively, the three Divisions in this Part set out—

- amendments to the **Transport Integration Act 2010**;
- amendments to the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011**; and
- amendments to the **Transport (Compliance and Miscellaneous) Act 1983**.

Part 3 of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011** provides for amendments to the charter and governance arrangements of the TSC to reflect its new role as industry regulator (the TSC initial role was to conduct an inquiry into the taxi and hire car industry). Part 3 of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011** is positioned to commence, by default, on 1 July 2013.

Part 5 of the Bill makes amendments to the **Transport Integration Act 2010**, the **Transport (Compliance and Miscellaneous) Act 1983**, and the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011** to provide for—

- a new object for the TSC;
- new functions and powers for the TSC;
- changes to how members of the TSC are appointed;
- the appointment of a Chief Executive Officer for the TSC.

Part 5 of the Bill provides for amendments that are additional to those provided for by Part 3 of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011** and assist in the commencement of the TSC in its second phase as the regulator of taxis, hire cars and other commercial passenger vehicles.

Part 5 of the Bill is related to recommendations 10.1, 10.2, 10.3, 10.7 and 10.9 of the Taxi Industry Inquiry.

### **Division 1—Amendment of the Transport Integration Act 2010**

Clause 34 substitutes a new section for section 115E of the **Transport Integration Act 2010**.

New section 115E provides a new object of the TSC.

New section 115E is related to recommendation 10.1 of the Taxi Industry Inquiry.

New subsection (1) provides that the primary object of the TSC is to regulate the commercial passenger vehicle industry in a manner that—

- promotes the provision of commercial passenger vehicle services that are customer responsive, safe, competitive, efficient and accessible; and

- is consistent with the vision statement and the transport system objectives.

New subsection (2) provides that, without limiting the generality of subsection (1), the primary object includes the following—

- to pursue and promote major and enduring improvements in the commercial passenger vehicle industry;
- to facilitate competition and innovation in the industry;
- to improve the safety of drivers and passengers of commercial passenger vehicles; and
- to promote public confidence in the safety of the commercial passenger vehicle industry.

Clause 35 amends the **Transport Integration Act 2010** to make changes to the appointment of Commissioners for the TSC.

Clause 35 substitutes "Governor in Council, on the recommendation of the Minister," for the word "Minister" in section 115I(1) and (2) of the **Transport Integration Act 2010**.

Clause 35 provides the TSC with greater independence as the Governor in Council becomes the party responsible for the appointment of Commissioners to the TSC rather than the Minister as previously provided for by the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011**.

This change is related to recommendation 10.3 of the Taxi Industry Inquiry.

Clause 36 substitutes a new section for section 115K(1)(a) of the **Transport Integration Act 2010**.

New section 115K(1)(a) provides that a Commissioner must declare any pecuniary interests in a matter relevant to the regulation of the commercial passenger vehicle industry.

This change replaces redundant wording in the existing provision.

Clause 37 amends section 115L of the **Transport Integration Act 2010** to change the procedure for any vacancies, resignation and removal of Commissioners of the TSC from office.

This change provides the TSC with greater independence as it provides that the power to remove Commissioners of the TSC is with the Governor in Council rather than the Minister as previously provided.

This change relates to recommendation 10.3 of the Taxi Industry Inquiry.

Subclause (1) inserts "signed by him or her, addressed to the Governor and" after the word "writing" in section 115L(2) of the **Transport Integration Act 2010**.

This change provides that a Commissioner of the TSC may resign by delivering a notice in writing signed by him or her, which is addressed to the Governor in Council and delivered to the Minister.

Subclause (2) substitutes "Governor in Council may at any time, on the recommendation of the Minister," for "Minister may at any time" in section 115L(3) of the **Transport Integration Act 2010**.

This change provides that the Governor in Council, on the recommendation of the Minister, may at any time remove a Commissioner or acting Chairperson of the TSC from office.

Subclause (3) substitutes a new section for section 115L(4) of the **Transport Integration Act 2010**.

New section 115L(4) provides that the Minister may only make a recommendation under section 115L(3) if the Minister is of the opinion that the Commissioner or acting Chairperson has—

- engaged in misconduct in carrying out the functions or duties of his or her office;
- refused or neglected to carry out those functions or duties;
- become mentally or physically incapable of satisfactorily carrying out those functions or duties; or
- a pecuniary interest to which section 115K applies (whether or not the Commissioner or acting Chairperson has declared the interest in accordance with that section).

This change clarifies, but does not limit, the situations in which the Minister may make a recommendation to the Governor in Council to remove a Commissioner or acting Chairperson of the TSC.

Clause 38 inserts new section 115QA after section 115Q of the **Transport Integration Act 2010**.

New Section 115QA relates to recommendation 10.3 of the Taxi Industry Inquiry.

New Section 115QA provides for the appointment of a chief executive officer for the TSC.

New subsection (1) provides that the TSC, with the approval of the Minister, may appoint a person as the chief executive officer of the TSC and may at any time remove or suspend a person from that office.

New subsection (2) provides that the chief executive officer holds office, subject to the **Transport Integration Act 2010**, on a full-time basis and on such terms and conditions as are determined by the Minister and specified in the instrument of appointment.

New subsection (3) provides that the chief executive officer may be a Commissioner of the TSC other than the Chairperson.

New subsection (4) provides that the chief executive officer may resign from the office by notice in writing signed by him or her and delivered to the Chairperson of the TSC.

New subsection (5) provides that if the chief executive officer is unable, whether because of illness, suspension, absence or otherwise, to perform the duties of the office of chief executive officer, the TSC may appoint another person to act in the place of the chief executive officer during the period of the inability.

New subsection (6) provides that a person appointed under section 115QA to act in the place of the chief executive officer while so acting—

- has, and may exercise, all the powers, and must perform all the duties, of the chief executive officer; and
- is to be paid any remuneration and travelling or other allowances fixed by the TSC from time to time, having regard to the rate of remuneration and allowances for the time being payable to the chief executive officer.

New subsection (7) provides that if the chief executive officer was immediately before his or her appointment an officer within the meaning of the **State Superannuation Act 1988** or a member within the meaning of the **Transport Superannuation Act 1988**, he or she continues to be such an officer or member while serving with the TSC.

New subsection (8) provides that section 115QA has effect despite the Chairperson having the employer powers under Part 3 of the **Public Administration Act 2004**.

Clause 39 inserts new section 115SB before section 115T of the **Transport Integration Act 2010**.

New section 115SB relates to recommendation 10.2 of the Taxi Industry Inquiry.

New section 115SB provides for an additional reporting obligation on the TSC. This change reflects that the TSC will have a role in implementing the Government supported reforms of the Taxi Industry Inquiry. The TSC will be accountable for the progress of implementation. The TSC will be required to report annually for five years to Parliament on the progress of implementation. The length of the reporting period reflects the Government's expectation as to the time which the Taxi Industry Inquiry's reforms will take to implement.

New subsection (1) provides that the TSC must include in the annual report required to be prepared by it under Part 7 of the **Financial Management Act 1994** a report on—

- the progress made in the year to which the annual report relates in implementing those recommendations contained in the final report of the Taxi Industry Inquiry tabled in both Houses of the Parliament on 12 December 2012 that are supported by the Government and are notified in writing to the TSC by the Minister for the purposes of this section before the commencement of that year; and
- its activities during that year; and
- the performance of the commercial passenger vehicle industry during that year.

New subsection (2) provides that section 115SB expires on the 5th anniversary of the commencement of section 39 of the **Transport Legislation Amendment (Foundation Tax and Hire Car Reforms) Act 2013**.

Clause 40 substitutes a new section for section 115T of the **Transport Integration Act 2010**.

Clause 40 relates to recommendation 10.7 of the Taxi Industry Inquiry and ensures that the TSC has sufficiently flexible powers to undertake its functions.

New section 115T provides a new delegation power for the TSC. The delegation power is expanded to provide the TSC with appropriate delegation powers to undertake its powers, duties and functions.

New subsection (1) provides that the TSC may by instrument delegate to any person any power, duty or function of the TSC under any Act or regulations including, subject to subsection (3), this power of delegation.

New subsection (2) provides that a delegation made under this section may be made—

- in relation to a person or class of persons specified in the instrument of delegation; or
- in relation to the holder, or the holder from time to time, of an office specified, or of each office in a class of offices specified, in the instrument of delegation.

New subsection (3) provides that a person to whom a power, duty or function has been delegated under subsection (1) may, subject to and in accordance with the instrument of delegation, delegate to another person that power, duty or function.

New subsection (4) provides that sections 42 and 42A of the **Interpretation of Legislation Act 1984** apply to a sub-delegation under subsection (3) as if it were a delegation.

Clause 41 inserts new section 115V at the end of Division 3 of Part 5 of the **Transport Integration Act 2010**.

New section 115V provides for transitional arrangements in relation to Commissioners of the TSC.

New subsection (1) provides that section 115V applies to a Commissioner in office immediately before the commencement of section 35 of the **Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013**.

New subsection (2) provides that the Commissioner continues in office, subject to Division 3 of Part 5 of the **Transport Integration Act 2010**, for the term for which he or she was appointed under section 115I as if he or she had been appointed by the Governor in Council on the recommendation by the Minister.

### **Division 2—Amendment of Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011**

Clause 42 amends section 109 of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011**.

Clause 42 provides the TSC with new functions. The changes ensure that the TSC has flexible powers to ensure compliance with legislation and is consistent with recommendation 10.7 of the Taxi Industry Inquiry.

On its commencement, section 109 of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011** will substitute a new section for section 115F of the **Transport Integration Act 2010**. Clause 42 amends the matters that section 109 of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011** contains.

Subclause (1) amends section 109 of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011**. The effect of subclause (1) is to substitute new paragraphs for proposed new section 115F(1)(a) to (d).

The new paragraphs provide new functions for the TSC which are—

- to develop and implement operational policies, strategies and performance measures that promote its object;
- to administer licensing, accreditation and other requirements imposed on participants in the commercial passenger vehicle industry;

- to administer grants made, or subsidy schemes established, in relation to the commercial passenger vehicle industry;
- to promote and monitor compliance with any relevant legislation;
- to receive complaints relating to the operation and performance of the commercial passenger vehicle industry and deal with them in accordance with any relevant legislation, policies and procedures;
- to investigate and prosecute breaches of any relevant legislation;
- to conduct inquiries into any matter relating to the commercial passenger vehicle industry, either on its own motion or at the direction of the Minister;
- to inform and educate the public about the operation and performance of the commercial passenger vehicle industry;
- to prepare and publish guidelines on how to comply with, or in relation to the operation or enforcement of, any relevant legislation;
- to report to the Minister on any matter into which it has conducted an inquiry;
- up until the third anniversary of the commencement of section 9 of the **Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013**, to monitor the number of taxi-cab licences in existence in the Melbourne Metropolitan Zone or the Urban and Large Regional Zone and consider whether to exercise in relation to that Zone the power of suspension conferred by section 143AA(1) of the **Transport (Compliance and Miscellaneous) Act 1983**;
- to advise the Minister on the operation of any relevant legislation;
- to conduct and publish research on the commercial passenger vehicle industry or any related matter.

Subclause (2) amends section 109 of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011**. The effect of subclause (2) is to substitute new sections 115F(3) and (4) for proposed new section 115F(3).

New subsection (3) provides that, in performing the functions conferred on it, the TSC must, where relevant, engage and collaborate with stakeholders so as to ensure better outcomes for all Victorians.

New subsection (4) provides that in section 115F of the **Transport Integration Act 2010** relevant legislation is to mean Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** or any subordinate instrument made under that Part.

Clause 43 amends section 112 of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011** to provide for amendments to the terms and conditions of Commissioners of the TSC.

The changes made by clause 43 relate to recommendation 10.3 of the Taxi Industry Inquiry.

Subclause (1) repeals section 112(1) of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011**.

Section 112(1) of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011** was positioned to amend section 115I of the **Transport Integration Act 2010** to permit the appointment of the Chairperson of the TSC on a full time basis only.

The effect of this change is to permit the appointment of a Chairperson of the TSC on either a full-time or part-time basis.

Subclause (2) substitutes "5 years" for "3 years" in section 112(2) of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011** in proposed new section 115I(3A) of the **Transport Integration Act 2010**.

This change permits the appointment of a Commissioner of the TSC for a period of 5 years.

Clause 44 repeals sections 108 and 120 of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011**.

These provisions are made redundant by the changes made by other provisions in Division 2 of Part 5 of this Bill.

Clause 45 substitutes a new section for section 124 of the **Transport Legislation Amendment (Taxi Services Reform and Other Matters) Act 2011**.

New section 124 amends Division 9A of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983**.

New section 124 make changes to reflect that the TSC is no longer tasked to inquire into the small commercial passenger vehicle industry but is still restricted in sharing confidential or commercially sensitive information and exempt freedom of information documents.

The following changes are made to Division 9A—

- "inquiry" is omitted in the heading to the Division;
- in section 191A the definition of *Commission* is repealed;
- in section 191A, in the definition of *FOI exempt document*, in paragraph (a) for "Commission (whether under Subdivision 3 or otherwise)" substitute "TSC";
- Subdivisions 2 and 3 are repealed (Subdivision 2 provided the TSC with power to inquire into any matter relating to commercial passenger vehicles. Subdivision 3 relates to information gathering powers. These powers are replaced by clause 49 of the **Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Bill 2013**.);
- In sections 191K, 191L, 191M, 191N, 191O, 191P, 191Q and 191R for "Commission" (wherever occurring) substitute "TSC";
- sections 191S, 191T and 191U are repealed (these provisions relate to disclosure of information to various parties related to and for the purposes of the Taxi Industry Inquiry.);

- in sections 191V and 191W for "Commission" substitute "TSC";
- sections 191X and 191Y are repealed (The TSC will no longer be permitted to disclose freedom of information exempt documents to consultants. Section 191Y relates to a redundant provision related to the Taxi Industry Inquiry.);
- Subdivision 6 is repealed (Subdivision 6 relates to reporting requirements for the purposes of the Taxi Industry Inquiry which are no longer required.)

### **Division 3—Amendment of Transport (Compliance and Miscellaneous) Act 1983**

Clause 46 amends section 158B and 158C of the **Transport (Compliance and Miscellaneous) Act 1983** to provide for amendments to provisions relating to security cameras.

This change reflects that this function is now proposed to be provided by the TSC.

Subclause (1) substitutes "licensing authority" for "Secretary" (wherever occurring) in sections 158B and 158C of the **Transport (Compliance and Miscellaneous) Act 1983**.

Subclause (2) substitutes "licensing authority or his or her services are being used by the licensing authority in accordance with section 115R(2) of the **Transport Integration Act 2010**" for "Department" in section 158B(1)(b) of the **Transport (Compliance and Miscellaneous) Act 1983**.

Subclause (3) substitutes "licensing authority's" for "Secretary's" in section 158B(3) of the **Transport (Compliance and Miscellaneous) Act 1983**.

Clause 47 inserts new section 158D after section 158C of the **Transport (Compliance and Miscellaneous) Act 1983**.

New section 158D provides for a transitional provision in relation to agreements and authorisations made under sections 158B and 158C in respect of security cameras downloads.

New subsection (1) provides that, subject to subsection (2), the amendments made to section 158B by section 46 of the **Transport Legislation Amendment (Foundation Tax and**

**Hire Car Reforms) Act 2013** do not affect an authorisation given under that section by the Secretary before the commencement of that section 46 and that authorisation continues to have effect, subject to any conditions referred to in section 158B(3), on and after that commencement as if it had been given by the licensing authority.

New subsection (2) provides that an authorisation under section 158B(1)(b)(i) only continues to have effect on and after the commencement of section 46 of the **Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013** if the person continues to be employed in the licensing authority, or his or her services continue to be used by the licensing authority in accordance with section 115R(2) of the **Transport Integration Act 2010**, on and after that commencement.

New subsection (3) provides that an agreement under section 158C that was in force between the Secretary and a person immediately before the commencement of section 46 of the **Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Act 2013** continues to have effect on and after that commencement as if it were an agreement between the licensing authority and the person.

Clause 48 inserts new Division 7 in Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** (new sections 170 and 171) entitled "TSC Inquiries" that sets out inquiries by the TSC.

New Division 7 provides the TSC with a power to conduct investigations and inquiries into any aspect of taxi and hire car services.

New Division 7 relates to recommendation 10.7 of the Taxi Industry Inquiry.

New section 170 provides for inquiries undertaken by the TSC.

New subsection (1) provides that the section applies to an inquiry conducted by the TSC under section 115F(1)(dc) of the **Transport Integration Act 2010**.

New subsection (2) provides that at least one Commissioner of the TSC must preside at the inquiry.

New subsection (3) provides that, subject to new Division 7, the TSC may conduct an inquiry in any manner it considers appropriate.

New subsection (4) provides that if directed to do so by the Minister, the TSC must conduct an inquiry into any matter relating to the commercial passenger vehicle industry.

New subsection (5) provides that a direction made by the Minister must be in writing.

New section 171 provides that, without limiting section 115F(1)(df) of the **Transport Integration Act 2010**, at the conclusion of an inquiry the TSC must give the Minister a report on the outcomes of the inquiry. This report must be made in writing.

Clause 49 inserts a new Subdivision 5A after Subdivision 5 of Division 9A of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** (new sections 191YA to 191YD) entitled "Power of TSC to obtain and share information" that sets out the powers of the TSC to obtain and share information.

New Subdivision 5A provides the TSC with new information gathering powers which may be used to require taxi operators to provide data on trips, shifts and fares direct from the taxi-cab to the TSC on a continuous basis (as is recommended by recommendation 3.9 of the Taxi Industry Inquiry), and for networks service providers to provide specified service delivery data on a regular basis.

This subdivision relates to recommendation 10.9 of the Taxi Industry Inquiry.

New section 191YA provides that the TSC, by notice in writing, may require a person accredited under Division 4 of Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** who it believes is capable of providing information or producing documents that may assist it in performing its functions—

- to provide, in accordance with the notice, that information to the TSC; or
- to produce those documents, in accordance with the notice, to the TSC or a person specified in the notice who is acting on its behalf; or

- to appear before the TSC at a time and place specified in the notice to provide that information, either orally or in writing, or produce those documents.

New subsection (2) provides that, to avoid doubt, a notice under section 191YA may require the operator of a taxi-cab to produce to the TSC, on a continuing basis, information directly from the taximeter fitted to the taxi-cab.

New subsection (3) provides that a person must not—

- refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it; or
- in purported compliance with a notice under section 191YA, knowingly provide information that is false or misleading; or
- obstruct or hinder the Taxi Service Commission in exercising a power under section 191YA

This offence carries a maximum penalty of 120 penalty units for a natural person and 600 penalty units for a body corporate.

New subsection (4) provides that nothing in section 191YA entitles or requires a person to provide information or produce a document that is the subject of legal professional privilege, or if its provision or production might tend to incriminate the person or make the person liable to a penalty.

New subsection (5) provides that any information provided or document produced by a person in compliance with a notice under this section is not admissible in evidence against the person in any proceedings other than proceeding under section 191YA.

New subsection (6) provides that if any documents are produced to the TSC under section 191YA, it may inspect the documents or authorise a person to do so, or make copies of, or take extracts from, the documents and retain possession of those copies or extracts.

New section 191YB provides that any person may complain to the Secretary about the exercise of a power by the TSC under this Division. The Secretary must investigate any complaint and provide a written report to the complainant on the results of the investigation.

New section 191YC provides that a written requirement by the TSC under this Division may be given personally or by registered post to a person at the last known place of business, employment or residence of the person, or in the case of a body corporate, at the registered office of the body corporate. A person may provide information or a document to the TSC by sending it to the TSC by registered post.

New section 191YD provides for information sharing by TSC with other agencies.

New subsection (1) provides that the TSC may enter into an arrangement with a relevant agency for the purposes of sharing or exchanging information held by the TSC and the relevant agency.

New subsection (2) provides that the information to which an information sharing arrangement may relate is limited to the following—

- information concerning investigations, inquiries, law enforcement, assessment of complaints or any licensing, permit or accreditation matters;
- probity assessments and reference checks concerning persons who provide, or propose to provide, commercial passenger vehicle services;
- any other information affecting the interests of users of commercial passenger vehicle services;
- any other information of a prescribed kind.

New subsection (3) provides that, under an information sharing arrangement, the TSC and the relevant agency are authorised—

- to request and receive information held by the other party to the arrangement; and
- to disclose information to the other party—

but only to the extent that the information is reasonably necessary to assist the TSC in the exercise of functions under Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** or the **Transport Integration Act 2010** or assist the relevant agency concerned in the exercise of its functions.

New subsection (4) provides that, without limiting subsection (3), the TSC may also (whether as part of an information sharing arrangement or otherwise)—

- refer to a commercial passenger vehicle agency or law enforcement agency any matter (including any complaint) with respect to the commercial passenger vehicle industry or that affects the interests of users of commercial passenger vehicle services;
- receive any matter of a type described in paragraph (a) from a commercial passenger vehicle agency or law enforcement agency;
- conduct a joint investigation into any such matter with a commercial passenger vehicle agency or law enforcement agency.

New subsection (5) provides that section 191YD does not limit—

- the powers of the TSC under Part VI of the **Transport (Compliance and Miscellaneous) Act 1983** or the **Transport Integration Act 2010**;
- the operation of any other Act under which a relevant agency is authorised or required to disclose information to another person or body;
- the giving of information—
  - to a court or tribunal in the course of legal proceedings;
  - under an order of a court or tribunal;
  - to the extent reasonably required to enable the investigation or the enforcement of a law of the State or of any other State or of a Territory or of the Commonwealth;
  - to the ESC;
  - with the written authority of the Secretary;
  - with the written authority of the person to whom the information relates.

New subsection (6) provides for the definitions in section 191YD which are—

- **commercial passenger vehicle agency** means an agency of the State, or of the Commonwealth, or of another State or a Territory or of an overseas jurisdiction, that exercises functions under an enactment with respect to commercial passenger vehicles;
- **law enforcement agency** means—
  - the police force of Victoria or the police force of another State or of a Territory or of an overseas jurisdiction;
  - the Australian Federal Police;
  - the Australian Crime Commission;
  - any other authority or person responsible for the investigation or prosecution of offences against the laws of the State or of the Commonwealth, another State or a Territory or an overseas jurisdiction;
- **relevant agency** means—
  - a commercial passenger vehicle agency;
  - a law enforcement agency;
  - the Essential Services Commission;
  - any other agency of the State or of the Commonwealth, another State or a Territory or an overseas jurisdiction;
  - any other person or body that exercises functions, in the public interest, that involve protecting the interests of users of commercial passenger vehicle services.

Clause 50 inserts new section 212(1A)(ab) after section 212(1A)(a) of the **Transport (Compliance and Miscellaneous) Act 1983**.

New section 212(1A)(ab) provides that a person is an officer who is authorised to issue transport infringement notices if the person is employed in the TSC, or is a person whose services are being used by the TSC in accordance with section 115R(2) of the

**Transport Integration Act 2010**, and is appointed in writing by the TSC to issue transport infringement notices.

This change reflects that issuing infringement for taxi related transport infringements will be transferred to the TSC and will not remain with the Department as initially envisaged.

- Clause 51 inserts ", the licensing authority" after "the Secretary" in section 229(1) and (1B)(a) of the **Transport (Compliance and Miscellaneous) Act 1983**.

This change provides that the TSC, as the licensing authority, may bring prosecutions. This change is related to recommendation 10.7 of the Taxi Industry Inquiry.

- Clause 52 makes consequential amendments to the **Transport (Compliance and Miscellaneous) Act 1983**.

Subclause (1) inserts a new definition for the *TSC* in section 2(1) of the **Transport (Compliance and Miscellaneous) Act 1983**. The *TSC* is to mean the Taxi Services Commission established by section 115B of the **Transport Integration Act 2010**.

Subclause (2) substitutes "this Division" for "this section" in section 162(2) of the **Transport (Compliance and Miscellaneous) Act 1983**.

#### **Division 4—Amendment of Road Safety Act 1986**

- Clause 53 makes amendments to the **Road Safety Act 1986** that are consequential to the establishment of the TSC so that enforcement officers employed in the TSC can continue to exercise powers needed to fulfil TSC functions that were previously fulfilled by officers employed in the Department of Transport (in the business unit named the Victorian Taxi Directorate).

Subclause (1) amends section 3(1) to define TSC.

Subclause (2) amends section 77(2)(c) to enable a person employed in the TSC to be authorised in writing by the Secretary to the Department of Transport to prosecute offences (either generally or in any particular case) against the Act or regulations.

Subclause (3) amends section 77(3) to enable proceedings under the Act or regulations taken by a person employed in the TSC to be conducted by another person employed in the TSC.

Subclause (4) amends section 84(1) to enable a certificate issued by the TSC as to matters that appear in or can be calculated from its records to be admissible in evidence in any proceedings and, in the absence of evidence to the contrary, to be proof of the matters stated.

Subclause (5) amends section 84(3) and 84(4A).

The amendment to section 84(3) enables the TSC to certify that on a particular date a motor vehicle or trailer was registered in the name of a particular person and makes the certificate admissible in evidence in any proceedings and, in the absence of evidence to the contrary, proof of the matters stated.

The amendment to section 84(4A) enables the TSC to certify that on a particular date—

- a particular registration number was assigned to a particular motor vehicle or trailer; or
- a particular person was entitled to use or possess a number plate bearing a particular registration number—

and makes the certificate admissible in evidence in any proceedings and, in the absence of evidence to the contrary, proof of the matters stated.

#### **PART 6—REPEAL OF AMENDING ACT**

Clause 54 provides that this Bill is repealed on 30 June 2015. The repeal of this Bill does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).