



## Research Paper



## Uber and Ridesharing

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## List of Abbreviations

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CPC	Certificate of Public Convenience
CPUC	California Public Utilities Commission
CTP	Compulsory Third Party
DGCCRF	Directorate-General for Competition, Consumer Affairs and Product Quality/Safety
DOTC	Department of Transportation and Communication
EU	European Union
LTFRB	Land Transportation Franchising and Regulatory Board
PHV	Private Hire Vehicle
SME	Small and Medium-Sized Enterprises
TBS	Transport Booking Service
TNC	Transportation Network Companies
TVNS	Transportation Vehicle Network Service

## Executive Summary

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The emergence and subsequent popularity of Uber and alternative ridesharing services has had a profound impact on the transport industry, both in Australia and overseas. Legislation governing the operations of transportation network companies (TNCs) and their regulation has been the subject of controversy, due largely to stakeholder interests.

Uber's entry into the Australian market has been met with a delayed legislative response from state governments. The primary issue of contention in regulating Uber has been in creating a level playing field for TNCs and the taxi industry, which has long adhered to strict regulatory measures from government. Industry assistance, most often in the form of compensation, has also been central to implementing an effective and fair regulatory framework. The majority of states in Australia have or are in the process of introducing legislation to regulate services provided by TNCs.

The successful spread of Uber and other TNCs into transport markets has been facilitated by a number of factors, including: low prices, efficient business models, effective market penetration and other incentives.

This research paper offers a jurisdictional comparison of legislation affecting Uber and other TNCs, within Australia and at an international level. It also provides commentary on a number of related issues, including:

- the operational business model and legal status of TNCs, with a particular focus on Uber – currently the largest provider of ridesharing services in Australia and globally;
- the licensing framework and industry assistance being provided for the taxi industry in each Australian jurisdiction where ridesharing has been, or is in the process of being, legalised; and
- the effect of legislation and regulation regarding TNCs on consumers, TNC providers, drivers, investors, governments, taxi plate holders and taxi drivers.

# Introduction

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Uber was founded in San Francisco in 2009 and is currently the world's largest transportation network company (TNC).<sup>1</sup> Uber connects passengers with drivers who offer rideshare services using their own non-commercial vehicles and also allows paying passengers to order transport services, such as taxis and hire cars, through a smartphone or other internet and location enabled devices. Uber has grown rapidly and after its last investment round, in December 2015, was valued at \$62.5 billion (A\$82.4 billion).<sup>2</sup> The rapid growth of the sharing economy has enabled Uber to expand its presence into 77 countries and more than 503 cities worldwide.<sup>3</sup> Uber's arrival into the international marketplace has caused a wide array of reactions, both positive and negative.

A number of ridesharing smartphone applications (apps) are now in operation throughout the world, including Lyft, GoCatch and Ingogo.<sup>4</sup> Like Uber, many of these apps have the operational capacity to be used to order both traditional taxis and rideshare services; as is the case with GoCatch, for example.<sup>5</sup> In Australia, Uber remains the major rideshare provider, although other service providers are beginning to increase their market share. For example, GoCar was launched in Sydney and is currently looking at opportunities in the ACT and Brisbane.<sup>6</sup> GoCar provides ridesharing services through the existing GoCatch taxi-booking app, allowing users to switch between both transport services.<sup>7</sup> Backseat provides ridesharing services in Sydney, which allows passengers to pay a contribution for rides provided.<sup>8</sup> Shofer has recently launched in Perth.<sup>9</sup> A GoFundMe page has been started for a Mum's Taxi ridesharing app which would provide female drivers for female passengers only.<sup>10</sup> Oiii is another Australian-developed app which is poised to enter the market.<sup>11</sup>

Uber offers a range of services in Australia. UberX connects passengers to individuals offering rides in their own private vehicles and has been the centre of most of the controversy surrounding Uber. UberX launched in Sydney and Melbourne in 2014 and now operates in Adelaide, Perth, Canberra, Brisbane,

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<sup>1</sup> The following definition of transportation network company comes from the [California Public Utilities Commission](#); 'an organisation whether a corporation, partnership, sole proprietor, or other form ... that provides prearranged transportation services for compensation using an online-enabled application (app) or platform to connect passengers with drivers using their personal vehicles'.

<sup>2</sup> M. Isaac & L. Picker (2015) '[Uber Valuation Put at \\$62.5 Billion After a New Investment Round](#)', *New York Times*, 3 December.

<sup>3</sup> Uber (date unknown) '[Uber Cities](#)', Uber website, accessed 12 September 2016.

<sup>4</sup> K. Brown & H. Enriquez (2014) '[Have smartphone, will travel](#)', *Choice*, 20 June.

<sup>5</sup> S. Thomsen (2016) '[GoCatch is moving into Brisbane as the Queensland government legalises ridesharing](#)', *Business Insider*, 15 August.

<sup>6</sup> Daily Telegraph (2016) '[Aussie ridesharing app GoCar to rival Uber launched in Sydney](#)', *Daily Telegraph*, 23 February; P. Durkin (2016) '[GoCatch to take on Uber, taxi industry in Australia](#)', Sydney Morning Herald website, 22 February; S. Thomsen (2016) op. cit.

<sup>7</sup> Daily Telegraph (2016) op. cit.

<sup>8</sup> News.com.au (2014) '[Over taxis? Ride-sharing apps like Uber and Backseat hit Australia](#)', *news.com.au* April 30; Backseat (date unknown) '[How it works](#)', Backseat website, accessed 12 September 2016.

<sup>9</sup> K. Kumar (2016) '[Rival For Uber? New App Shofer to Compete With Uber and Taxis in Perth: Reject \\$60 Minimum for Perth Services](#)', Aussie Network News, 1 April.

<sup>10</sup> T. Prime (2016) '[George McEncroe starts GoFundMe page for Mum's Taxi ride-sharing app](#)', *Melbourne Leader*, 18 May.

<sup>11</sup> NetCABS (2016) '[Homepage](#)', NetCABS website; L. Novak & D. Nankervis (2016) '[Uber X to become legal in South Australia under laws introduced by Weatherill Labor Government](#)', *The Advertiser*, 13 April.

the Gold Coast, the Sunshine Coast, Toowoomba, Newcastle, Geelong and the Mornington Peninsula.<sup>12</sup> Other Uber services available in Australia include UberLUX, UberTAXI and UberSUV.<sup>13</sup>

Media reports indicate that UberPOOL, a service which allows people to ride with others travelling in the same direction, is scheduled to be launched in Sydney and Melbourne in late 2016.<sup>14</sup>

All states and territories in Australia have a licensing and accreditation framework for public passenger services. Aspects of the licensing frameworks for taxis and hire cars which may require accreditation include: the drivers of the service, the vehicles being used, the operators of passenger services (often the owners of the vehicles) and the operators of transportation network services. Recent legislation in a number of Australian jurisdictions has changed the accreditation and licensing requirements for public passenger services, in order to legalise rideshare services.

Uber contends that rideshare services are legal under existing legal frameworks, as they merely connect riders and drivers using a technology platform.<sup>15</sup> A number of Australian jurisdictions have attempted to enforce their passenger transport licensing framework by charging drivers with offences under the relevant passenger transport legislation.<sup>16</sup> It is believed that Uber has paid the court costs and fines of some drivers charged with offences.<sup>17</sup>

Uber often operates in a legal grey area as governments have been slow to introduce legislative and regulatory measures to deal with its entry into the market. Moreover, legislation must take into account a number of stakeholder interests and is often controversial. Uber is subject to ongoing legislative and regulatory measures from governments, along with litigation from driver-partners and companies around the world.

## Uber business model

Uber's business model operates on the premise of connecting drivers and passengers through an online marketplace. In essence, Uber does not directly render services but rather provides a platform to bring together riders and drivers. The popularity of Uber and its penetration into the market is facilitated by favourable prices, but also by its business practices. Uber's modus operandi is based on the following model:

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<sup>12</sup> Deloitte Access Economics (2016) *Economic effects of ridesharing in Australia*, report prepared for Uber, Deloitte, p. 1; Uber (date unknown) 'Find a City', Uber website, accessed 12 September.

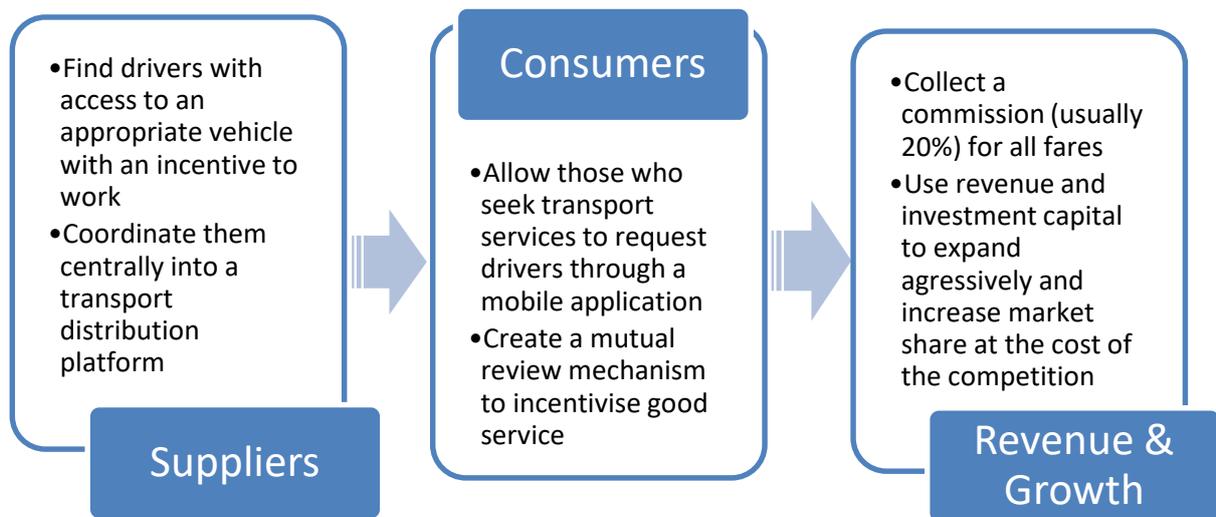
<sup>13</sup> Deloitte Access Economics (2016), op. cit. p.11.

<sup>14</sup> R. Chester (2016) 'Uber now legalised in five states and territories in Australia plans to start UberPOOL', *Courier Mail*, 12 August.

<sup>15</sup> K. Swisher (2014) 'Man and Uber Man', *Vanity Fair Hive*, 5 November; A. Haylen (2015) *Uber and Airbnb: the legal and policy debate in NSW*, NSW Parliamentary Research Service, October, Sydney, p. 4.

<sup>16</sup> For example, D. Lewis (2015) 'Illegal ride-sharing service UberX outsmarts transport inspectors, disrupting undercover stings', *ABC News*, 15 January; ABC News (2015) 'NSW Government cracks down on illegal ride-sharing; puts Uber on notice', *ABC News*, 28 September.

<sup>17</sup> D. Lewis (2015) op. cit.



Uber builds support and popularity amongst customers and driver partners through:

- its ability to disrupt an existing, and usually heavily regulated, taxi monopoly through aggressive marketing and by paying regulatory infringements incurred by drivers;<sup>18</sup>
- incentives, offered to drivers in the form of bonuses and temporary increases in pay, as well as to passengers in the form of free introductory rides, discounts and other promotions; and
- eventually capturing a growing market share and gradually eliminating traditional ride-hailing alternatives, such as taxis.

Apart from allowing customers to monitor proximity and availability of Uber vehicles on their app, the proposed benefits of using Uber over traditional taxis for consumers and driver-partners include:

- all payments are handled exclusively through Uber using a cashless payment method – customers' credit cards are charged through the Uber app;
- Uber has proven to be cheaper than using taxis;<sup>19</sup>
- Uber normally takes 20-25 per cent commission from driver-partners, generally leaving drivers with higher than traditional taxi net pay;<sup>20</sup>
- both riders and drivers have access to each other's app profiles – lessening the factor of anonymity that may reduce the feeling of safety in taxis;<sup>21</sup>
- both riders and drivers provide feedback on their experience, making a system of accountability and incentivising both parties to maintain high ratings;
- Uber app ease of usability; and
- shorter wait times for customers compared to taxis.<sup>22</sup>

<sup>18</sup> D. Shum (2015) 'Uber to pay Toronto bylaw tickets for drivers', *Global News*, 10 July.

<sup>19</sup> J. Castle (2015) 'UberX vs taxi – which is best?', *Choice*, 24 September.

<sup>20</sup> R. Lawler (2015) 'Uber study shows its driver make more per hour and work fewer hours than taxi drivers', *TechCrunch*, 22 January.

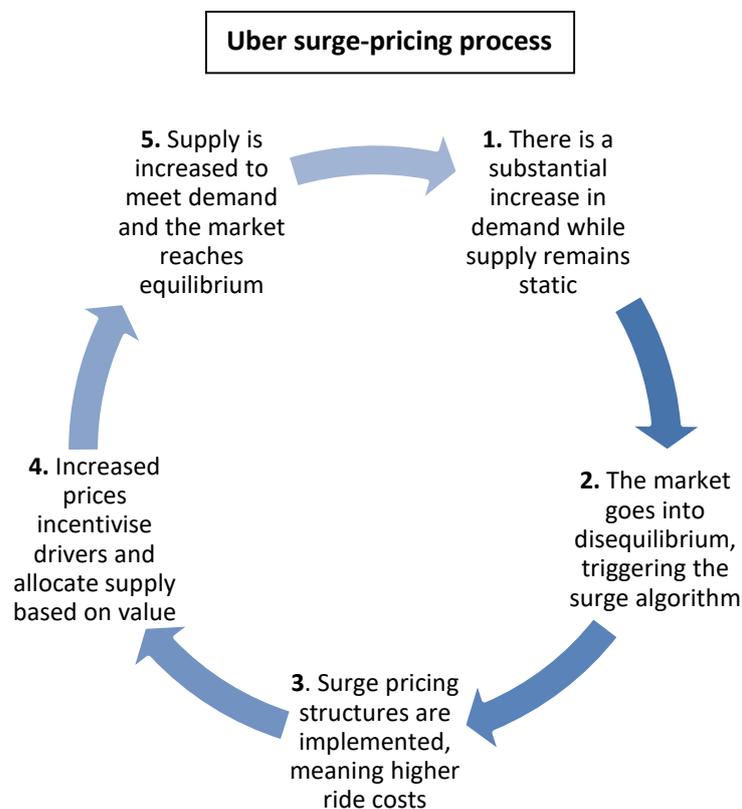
<sup>21</sup> O. Lambert (2016) 'A new report explores the benefits of Uber', *news.com.au*, 1 February.

<sup>22</sup> *ibid.*

## Uber surge pricing

The growth of Uber can also be attributed to its dynamic pricing model, called 'surge'.<sup>23</sup> In contrast to the static price structure of the taxi industry, Uber's prices change depending on rider demand and driver supply. When demand overtakes supply, the surge algorithm temporarily increases prices to help reach market equilibrium. An increase in demand without an increase in price would lead to an economic shortage, leaving the market in disequilibrium. Essentially, the algorithm incentivises more drivers to offer rides, which pushes a number of potential customers out of the market place.

Research has been undertaken by the University of Chicago, commissioned by Uber, into the surge algorithm and its effects. The research showed that surge efficiency gains come from both an increase in supply of drivers on the road and from an allocation of supply to those that value rides the most. The research likewise showed that in periods of increased demand where the surge algorithm is not employed, the market becomes inefficient. In the absence of surge pricing, drivers are less likely to drive while riders request rides in increasing numbers because of a lack of a pricing mechanism encouraging them to make an economic trade-off. According to the research, employing the surge pricing algorithm leads to a consistent wait time for riders, regardless of demand conditions.<sup>24</sup>



<sup>23</sup> Uber (date unknown) 'Understanding surge', Uber website, accessed 2 September 2016.

<sup>24</sup> J. Hall et al (2015) *The Effects of Uber's Surge Pricing: A Case Study*, University of Chicago.

## Legal status of Uber and other TNCs by jurisdiction - Summary

The following table provides a brief overview of the legal status of ridesharing services in Australia and overseas. Most states in Australia have legalised ridesharing services, such as Uber, with three states (Queensland, Tasmania and Victoria) yet to legalise. Ridesharing is currently illegal in the Northern Territory, however this is likely to change once the new Labor Government is sworn in after the 2016 election. Uber is currently active in 77 countries worldwide, with the top five most active countries being the United States, China, India, Mexico and Colombia.<sup>25</sup> For the purposes of this paper, ridesharing services in Australia, France, Germany, California, India, Philippines and China will be assessed, with a brief outline of the status in EU states.

**Table 1: Legal status of ridesharing by jurisdiction.**

Jurisdiction	Legal Status
Australian Capital Territory	Legal – legalised 30 October 2015
New South Wales	Legal – legalised 18 December 2015
South Australia	Legal – legalised 1 July 2016
Western Australia	Legal – legalised 4 July 2016
Queensland	To be legalised from 5 September 2016
Tasmania	Legislation legalising Uber yet to take effect
Northern Territory	Illegal
Victoria	To be legalised
France	Licensed services legal
Germany	Licensed services legal in Berlin and Munich only
California	Legal – legalised 19 September 2013
India	Varies by state – national government has issued service guidelines
Philippines	Legal – legalised 10 May 2015
China	To be legalised from 1 November 2016

<sup>25</sup> Uber (date unknown) 'Cities', Uber website, accessed 6 September 2016.

## Victoria

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The Victorian taxi and hire car industry underwent significant reform after an independent inquiry in 2012. The *Government Response* to the *Taxi Industry Inquiry Final Recommendations* noted that the reforms 'do not constitute a move to an open fully de-regulated market but rather set a more moderate path of reform.'<sup>26</sup> Specifically, the reforms stopped short of legalising ridesharing services.

Since the commencement of Uber services in Victoria, a number of Uber drivers have been fined for driving a hire car without a commercial licence or registration.<sup>27</sup> The Taxi Services Commission's case against Nathan Brenner, an Uber driver, was originally successful in the Magistrates Court and Mr Brenner was fined.<sup>28</sup> On 18 May 2016, the County Court dismissed the charges on the grounds that section 159 of the *Transport (Compliance and Miscellaneous) Act 1983 (Vic)* provided a defence against the charges under that Act, which were, 'that the passengers carried by such a vehicle at the relevant time were not carried for reward at separate and distinct fares for each passenger'.<sup>29</sup> The Victorian Parliament then passed the *Transport (Compliance and Miscellaneous) Amendment (Public Safety) Act 2016 (Vic)* to close the loophole in the Act by repealing section 159 of the *Transport (Compliance and Miscellaneous) Act 1983 (Vic)*.<sup>30</sup>

Premier Daniel Andrews announced on 23 August 2016 that legislation will be introduced in 2016 which will waive the hire car licensing fee and impose a \$2 levy on every trip to help fund a 'Fairness Fund' to compensate existing taxi licence holders. Further legislation will be introduced in 2017 to replace the current licensing regime with a single registration system, thus opening the door for more ridesharing services in Victoria.<sup>31</sup>

Previously, Fiona Patten MP had introduced the *Ridesharing Bill 2016* (the Bill) as a private Member's Bill into the Legislative Council on 7 June 2016. This Bill sought to:

- legalise ridesharing in Victoria by excluding ridesharing vehicles from the definition of commercial passenger vehicles under the *Transport (Compliance and Miscellaneous) Act 1983 (Vic)*;
- impose a range of duties on facilitators of ridesharing that set standards for driver and vehicle safety;
- amend the *Transport Integration Act 2010 (Vic)* to include rideshare journeys as a form of transport service; and
- establish several duties on rideshare facilitators (persons who own, operate or control a rideshare platform), including:
  - a requirement for rideshare applications to display certain information and images;
  - a ban on rideshare facilitators from entering into a rideshare driver arrangement with a person who fails to meet certain requirements or whose vehicle is more than 10 years old; and

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<sup>26</sup> Victorian Government (2013) *Government response to the Taxi Industry Inquiry Final Recommendations*, May, p.3.

<sup>27</sup> J. Dowling (2015) 'Ride-sharing costs: Uber drivers fined near \$600,000 as hire-car battle goes on', *The Age*, 24 October.

<sup>28</sup> E. Younger (2016) 'Melbourne Uber driver beats fine in landmark case, effectively legalising service in Victoria', *ABC News*, 18 May.

<sup>29</sup> *Brenner v Taxi Services Commissioner* (2016) Judge Chettle, Judgement, County Court, 18 May.

<sup>30</sup> J. Allan, Minister for Public Transport (2016) 'Second reading speech: *Transport (Compliance and Miscellaneous) Amendment (Public Safety) Bill 2016*', *Debates*, Victoria, Legislative Assembly, 7 June, p. 2258.

<sup>31</sup> D. Andrews, Premier (2016) *Victoria leads the way with safer, simpler, more flexible trips*, media release, 23 August.

- a requirement for drivers to be 18 years of age or older, have a full drivers licence for at least one year and have not been found guilty of certain criminal offences in the preceding 10 years.

Regulations would be required to make provision for insurance, accreditation, health checks and access to disability subsidies.<sup>32</sup> The Bill did not make provision for an industry assistance package for existing taxi plate licence holders.

## Industry assistance

On 23 August 2016, Premier Daniel Andrews announced that \$378m would be made available to assist licence holders to transition to the new framework. A \$75m Fairness Fund is dedicated to helping those facing immediate hardship, including \$25m to improve access to transport for people with a disability.<sup>33</sup> Media reports have indicated that the government announced that it would purchase two taxi licences per licence holder, at a cost of \$100,000 for the first taxi licence and \$50,000 for the second licence.<sup>34</sup> All commercial passenger vehicle providers will be charged a levy, equivalent to approximately \$2 per trip, to fund the assistance package.<sup>35</sup> Media reports indicate that the levy will be imposed for 8 years and is expected to raise \$44m per year.<sup>36</sup>

The Parliament of Victoria's Economy and Infrastructure Committee is currently undertaking an [Inquiry into Ride Sourcing Services](#) (due to report by 8 December 2016) on the need for, and appropriate structure of, regulation of ride sourcing services such as Uber, with particular regard to:

- barriers to entry;
- consumer protection;
- customer safety;
- competition;
- access for people with disabilities;
- remuneration and workplace rights for drivers;
- how impacts of such regulation on the taxi industry can be minimised;
- industry transition; and
- any other issues the Committee regards as relevant.<sup>37</sup>

## Australian Capital Territory

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The ACT was the first jurisdiction in Australia to legalise rideshare services. An interim regulation commenced operation on 30 October 2015, which legalised the service until more comprehensive

<sup>32</sup> F. Patten, Member for Northern Metropolitan (2016) '[Second reading speech: Ridesharing Bill 2016](#)', *Debates*, Victoria, Legislative Council, 8 June, p. 2745.

<sup>33</sup> D. Andrews, Premier (2016) op. cit.

<sup>34</sup> B. Preiss & T. Cowie (2016) '[Uber gets green light to operate in Victoria](#)', *The Age*, 23 August.

<sup>35</sup> D. Andrews, Premier (2016) op. cit.

<sup>36</sup> B. Preiss & T. Cowie (2016) op. cit.

<sup>37</sup> Economy and Infrastructure Committee (2016) '[Inquiry into Ride Sourcing Services Terms of Reference](#)', Parliament of Victoria website, 25 May.

legislation could be introduced.<sup>38</sup> The legalisation of Uber was the result of the [2015 Taxi Industry Innovation Review](#).<sup>39</sup>

## Legislative provisions

The [Road Transport \(Public Passenger Services\) \(Taxi Industry Innovation\) Amendment Act 2015 \(ACT\)](#) amends the [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#) and represents the second stage of ridesharing reforms in the territory. These amendments came into force on 1 August 2016.<sup>40</sup> Requirements for rideshare services are also contained in the [Road Transport \(Public Passenger Services\) Regulation 2002](#).

## Licensing framework

Drivers and vehicle owners who provided rideshare services before 1 August 2016 have until 1 February 2017 to meet the new driver and vehicle licensing and accreditation requirements.<sup>41</sup> The amendments require Transport Booking Services to be accredited from 1 November 2016.<sup>42</sup> This covers services which accept bookings for taxis, rideshare vehicles and/or hire cars.<sup>43</sup> Transport Booking Services must comply with the [Road Transport \(Public Passenger Services\) Transport Booking Services—Service Standards 2016 \(No 1\)](#), regarding issues such as vehicle safety, customer complaints and performance reporting. Rideshare drivers must also be accredited and hold a public vehicle licence under the [Road Transport \(Driver Licensing\) Act 1999](#) with a ‘D’ rideshare condition.<sup>44</sup> A person is entitled to operate rideshare services in the ACT only if the person is an affiliated driver for a transport booking service and an accredited rideshare driver.<sup>45</sup> Rideshare vehicles must also be licensed by the Road Transport Authority and the vehicle must be registered under the [Road Transport \(Vehicle Registration\) Act 1999 \(ACT\)](#).<sup>46</sup> Drivers and vehicle licensees must comply with the [Road Transport \(Public Passenger Services\) Rideshare Services—Service Standards 2016 \(No 1\)](#), regarding issues such

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<sup>38</sup> The [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#) and [Road Transport \(Public Passenger Services\) Regulation 2002](#) (as in force prior to 30 October 2015) required taxi services and hire car services to be appropriately accredited. However, a regulation could exempt a kind of vehicle or person from the operation of the Act. On 30 October 2015, the [Road Transport \(Public Passenger Services\) \(Exemptions\) Amendment Regulation 2015 \(No 1\)](#) inserted a new chapter 4A into the [Road Transport \(Public Passenger Services\) Regulation 2002](#), with the effect of exempting interim rideshare providers from requiring licences and accreditation under the [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#), if they had entered into an interim rideshare driver agreement with an interim rideshare booking service which had in turn entered into an interim rideshare booking service agreement with the Territory.

<sup>39</sup> ACT Government, Chief Minister, Treasury and Economic Development Directorate (2015) ‘[2015 Taxi Industry Innovation Review](#)’, ACT Government website.

<sup>40</sup> [Road Transport \(Public Passenger Services\) \(Taxi Industry Innovation\) Amendment Commencement Notice 2016](#); Access Canberra (2016) ‘[Rideshare accreditation and licensing in the ACT](#)’, Access Canberra website; The relevant provisions of the [Road Transport \(Taxi Industry Innovation\) Legislation Amendment Regulation 2016 \(No 1\)](#) commenced on 1 August 2016 and amends the [Road Transport \(Public Passenger Services\) Regulation 2002](#).

<sup>41</sup> Access Canberra (2016) op. cit.

<sup>42</sup> *ibid.*; [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#), s 32.

<sup>43</sup> [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#), s 28; [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#), s 29.

<sup>44</sup> [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#), s 60E; [Road Transport \(Public Passenger Services\) Regulation 2002](#), s 164Q; Access Canberra (2016) op. cit.; Access Canberra (2016) ‘[Rideshare driver licensing](#)’, Access Canberra website.

<sup>45</sup> [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#), s 60D; [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#), s 36F.

<sup>46</sup> [Road Transport \(Public Passenger Services\) Regulation 2002](#), Part 3A.3; [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#), s 60J; Access Canberra (2016) ‘[Rideshare accreditation and licensing in the ACT](#)’, Access Canberra website.

as maintenance, advertising, recordkeeping, complaints management and lost property.<sup>47</sup> Rank and hail services and wheelchair accessible taxi services will only be provided by taxis.<sup>48</sup>

## Industry assistance

No compensation scheme has been announced in the ACT for existing taxi and hire car licence holders, however the government has indicated that it will review the operation of rideshare services in the ACT and look at the issue again after two years to assess the effect the reforms have had on licence values.<sup>49</sup>

Annual hire car licence fees were reduced from \$4,600 to \$100 and the cost of annual leases for taxi licences will be reduced by 75 per cent, from \$20,000 to \$10,000 on 30 October and to \$5,000 one year after the new laws commence.<sup>50</sup> The \$350 annual taxi and hire car operator accreditation fee will be eliminated.<sup>51</sup>

## Insurance

All accredited operators of a public passenger vehicle must hold a public passenger vehicle insurance policy for at least \$5 million for the vehicle.<sup>52</sup> From 1 April 2016, new compulsory third party (CTP) premiums will apply for rideshare vehicles, making it compulsory to upgrade their insurance from CTP passenger vehicle class to CTP rideshare vehicle class at registration renewal and to pay an additional premium for the CTP rideshare class.<sup>53</sup>

In addition, drivers working solely for a single transport booking service (TBS) will be considered an employee of that TBS and also be covered by workers' compensation, whether they own the vehicle or not.<sup>54</sup>

# New South Wales

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## Interim regulations

New South Wales legalised ridesharing on 18 December 2015 with the commencement of the [Passenger Transport Amendment \(Taxis and Hire Cars\) Regulation 2015](#), which amended the [Passenger Transport Regulation 2007](#) made under the [Passenger Transport Act 1990 \(NSW\)](#).<sup>55</sup> The regulation is an interim measure allowing the operation of rideshare services until more comprehensive legislation

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<sup>47</sup> [Road Transport \(Public Passenger Services\) Rideshare Services—Service Standards 2016 \(No 1\)](#); [Road Transport \(Public Passenger Services\) Regulation 2002](#), s 20C.

<sup>48</sup> A. Barr, Chief Minister, (2015) [ACT first in Australia to legalise ridesharing](#), media release, 30 October.

<sup>49</sup> K. Lawson (2015) '[ACT government unmoved as NSW considers of compensation for taxi plate owners](#)', *Canberra Times*, 25 November; S. Rattenbury, Minister for Territory and Municipal Services, Minister for Justice, Minister for Sport and Recreation and Minister assisting the Chief Minister on Transport Reform (2015) '[Road Transport \(Public Passenger Services\) \(Taxi Industry Innovation\) Amendment Bill 2015](#)', *Debates*, Australian Capital Territory, Legislative Assembly, 17 November, p. 3994.

<sup>50</sup> ACT Government (2015) '[ACT Taxi Industry Innovation Reforms: Taxi and Hire Car Industry factsheet](#)', ACT Government website; A. Barr, Chief Minister, (2015) [ACT first in Australia to legalise ridesharing](#), media release, 30 October.

<sup>51</sup> A. Barr (2015) *op. cit.*

<sup>52</sup> [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#), s 111

<sup>53</sup> *ibid.*

<sup>54</sup> *ibid.*

<sup>55</sup> Transport for NSW (2016) '[Point to Point industry](#)', Transport for NSW website.

can be introduced. The reforms were the result of the [Point to Point Transport Taskforce Report](#) published in November 2015.<sup>56</sup>

[Under the Passenger Transport Act 1990 \(NSW\)](#), the definition of a private hire vehicle service is broad enough to include rideshare services.<sup>57</sup> Under the amended [Passenger Transport Regulation 2007](#), a person who carries on a private hire vehicle service is exempt from the requirement to hold an accreditation under the [Passenger Transport Act 1990 \(NSW\)](#) if that person complies with certain conditions.<sup>58</sup> According to the Point to Point Transport [Rideshare Driver factsheet](#), in order to be exempt from requiring accreditation, a rideshare driver:

- must hold a current Private Hire Vehicle (PHV) driver authority issued by Roads and Maritime Services
- must register the vehicle for business use; and
- must comply with certain safety conditions, including those relating to vehicle maintenance and keeping records.<sup>59</sup>

## Second stage of reforms

The second stage of reforms is contained in the [Point to Point Transport \(Taxis and Hire Vehicles\) Act 2016 \(NSW\)](#).<sup>60</sup> This Act was passed by Parliament in June 2016 and the provisions relating to the first stage of the transitional assistance package, as well as the establishment of the new Point to Point Transport Commissioner, have commenced.<sup>61</sup>

Under the Act, Passenger Service Providers, Booking Service Providers, officers of those providers and drivers would have a duty of care to ensure the health and safety of drivers, passengers and others. Regulations may specify safety standards for passenger and booking services.<sup>62</sup> The Act will also make provision for the authorisation and licensing of taxi services and the authorisation of booking services.<sup>63</sup> The new legislation outlines:

- the establishment of a \$250m industry adjustment assistance fund;
- the establishment of a new regulator for all taxis, hire cars and ride share operators;
- that fare estimates must be provided to customers by booking companies; and
- that a clear chain of responsibility will be established and that government will continue to set safety standards.

The Act provides that booked fares will no longer be regulated for all point to point services, including taxis, hire cars and ridesharing. All services will be required to provide a fare estimate to customers before a booking is made.<sup>64</sup>

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<sup>56</sup> Point to Point Transport Taskforce (2015) [Report to the Minister for Transport and Infrastructure](#), New South Wales, November.

<sup>57</sup> [Passenger Transport Act 1990 \(NSW\)](#), s 36A

<sup>58</sup> [Passenger Transport Regulation 2007](#), s 26A.

<sup>59</sup> Transport Roads & Maritime Services, '[Point to Point Transport: Rideshare Driver factsheet](#)', Transport Roads & Maritime Services website; [Passenger Transport Regulation 2007](#), s 26A.

<sup>60</sup> A. Constance, Minister for Transport and Infrastructure (2016) '[Second reading speech: Point to Point Transport \(Taxis and Hire Vehicles\) Bill 2016](#)', *Debates*, New South Wales, Legislative Assembly, 2 June, p.1.

<sup>61</sup> See [Point to Point Transport \(Taxis and Hire Vehicles\) Act 2016 \(NSW\)](#), Schedule 3. The [Point to Point Transport \(Taxis and Hire Vehicles\) Regulation 2016](#) commenced on 8 July 2016 and relates to the establishment of the industry assistance package.

<sup>62</sup> [Point to Point Transport \(Taxis and Hire Vehicles\) Act 2016 \(NSW\)](#), Part 2, Divisions 1-3.

<sup>63</sup> [Point to Point Transport \(Taxis and Hire Vehicles\) Act 2016 \(NSW\)](#), Part 3 and Part 4.

<sup>64</sup> Transport for NSW (2017) '[Point to point transport](#)', NSW Government.

Transport for NSW issued a media release on 12 October 2016 announcing the appointment of the inaugural Point to Point Transport Commissioner. Barbara Wise has been appointed for a term of two years under the new legislation.<sup>65</sup> The enforcement regime under the new Commissioner is set to begin in the first half of 2017.<sup>66</sup>

Further information is given about the [Point to Point Transport \(Taxis and Hire Vehicles\) Bill](#) in the [Second Reading Speech](#) of the Minister for Transport and Infrastructure, Andrew Constance. Specifically, only taxis can undertake rank and hail work, with penalties for wrongdoers including a custodial sentence for providing a taxi service without a taxi licence.<sup>67</sup>

[A new Passenger Transport Act 2014 \(NSW\)](#) was also passed, although this Act does not contain specific provisions referring to rideshare services. Minister for Transport, Gladys Berejiklian, in her [Second Reading Speech](#) for the bill stated:

Other new services are emerging in the market, such as ridesharing services. Transport for NSW is currently considering how these new services could be addressed. The bill will allow the Government to respond to the current investigations through regulation, although it does not deal with that specific issue.

The level of regulation government considers appropriate for rideshare services and whether third parties should be captured under the Act are substantial issues that the Government believes need to be worked through, including in consultation with industry and the community.<sup>68</sup>

To date, regulations relating to rideshare services have not been made under the [Passenger Transport Act 2014 \(NSW\)](#).<sup>69</sup>

## Industry assistance

The NSW government is implementing a \$250m industry adjustment assistance package for taxi and passenger hire vehicle industries. This package includes:

- \$98 million for transitional assistance of \$20,000 per ordinary transferable licence, for up to two licences, for taxi licence holders who held their licence before 1 July 2015;
- \$142 million for taxi licensees facing hardship as a result of the changes; and
- up to \$10 million for a buy-back scheme for perpetual hire car licences.

The package will be funded by a \$1 levy, for up to five years. The levy will be payable on all point-to-point transport trips by the taxi company or booking company.<sup>70</sup>

The first stage of the transitional assistance package is being implemented and the relevant provisions of the [Point to Point Transport \(Taxis and Hire Vehicles\) Act 2016 \(NSW\)](#) and the [Point to Point Transport \(Taxis and Hire Vehicles\) Regulation 2016](#) have commenced.<sup>71</sup> This first stage of transitional assistance consists of \$20,000 payments per eligible ordinary transferable licence, for up

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<sup>65</sup> Transport for NSW (2016) [NSW Point to Point Transport Commissioner announced](#), NSW Government, media release, 12 October.

<sup>66</sup> *ibid.*

<sup>67</sup> A. Constance, Minister for Transport and Infrastructure (2016) *op. cit.*; For example, see [Point to Point Transport \(Taxis and Hire Vehicles\) Act 2016 \(NSW\)](#), ss 16 and 47.

<sup>68</sup> G. Berejiklian, Minister for Transport (2014) [‘Second reading speech: Passenger Transport Bill 2014’](#), *Debates*, New South Wales, Legislative Assembly, 18 June, p. 29808.

<sup>69</sup> The [Passenger Transport Regulation 2014](#) does not contain provisions relevant to ridesharing services; Transport for NSW (2016), [‘NSW Passenger Transport Legislation Review’](#), Transport for NSW website.

<sup>70</sup> *ibid.*

<sup>71</sup> Transport for NSW (2016) *op. cit.*

to two licences. Hire care licences are no longer issued or required, therefore hire car drivers will no longer be needed to pay an annual fee of \$8,235 in Sydney and approximately \$3,000 in regional NSW.<sup>72</sup>

## Insurance

New CTP agreements for point-to-point vehicles under the NSW Compulsory Third Party Insurance Scheme will see transport service providers pay a base premium plus an additional fee based on their vehicle usage. Vehicle usage data for transport service providers will be collected through in-vehicle technologies, allowing the State Insurance Regulatory Authority to monitor how often a vehicle is on the road, at what times and how safely the vehicle is being driven.

## South Australia

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In January 2015, the South Australian Government commissioned the *Taxi and Chauffeur Vehicle Industry Review* which delivered its final report in February 2016.<sup>73</sup> Following the review, the government announced in April 2016 that ridesharing services would be legalised from 1 July 2016.<sup>74</sup> The reforms were introduced by the *Passenger Transport Variation Regulations 2016* which amended the *Passenger Transport Regulations 2009* made under the *Passenger Transport Act 1994 (SA)*.

### Licensing framework

Under the amended *Passenger Transport Regulations 2009*, all rideshare drivers are required to be accredited under the *Passenger Transport Act 1994 (SA)*.<sup>75</sup> Operator accreditation is also required for owners of the vehicle, while a person who is both the owner and driver of the vehicle will require both. Booking services for taxis, rideshare and chauffeured vehicles also require accreditation.<sup>76</sup>

The Government will increase penalties for breaches of the *Passenger Transport Act 1994 (SA)* from \$4,000 to \$15,000.<sup>77</sup>

### Industry assistance

The South Australian Government will implement an assistance package to help offset potential impacts of the new regulations, which will include:

- a \$30,000 payment per taxi licence;
- compensation of \$50 per week for a maximum of 11 months for licence lessees; and

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<sup>72</sup> *ibid.*

<sup>73</sup> L. MacLennan (2016) 'Uber X proposal to reform taxi services in South Australia to be debated in Parliament', *ABC News*, 31 March; J. Weatherill, Premier (2016) *State Government to reform the taxi and chauffeur vehicle industry*, media release, 12 April.

<sup>74</sup> J. Weatherill, (2016) *op. cit.*

<sup>75</sup> *Passenger Transport Regulations 2009*, Part 2, Division 2; *Passenger Transport Act 1994 (SA)*, Part 4 Division 2; Department of Planning, Transport and Infrastructure (date unknown) 'Taxi and Chauffeur Vehicle Industry Reform- Potential New Drivers (rideshare)', DPTI website, accessed 14 September 2016.

<sup>76</sup> *Passenger Transport Act 1994*, s 27; Government of South Australia (2016) 'Drivers and operators', SA Government website, 4 August;

Department of Planning, Transport and Infrastructure (2016) 'Approval as a Transport/Centralised Booking Service for Rideshare/Chauffeured Vehicles Information Guide', DPTI website; *Passenger Transport Act 1994*, s29.

<sup>77</sup> S. Mullighan, Minister for Transport and Infrastructure (2016) *Transport reforms to benefit customers*, media release, 1 July. (See section 28A, standard scales for penalties and expiation fees for a division 4 fine under the *Acts Interpretation Act 1915 (SA)*)

- a freeze on the release of new taxi licences for at least five years.<sup>78</sup>

The assistance package will be funded by a \$1 levy on all metropolitan trips for all transport service providers. Furthermore, taxis will maintain exclusive rights to rank and hail work, while taxis and chauffeur vehicles will continue to have exclusive rights to pre-booked work and cash fares.

In relation to its taxi and ridesharing industries, the South Australian Government has:<sup>79</sup>

- removed restrictions on vehicle requirements, technology platforms and payment services for greater flexibility and reduced costs for existing and new operators;
- allowed drivers to accept bookings from multiple taxi booking service providers;
- removed requirements around 'not for hire' signs and minimum \$20 fares for chauffeur vehicles;
- allowed passengers greater freedom in choosing booking and payment technologies;
- better focused driver training for taxis on better customer service, knowledge of Adelaide and attitudes towards women and people with disabilities; and
- reduced the annual costs for taxi and chauffeur vehicle drivers to \$85 year.

From 1 October 2016, the [Passenger Transport \(Taxi Fares\) Variation Regulations 2016](#) will come into operation. Taxi fares will increase by 3 per cent and also through a payment of \$2, payable to the driver from midnight to 6am on weekends and public holidays.<sup>80</sup>

## Insurance

Accredited operators must also hold:

- public liability insurance for a minimum of \$5 million;
- third party property insurance; and
- compulsory third party insurance for a public passenger transport vehicle.<sup>81</sup>

## Western Australia

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In 2015, the Western Australian Department of Transport released [On-demand Transport: A discussion paper for future innovation](#), following a consultation process with industry and the community. The government announced in December 2015 that ridesharing would be legalised in Western Australia as part of on-demand transport reforms from July 2016.<sup>82</sup>

Interim reforms were implemented by two regulations, namely the:

- [On-demand Transport Regulations Amendment Regulations 2016](#) (the relevant provisions commenced on 4 July 2016); and

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<sup>78</sup> J. Weatherill, Premier (2016) [State Government to reform the taxi and chauffeur vehicle industry](#), media release, 12 April.

<sup>79</sup> S. Mullighan, Minister for Transport and Infrastructure (2016) [Transport reforms to benefit customers](#), media release, 1 July; [Passenger Transport Regulations 2009](#), s 148 and Schedule 1.

<sup>80</sup> Department of Planning, Transport and Infrastructure (date unknown) 'Taxi and Chauffeur Vehicle Industry Reform: Changes to the Taxi, Chauffeur and Rideshare Vehicle Industry in South Australia', DPTI website, accessed 14 September 2016; [Passenger Transport \(Taxi Fares\) Variation Regulations 2016](#), s 4.

<sup>81</sup> Government of South Australia (2016) 'Operating a passenger transport business', SA Government website, 13 July; [Passenger Transport Regulations 2009](#), s 9(1)(v).

<sup>82</sup> D. Nalder, Minister for Agriculture and Food, and Transport (2015) [Green light for on-demand transport industry reform](#), media release, 18 December.

- [On-demand Transport Regulations Amendment \(Fees\) Regulations 2016](#) (the relevant provisions commenced on 1 July 2016).<sup>83</sup>

The second stage of the reforms will be implemented at a later date.<sup>84</sup> It is envisaged that a single On-demand Transport Act will replace the multiple pieces of legislation currently in force.<sup>85</sup>

Key interim measures include:<sup>86</sup>

- the creation of a new omnibus licence category, designed to encourage new market entrants to comply with requirements;
- encouraging taxi operators to use technology to expand their business;
- reducing government-leased taxi plate fees;
- introducing mandatory standards for all drivers in the transport service industry; and
- developing a transition assistance package, including a hardship fund for taxi plate owners.

In addition, taxis can now set and pre-arrange fares in some circumstances.<sup>87</sup> It is also intended that taxis will have exclusive rights to rank and hail work.<sup>88</sup>

## Licensing framework

From 4 July 2016, a new category of omnibus licence under the [Transport Co-ordination Act 1966 \(WA\)](#) was created through the development of the [Omnibus-Charter Vehicle Licence Policy](#).<sup>89</sup> Under the policy, a [Charter Vehicle Licence](#) will be needed for any passenger motor vehicle used for hire and reward which is not a taxi, or a regular passenger transport vehicle.<sup>90</sup>

A number of the reforms mentioned above have not yet been implemented. The [Taxi Amendment Bill 2016](#) has been second read in the Legislative Assembly and, if passed, will amend the [Taxi Act 1994 \(WA\)](#) to remove the five plate cap.<sup>91</sup>

## Industry assistance

On 19 May 2016 the government announced a \$27.5m Transition Assistance Package.<sup>92</sup>

The Government's \$27.5 million Transition Assistance package comprises \$20,000 for each Perth metropolitan owned taxi plate purchased prior to December 18, 2015 and \$6,000 for each owned peak period and area restricted plate purchased prior to December 18, 2015, a \$6 million Perth metropolitan taxi industry Hardship Fund and \$1.5 million for adjustment help and business support.<sup>93</sup>

<sup>83</sup> See the [Taxi Act 1994 \(WA\)](#), the [Road Traffic \(Authorisation to Drive\) Act 2008 \(WA\)](#) and the [Transport Co-ordination Act 1966 \(WA\)](#)

<sup>84</sup> Department of Transport (date unknown) 'About On-Demand transport reform - What is changing?', Department of Transport website, accessed 16 September 2016.

<sup>85</sup> Department of Transport (date unknown) 'On-demand Transport Reform-Questions & Answers', Department of Transport website, accessed 16 September 2016.

<sup>86</sup> D. Nalder, Minister for Agriculture and Food, and Transport (2015) [Green light for on-demand transport industry reform](#), media release, 18 December.

<sup>87</sup> Department of Transport (date unknown) 'On-demand Transport Reform-Questions & Answers', Department of Transport website, accessed 16 September 2016.

<sup>88</sup> D. Nalder, Minister for Agriculture and Food, and Transport (2015) op. cit.

<sup>89</sup> Department of Transport (2016) 'Charter and RPT Services', Department of Transport website.

<sup>90</sup> Department of Transport (2016) 'Charter Vehicles', Department of Transport website.

<sup>91</sup> [Explanatory Memorandum](#), Taxi Amendment Bill 2016, p. 2.

<sup>92</sup> D. Nalder, Minister for Agriculture and Food, and Transport, [Transport reforms to benefit customers](#), media release, 19 May 2016.

<sup>93</sup> D. Nalder, Minister for Agriculture and Food, and Transport, [Transport reforms to benefit customers](#), op. cit.

Access to the Transition Assistance Package funds will be available once the [Taxi Amendment Bill 2016](#) has passed through parliament.<sup>94</sup> Transition assistance will not be available for Country Taxi-cars as country taxi-car licence sales information does not show a decline in value as a result of proposed reforms.<sup>95</sup>

To help fund this package, Transport Minister Dean Nalder announced that his department would explore a levy on all charter and taxi trips and determine the period this levy should be in place – as well as any additional adjustment payments to taxi plate owners.<sup>96</sup>

According to the [On-demand Transport Transition Assistance Package Factsheet](#), the \$6 million hardship fund will be available for:

- Perth metropolitan plate owners who rely on taxi plates as a sole source of income and have suffered financial hardship arising from an inability to derive income as a result of the reforms; and
- Perth metropolitan plate owners who have suffered financial hardship arising from an inability to meet loan repayments of plates as a result of the reforms.<sup>97</sup>

Hardship fund payments may be adjusted where a plate owner has accessed the \$20,000 taxi plate adjustment assistance payment.<sup>98</sup>

The Department of Transport [On-demand Transport Fees and Charges Factsheet](#) summarises the key changes to the licence fees as follows:

- Metropolitan conventional taxi lease plate fees will decrease to \$1,191, resulting in savings of up to \$12,019 per year.
- New market entrants will be required to meet the cost of an Omnibus licence.
- Multi-purpose taxi lease fee will drop by \$4,219 to a fee of \$1,191 per year.
- Purpose-built Taxi fees will remain at \$1 (plus the annual plate fee \$210) for the duration of the four year trial, which ends in June 2018.<sup>99</sup>

## Tasmania

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The [Taxi and Hire Vehicle Industries and Amendment Bill 2016 \(No. 4\)](#), containing provisions to legalise ridesharing, passed in the House of Assembly on 7 April 2016 and passed in the Legislative Council on 18 August 2016.<sup>100</sup> The Bill proposes to amend the [Taxi and Hire Vehicle Industries Act 2008 \(Tas\)](#) and will allow a person to offer ridesharing services under rules similar to those that apply to a luxury hire-car licence.<sup>101</sup> According to the Bill's factsheet, these rules include medical, police and working with vulnerable people checks, vehicles being subject to the applicable inspection regime and holding

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<sup>94</sup> D. Nalder, Minister for Agriculture and Food, and Transport (2016) [Transport reforms to benefit customers](#), media release, 19 May.

<sup>95</sup> WA Department of Transport (date unknown) '[On-demand Transport Transition Assistance Package Factsheet](#)', WA Department of Transport website, accessed 14 September 2016.

<sup>96</sup> A. O'Connor (2016) '[Taxi industry decline drives transport minister to revamp assistance package](#)', *ABC News*, 30 June; D. Nalder, Minister for Agriculture and Food, and Transport (2016) '[Taxis-Industry Reform](#)', *Debates*, Western Australia, Legislative Assembly, 29 June, p. 4312.

<sup>97</sup> *ibid.*

<sup>98</sup> *ibid.*

<sup>99</sup> *ibid.*

<sup>100</sup> Parliament of Tasmania, [Taxi and Hire Vehicle Industries Amendment Bill 2016 4 of 2016](#).

<sup>101</sup> W. Hodgman, Premier (2016) [Sharing Economy Legislation](#), media release, 7 March.

Motor Accidents Insurance Board cover.<sup>102</sup> According to media reports, Uber has indicated that they intend to commence operation in Tasmania as soon as possible.<sup>103</sup>

## Licensing framework

The *Taxi and Hire Vehicle Industries Act 2008 (Tas)* makes it an offence to use a small passenger vehicle on a public street to carry a passenger for financial consideration, unless the small passenger vehicle is operating as a licenced taxi, luxury hire car or restricted hire vehicle.<sup>104</sup>

The *Taxi and Hire Vehicle Industries and Amendment Bill 2016 (No.4)* proposes to amend the *Taxi and Hire Vehicle Industries Act 2008 (Tas)* so that the offence does not apply to a person using a small passenger vehicle if the person, vehicle or service has been exempted by the Transport Commission under the *Passenger Transport Services Act 2011 (Tas)*.<sup>105</sup> The Act sets out the licensing and accreditation requirements for taxis and hire cars and other passenger transport services.

According to the *Second Reading Speech* for the *Taxi and Hire Vehicle Industries and Amendment Bill 2016 (No.4)*, the Transport Commission agreed to exempt persons providing ride-sourcing services from section 10 of the *Passenger Transport Services Act 2011* under several conditions, anticipated to include that:

- persons providing ride-sourcing services use an application that facilitates electronic payment, without the exchange of cash, and which records driver and journey details;
- persons providing ride-sourcing services are identifiable to the Transport Commission;
- persons providing ride-sourcing services must not accept fares outside of the booking application; and
- all current regulatory requirements applying to luxury hire vehicles will also apply to ride-sourcing services.

The government has announced that it will undertake a review of taxi, hire car and ride-sourcing activities, once the Bill is passed.<sup>106</sup>

## Industry assistance

The *Taxi and Hire Vehicle Industries and Amendment Bill 2016 (No. 4)* allows the Infrastructure Minister to suspend the annual mandatory release of taxi licences for 2016 and 2017, to allow for the impact of ridesharing on the taxi industry.<sup>107</sup> On 11 September 2016 the government announced that it will suspend the annual release of new taxi licences for three years.<sup>108</sup>

# Northern Territory

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Ridesharing services cannot currently operate legally in the Northern Territory (NT). In February 2016, the former government announced that no changes to the existing legislation would be introduced,

<sup>102</sup> *Fact Sheet*, Taxi and Hire Vehicle Industries Amendment Bill 2016, p. 1; W. Hodgman, Premier (2016) *Sharing Economy Legislation*, media release, 7 March.

<sup>103</sup> E. Gramenz (2016), 'Uber could be operating in Tasmania within months', *ABC News*, 18 August.

<sup>104</sup> *Taxi and Hire Vehicle Industries Act 2008 (Tas)*, s 91E (1).

<sup>105</sup> *Taxi and Hire Vehicle Industries and Amendment Bill 2016*, s 5.

<sup>106</sup> W. Hodgman, Premier (2016) *Sharing Economy Legislation*, media release, 7 March.

<sup>107</sup> *Fact Sheet*, Taxi and Hire Vehicle Industries Amendment Bill 2016, p. 1.

<sup>108</sup> S. Thomsen (2016), 'Tasmania won't compensate it's taxi industry for Uber's arrival', *Business Insider*, 12 September

following the release of the *Commercial Passenger Vehicle Industry Review Report*.<sup>109</sup> Former Transport Minister, Peter Chandler, indicated that the government would continue to monitor developments in interstate legislation.<sup>110</sup>

Prior to their victory at the Northern Territory general election on 27 August 2016, Labor announced that they will legalise Uber,<sup>111</sup> however, no legislation has yet been put forward to allow Uber to operate.<sup>112</sup>

## Queensland

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An independent taskforce was commissioned to undertake an industry review into [Personalised Transport Services](#). In July 2016, the *Queensland's Personalised Transport Horizon – Five Year Strategic Plan for Personalised Transport Services 2016-2021* and *The future of Queensland's personalised transport industry (White Paper)* were released and the Queensland Government subsequently legalised ridesharing in Queensland on 5 September 2016.<sup>113</sup> The taskforce recommended a two-stage approach to reform.<sup>114</sup>

Under the new regulatory framework implemented from 5 September 2016:<sup>115</sup>

- ride-booking services may operate legally without a licence;
- taxis maintain exclusive access to rank and hail services;
- a new category of driver authorisation will be created, which all drivers must hold;
- mandatory yearly vehicle inspections for all personalised transport vehicles;
- a wheelchair-accessible incentive payment of up to \$20 per trip; and
- fare estimates for booked hire services must be provided up-front.

Legislative changes commencing from 2017 include:

- surcharges for electronic payment capped at 5 per cent;
- introduction of annual licence for all booked hire services;
- no new perpetual taxi licences to be issued; and
- introduction of a new compulsory third-party insurance category.

### Industry assistance

The government has identified the following key elements of the \$100 million industry adjustment assistance package:<sup>116</sup>

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<sup>109</sup> N. Daly (2016) '[Ride-sharing company Uber banned by Northern Territory Government](#)', *ABC News*, 23 February.

<sup>110</sup> N. Daly & J. Dunlevie (2016) '[Uber snub fallout worsens, as NT Transport Minister and company executive trade barbs](#)', *ABC News*, 23 February.

<sup>111</sup> C. Dunlop, '[Labor planning to allow Uber to operate in Northern Territory if it wins August election](#)', *NT News*, 27 June 2016; (2016) '[Uber: Debate over ride-sharing service entering NT market flares up again](#)', *ABC News*, 27 June.

<sup>112</sup> N. Daly (2016) '[NT Chief Minister, Taxi Council butt heads over Labor's Uber plans](#)', *ABC News*, 2 September.

<sup>113</sup> S. Hinchliffe, Minister for Transport and the Commonwealth Games (2016) *New level playing field for personalised transport*, media release, 11 August.

<sup>114</sup> Opportunities for Personalised Transport Review Taskforce (2016) *The future of Queensland's personalised transport industry*, White Paper, Brisbane, *The Taskforce*, July, p. 55.

<sup>115</sup> S. Hinchliffe, Minister for Transport and the Commonwealth Games (2016) op. cit.

<sup>116</sup> *ibid.*

- \$60 million via a one-off payment of up to \$40,000 for existing taxi service licence holders (\$20,000 per licence, capped at two licences) and \$10,000 per licence for existing limousine service licence holders;
- \$26.7 million hardship fund;
- \$4.3 million in waived fees;
- \$5.6 million to incentivise wheelchair accessible taxis; and
- \$3.75 million for business advisory help.

No fare levy will be introduced.<sup>117</sup> Many annual taxi and limousine fees will be waived for one year and ride-booking operators will have until 1 November to comply with the new laws.<sup>118</sup>

Prior to this review, the [Transport Legislation \(Taxi Services\) Amendment Act 2016](#) was passed and commenced in April 2016 to increase penalties for Uber drivers until the review could be completed.

## European Union

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The issues surrounding Uber and TNCs in the European Union (EU) are highly contentious and further complicated by the jurisdictional overlap of laws and governance and their division between EU institutions and Member States. To date, no specific legislation has been implemented at the EU level to regulate Uber; however, the European Commission has issued advisory guidelines for Member States.<sup>119</sup> The Commission outlined that companies which operate in the sharing economy:

- should not require licences to operate;
- should not necessarily have to classify workers as employees; and
- should be liable for services they provide, such as payment, but not for the services directly provided by others through their platform.

Furthermore, Commissioner Elżbieta Bieńkowska, who heads the Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (Small and medium-sized enterprises), said in a press conference that, ‘absolute bans should be only a measure of last resort’.<sup>120</sup> It is important to consider that Member States, rather than the Commission, are primarily responsible for legislation and regulation regarding transport services. Reactions to Uber from Member States have varied; however, they have generally not been as soft in their approach compared to Brussels.<sup>121</sup>

The service that has caused the greatest concern and is directly challenging the taxi market in Europe is UberPoP, which depends on private drivers and is equivalent to UberX in Australia. Regulators in France, Spain, Germany, Portugal and the Netherlands have taken action based on existing legal frameworks, resulting in administrative and criminal charges being laid against Uber drivers and Uber management for failing to follow national laws.<sup>122</sup> Uber has reacted by submitting complaints against Spanish, French and German national court bans to the European Commission, for violation of Art. 49

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<sup>117</sup> *ibid.*

<sup>118</sup> *ibid.*

<sup>119</sup> European Commission (2016) [Communication on a European agenda for the collaborative economy](#), Brussels.

<sup>120</sup> I. Lunden (2016) ‘EU backs light-touch regulation for on-demand companies like Uber and Airbnb’, *TechCrunch*, 2 June.

<sup>121</sup> T. Amar (2016) ‘EU calls for softer approach to Uber and Airbnb’, *The Verge*, 1 June.

<sup>122</sup> C. Labbe (2016) ‘French court fines Uber, execs for illegal taxi service’, *Reuters*, 9 June.

(right of establishment) and Art. 56 (freedom to provide services) of the Treaty on the Functioning of the EU.<sup>123</sup>

## France

Uber's first international expansion was to Paris, where its arrival has been particularly turbulent, with backlash from both the taxi industry and government. Uber's rapid expansion in France has triggered a series of legal battles as the traditional taxi sector has fought vigorously to protect its market dominance. There have been two separate services provided by Uber in France. The first, UberX, matches professional drivers with riders while the second, UberPoP, matches private drivers with riders.

UberPoP was launched in Paris in early 2014 and was examined by France's consumer protection agency, the Directorate-General for Competition, Consumer Affairs and Product Quality/Safety (DGCCRF) soon thereafter. The DGCCRF investigated Uber in regard to unfair competition based on existing legislation which requires for-profit ridesharing services to have appropriate licencing and insurance, and consequently pushed for its ban.<sup>124</sup> In response to growing opposition and unrest from the taxi industry, in September 2014 the French Government passed the pro taxi Thévenoud law, which imposed certain restrictions and regulations on Uber and other TNCs. These include:

- drivers must return to their dispatch after each fare;
- TNCs may not use geo-localisation services;
- restrictions on pricing;
- restrictions on the type of car which may be used; and
- new regulations surrounding applications for VTC licences (licenced professional drivers).<sup>125</sup>

In October 2014, a Paris criminal court ruled that the company's UberPoP service violated the prior decision that effectively outlawed carpooling for profit. Uber was ordered to pay a fine of €100,000 (A\$146,650) for deceptive practices<sup>126</sup> and the UberPoP service was officially banned under the Thévenoud law. Uber's services, however, continued to operate and Uber challenged the decision, which was escalated to the *Conseil constitutionnel* (Constitutional Court).<sup>127</sup> The specific provisions that were challenged by Uber were:

- i. the prohibition against chauffeured vehicles other than taxis charging a per-kilometre fee;
- ii. the prohibition on electronic roaming by chauffeured vehicles, i.e., the use of a smartphone application that shows the location of nearby available vehicles to potential customers in real-time; and
- iii. the requirement that, after each ride, chauffeured vehicles return to their home base or stop in a place where they are authorized to park.<sup>128</sup>

On 22<sup>nd</sup> May 2015 the *Conseil constitutionnel* gave its decision and found that the first provision violated the freedom of enterprise which was interpreted from a clause of the Declaration of the Rights

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<sup>123</sup> E. Casinge (2015) 'Uber Chief: 'Uber and Europe is definitely a conversation worth having'', *EurActiv*, 18 April.

<sup>124</sup> Boring, N. (2015) 'France: Constitutional Court Rules on Car-Hiring Services Legislation', *Library of Congress*, 30 June.

<sup>125</sup> [LOI n° 2014-1104 du 1er octobre 2014 relative aux taxis et aux voitures de transport avec chauffeur 2014](#) (France).

<sup>126</sup> S. Schechner (2014) 'Uber Technologies Fights French Court Ruling', *The Wall Street Journal*, 17 October.

<sup>127</sup> Corporation UBER France SAS et al (2015) [Conseil Constitutionnel 2015-468/469/472 QPC](#).

<sup>128</sup> N. Boring (2015) op. cit.

of Man 1789, stating that, 'liberty consists in being able to do anything that does not harm others'.<sup>129</sup> Nonetheless, the *Conseil constitutionnel* found the other two provisions to be constitutional.

In March 2015, French police raided the offices of Uber in Paris and arrested managers Thibault Simphal and Pierre-Dimitri Gore-Coty on several charges, including deceptive commercial practices and complicity in instigating an illegal taxi driving activity.<sup>130</sup> The arrests led to Uber being fined €800,000 (A\$1.173m) by a French court in June 2016 for illegally operating its UberPoP service throughout 2015.<sup>131</sup> UberPoP thus currently remains illegal in France; however, the company has filed a formal complaint with the European Commission which is expected to challenge the French court ruling and begin an infringement procedure.<sup>132</sup>

## Germany

Due to regulatory roadblocks, Uber's services in Germany are limited to:

- UberX, which uses licensed independent professional drivers;
- UberBLACK, the luxury car variant of UberX; and
- UberTaxi, through which standard taxi services can be requested.

These services only operate in Berlin and Munich.

All transport of people for remuneration or in the framework of economic activity in Germany is subject to the *Passenger Transport Act*.<sup>133</sup> If the transport of people conducted with a motor vehicle falls under section 1 of the Act a permit is required; however, an exception is offered if the price of the ride does not exceed the operating costs. The Act also outlines that only taxis, excursion and long distance trip organisers, and cars or buses for hire, may carry out occasional transport of people.<sup>134</sup> This sort of occasional transport differs with transport offered by taxis, which is described as, 'transport of persons with motor vehicles which the professional makes available at publicly designated locations and with which the transport of a passenger to a specific location is performed.'<sup>135</sup> Prices for taxi rides are fixed by regulation.

The primary legal issue considered by German courts was whether the services Uber provides can be classified under the Passenger Transport Act as occasional transport of people and, if so, whether Uber operates as a mediator between customers and drivers or if the company itself can be considered as a professional offering the services.

A case heard by a Berlin civil court in 2014 saw a taxi driver suing Uber on the premise that the UberBLACK service violated German competition law.<sup>136</sup> The plaintiff argued that Uber was in breach of the law because drivers were encouraged to make themselves available for work outside of the place of business without responding to a specific assignment. The Higher District Court of Berlin ruled against Uber and granted a preliminary injunction against the company;<sup>137</sup> however, Uber appealed the decision and the appeals court overturned the injunction.<sup>138</sup> Nonetheless, in February 2015, the

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<sup>129</sup> [Déclaration des Droits de l'Homme et du Citoyen de 1789](#) (France).

<sup>130</sup> Associated Press (2015) '2 Uber executive ordered to stand trial in France', *thestar.com*, 30 June.

<sup>131</sup> J. Baker (2016) 'Uber—and its execs—hit with fines in France for illegal taxi service', *Ars Technica*, 12 June.

<sup>132</sup> J. Fioretti (2016) 'EC to challenge French taxi law after Uber complaint', *Reuters*, 19 April.

<sup>133</sup> [Personenbeförderungsgesetz 1961](#) (Germany)

<sup>134</sup> *ibid.*, s. 46, para. 2.

<sup>135</sup> *ibid.*, s. 49, para. 4.

<sup>136</sup> J. Gesley (2016) 'Legal Challenges for Uber in the European Union and in Germany', *Library of Congress*, 14 March.

<sup>137</sup> LG Berlin (2014) [LG Berlin 15 O 43/14](#)

<sup>138</sup> KG Berlin (2014) [KG Berlin 5 U 63/14](#)

Berlin Higher Regional Court ruled that UberBLACK violated German competition law and ordered the company to cease activity in Berlin.<sup>139</sup>

Meanwhile, in August 2014, a civil suit was launched in the Higher Regional Court of Frankfurt examining whether the UberPoP service violated German competition law, as drivers were not appropriately licensed for passenger transport according to section 2 of the Passenger Transport Act.<sup>140</sup> The court found against Uber and imposed an injunction; however, it was revoked shortly after.<sup>141</sup> Proceedings in March 2015 at the same court resulted in a Germany-wide ban on the UberPoP service. Despite a final attempt to bring down the price to the cost of operation, UberPoP was discontinued completely.<sup>142</sup>

Along with civil court proceedings, the cities of Berlin and Hamburg handed down administrative rulings which effectively banned UberPoP. Berlin went a step further and also banned the use of the UberBLACK service.<sup>143</sup>

German courts have effectively ruled that Uber does not act as a mediator between driver and rider, but rather must be classified as a professional to the consumer on the basis of several factors:

- Uber concludes the contract with the consumer and handles payment;
- Uber contracts with drivers;
- Uber is responsible for setting ride prices; and
- Uber coordinates rides via its app.<sup>144</sup>

## Other EU States

**Table 2: Other EU States**

Country	Legal Status	Comments
Belgium	UberPoP banned in Brussels in 2014.	UberX and UberBLACK continue to operate in Brussels. Brussels' Mobility Minister announced that authorities plan to create a legal framework for TNCs in 2016. <sup>145</sup>
Denmark	Illegal – existing taxi regulations.	Upwards of 40 drivers have been found guilty and fined for violating Danish taxi laws by using cars that were not approved for taxi services. <sup>146</sup> Although, Uber continues to operate in Copenhagen. <sup>147</sup>

<sup>139</sup> J. Gesley (2016) op. cit.

<sup>140</sup> [Personenbeförderungsgesetz 1961](#) (Germany)

<sup>141</sup> Uber (2014) LG Frankfurt 2-03 O 329/14.

<sup>142</sup> BBC (2015) '[Uber banned in Germany as police swoop in other countries](#)', *BBC News*, 20 March.

<sup>143</sup> J. Gesley (2016) op. cit.

<sup>144</sup> *ibid.*

<sup>145</sup> EurActiv (2015) '[Uber ordered to shut Brussels service within 21 days](#)', *EurActiv*, 25 September.

<sup>146</sup> D. Clarke (2016) '[Uber drivers fined in Denmark](#)', *Reuters*, 8 July.

<sup>147</sup> Uber (date unknown) '[Uber moves Copenhagen](#)', Uber website, accessed 12 September 2016.

Finland	Illegal – existing taxi regulations.	Drivers have been fined and forced to give up earnings made using Uber as it is illegal to operate a taxi without a licence. <sup>148</sup> Although, Uber continues to operate in Helsinki. <sup>149</sup>
Hungary	Illegal – legislation passed and implemented specifically targeting Uber and TNCs.	Due to legislation which made Uber illegal in Hungary, the company has suspended all its operations within the country. <sup>150</sup>
Italy	UberPoP banned in May 2015.	An Italian court issued a nation-wide ban on UberPoP; however, Uber services continue to operate in several main cities in Italy. <sup>151</sup>
The Netherlands	UberPoP banned in November 2015.	Uber has discontinued the UberPoP service. Licensed driver Uber services (UberBLACK, UberLUX and UberX) continue to operate. <sup>152</sup>
Poland	Legal – no current legislation restricting Uber.	Uber operates normally. The Polish Competition Authority stated that no intervention should be taken against Uber. <sup>153</sup>
Portugal	Illegal – Uber was banned in April 2015.	Unclear if Uber continues to operate illegally in Portugal. <sup>154</sup> Although, Uber continues to operate in Algarve, Lisbon and Porto. <sup>155</sup>
Spain	Illegal – Uber was banned in December 2014.	Although suspended, Uber continues to operate in Madrid. <sup>156</sup>
United Kingdom	Legal – The high court has ruled that Uber is legal in London.	Uber continues to operate throughout the UK. <sup>157</sup>

## United States of America

The regulatory framework within which Uber operates in the United States varies from state to state. State governments are responsible for regulating TNCs and have taken different approaches to Uber's

<sup>148</sup> Yle (2016) '[Helsinki Uber driver ordered to pay state 12,000 euros](#)', *yle.fi*, 7 April.

<sup>149</sup> Uber (date unknown) '[Uber moves Helsinki](#)', Uber website, accessed 12 September 2016.

<sup>150</sup> D. Meyer (2016) '[Uber Pulls Out of Hungary Thanks to New Regulations](#)', *Fortune*, 13 July.

<sup>151</sup> *Taxiblu S.C. v Uber* (2000) Tribunale di Milano 16612/2015 R.G.

<sup>152</sup> Dutch News (2015) '[Uber drops Uberpop taxi service in the Netherlands](#)', *Dutch News*, 18 November.

<sup>153</sup> W. Van Weert (2016) '[Polish Competition Authority Supports UBER](#)', *Antitrust Alert*.

<sup>154</sup> Algarve News (2015) '[Uber cab service banned in Portugal](#)', *Algarve Daily News*, 28 April.

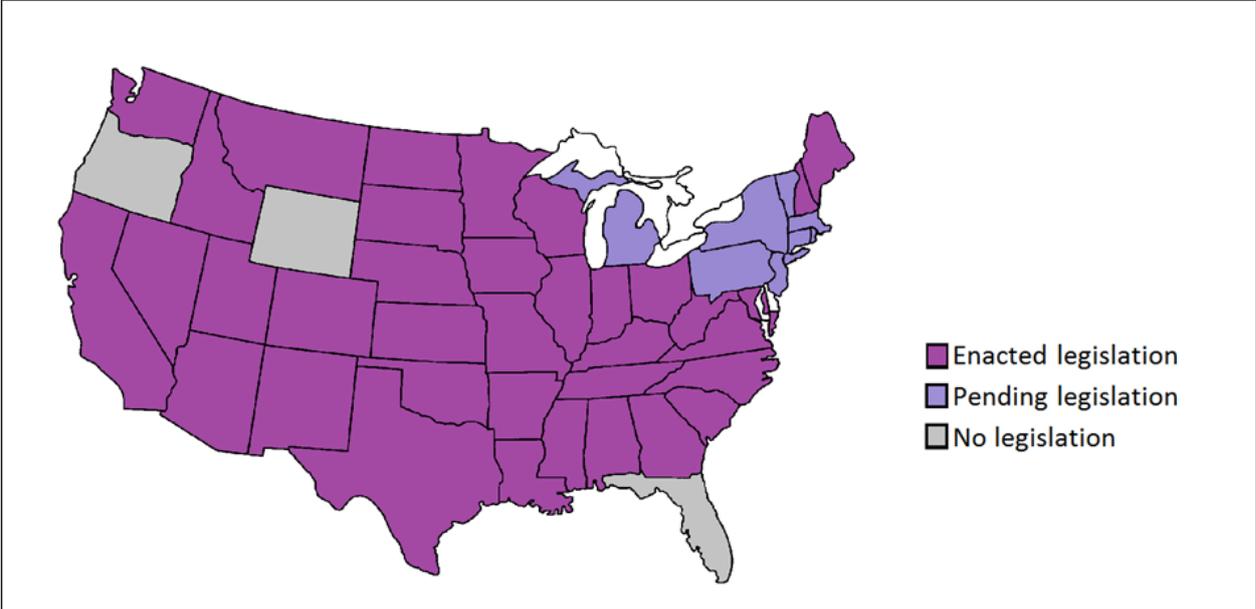
<sup>155</sup> Uber (date unknown) '[Find a City](#)', Uber website, accessed 12 September 2016.

<sup>156</sup> BBC (2014) '[Uber taxi app suspended in Spain](#)', *BBC News*, 9 December; Uber (date unknown) op. cit. accessed 12 September 2016.

<sup>157</sup> G. Topham et al. (2015) '[Uber wins high court case over taxi app](#)', *The Guardian*, 16 October.

expansion throughout the country. Nonetheless, since its launch in San Francisco in 2011, Uber has made substantial regulatory headway in the United States. The number of states implementing regulation, most often favourable to Uber, increased significantly in 2015. As it currently stands, the vast majority of states have enacted or are in the process of enacting legislation that seeks to regulate the services of Uber and other TNCs. As of June 2016, 74 per cent of states have introduced legislation regulating Uber, 20 per cent have pending legislation, while 6 per cent do not have any legislation. Notably, almost all legislation and regulation that is implemented allows Uber to operate its services, provided it follows a regulatory framework. Thus, the United States has tended to be overwhelmingly pro-Uber in its approach.

**Figure 1: Status of legislation governing TNCs in the United States**<sup>158</sup>



Source: R Street Institute (2016) *'Map of state-level ridesharing laws'*, R Street website.

**Table 3: Uber legislation in the United States**

Legislation	States
Legislation enacted	Alabama, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wisconsin.

<sup>158</sup> R Street Institute (2016) *'Map of state-level ridesharing laws'*, R Street website, 1 June.

Legislation pending	Alaska, Connecticut, Hawaii, Massachusetts, Michigan, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.
No legislation	Oregon, Wyoming and Florida.

## California

California was the first jurisdiction in which Uber began operating and the first to introduce regulations, thereby legalising Uber and other TNCs. In May 2011, shortly after Uber's entry into the market, it received a cease-and-desist order from the San Francisco Municipal Transportation Agency (SFMTA) and a legal demand from the California Public Utilities Commission (CPUC) to cease operations. Both agencies contended that Uber, known as UberCab at the time, was operating an unlicensed taxi service. UberCab adopted several measures and changed its name to Uber in response. In early 2012, the CPUC issued Uber a second cease-and-desist order and forced Uber to pay a \$20,000 (A\$26,384) fine. However, an agreement was reached between Uber and the CPUC in 2013 to reverse those actions.<sup>159</sup>

Within California, the CPUC has regulatory oversight over for-hire passenger carriers, including TNCs. In December 2012, the Commission sought to determine whether and how TNC services arranged through online apps, such as the Uber app, might affect public safety. The CPUC then outlined the new requirements for TNCs to:<sup>160</sup>

- obtain a permit from the CPUC to operate in California;
- conduct criminal background checks for drivers;
- establish a driver training program;
- implement a zero-tolerance policy on drugs and alcohol;
- conduct a 19 point car inspection; and
- hold a commercial liability insurance policy, requiring a minimum of \$1m (A\$1.329m) per-incident coverage for incidents involving TNC vehicles and drivers.<sup>161</sup>

Further regulations for TNCs were set out in phase II of the ruling, which was released by the CPUC in April 2016. Phase two requirements include that:

- vehicles shall be inspected every 12 months or 50,000 miles (80,467km), whichever occurs first;
- TNCs shall maintain records demonstrating that all vehicles/drivers' vehicles were inspected by a facility, licensed by the California Bureau of Automotive Repair;
- transport of unaccompanied minors must, at a minimum, comply with the background check requirements articulated by the CPUC in Decision 97-07-063;
- trade dress shall be placed in both the front and rear of a TNC vehicle/drivers' vehicle;
- TNCs shall certify, under penalty of perjury, the nature of their operation, and shall also certify how the fares are calculated; and

<sup>159</sup> R. Lawler (2013) 'A day after cutting a deal with Lyft, California regulator reaches an agreement with Uber as well', *TechCrunch*, 31 Jan.

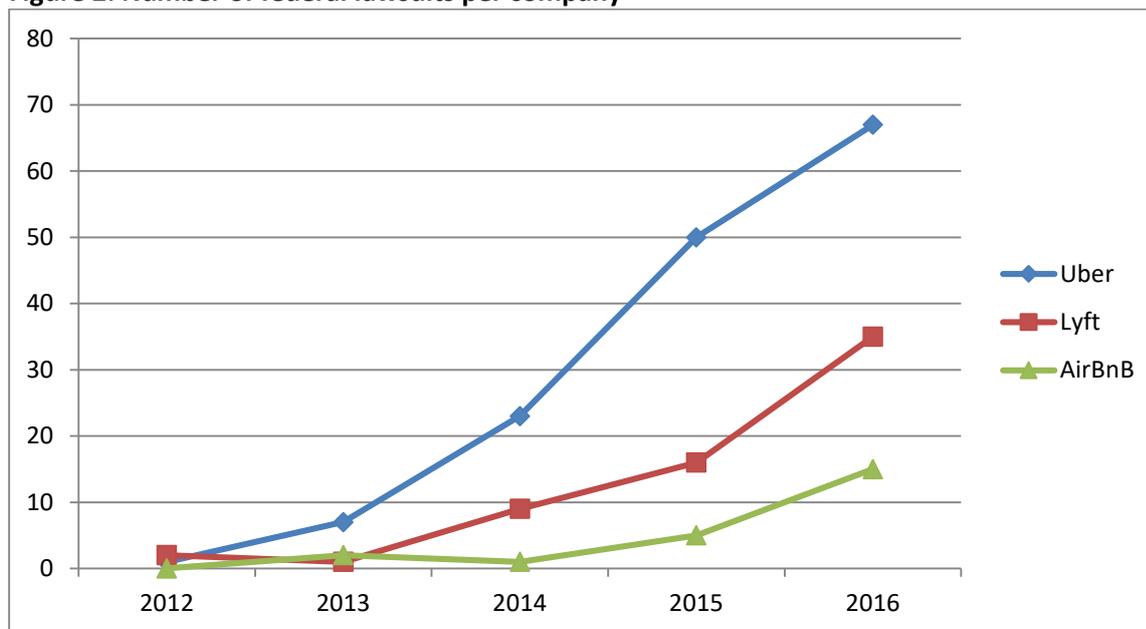
<sup>160</sup> California Public Utilities Commission (2013) *Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry*, 19 September, San Francisco, The Commission.

<sup>161</sup> California Public Utilities Commission (2013) *CPUC Establishes Rules for Transportation Network Companies*, media release, 19 September.

- fare-splitting operations are permitted, subject to certain conditions.<sup>162</sup>

Uber has also faced litigation in California, including a class-action lawsuit aiming to classify drivers as employees rather than independent contractors. Although Uber settled and driver-partners remained classified as independent contractors, the company agreed to pay them \$100m (A\$131m).<sup>163</sup> Uber has faced an unprecedented number of lawsuits in the US, a disproportionate amount compared to other companies of comparable value in the sharing economy, such as Lyft and Airbnb. The number of lawsuits involving Uber, Lyft and Airbnb are shown in the graph below:<sup>164</sup>

**Figure 2: Number of federal lawsuits per company**



Source: Compiled from federal cases in U.S. District Courts and U.S. Courts of Appeal.

## Asia

### India

The central issue in relation to regulation of Uber in India is whether the company should be classified as a traditional taxi operating company, or as an intermediary information technology company facilitating market interaction.<sup>165</sup>

In India, regulation and legislation related to road transport is in the jurisdiction of state governments, rather than the national government. The primary law which regulates road transport vehicles is the *Motor Vehicles Act 1988*,<sup>166</sup> which outlines permit conditions for transport vehicles. The Act confers

<sup>162</sup> California Public Utilities Commission (2016) *Decision on Phase II Issues and Reserving Additional Issues for Resolution in Phase III*, 21 April, San Francisco, The Commission.

<sup>163</sup> D. Levine (2016) 'Uber drivers remains independent contractors as lawsuit settled', *Reuters*, 22 April.

<sup>164</sup> Justia (2016) 'Federal cases, dockets and filings from U.S District Courts and U.S. Courts of Appeal', Justia website.

<sup>165</sup> R. Mukherjee (2014) 'The curious legal case of Uber in India – did Uber really violate any law?', *iPleaders Blog*, 8 December.

<sup>166</sup> *The Motor Vehicles Act 1988* (India)

the power to implement regulations regarding taxis and the taxi industry to states. The *Information Technology Act 2000*,<sup>167</sup> on the other hand, regulates e-commerce and cybercrime.

Currently, India does not have a national law regulating the services of Uber and other TNCs, although attempts may be under way to create one.<sup>168</sup> In October 2015 the National Ministry of Road Transport and Highways provided states with non-binding advisory guidelines outlining how to regulate TNCs.<sup>169</sup> The guidelines, amongst other recommendations, stated that TNCs should:

- not own or lease any vehicles;
- not employ any drivers;
- not represent themselves as a taxi service;
- provide gender sensitisation programs for drivers;
- ensure that wherever mandated, vehicles be equipped with emergency safety button(s);
- maintain up to date records of drivers and vehicles;
- implement a zero tolerance policy on drugs and alcohol use by drivers; and
- conduct police verification on the criminal background of drivers.<sup>170</sup>

Uber's legal problems in India arose in Delhi after a female passenger was allegedly raped by her Uber driver, prompting the Delhi Government to impose a ban on all TNCs.<sup>171</sup> However, in December 2014, the Delhi Government changed existing taxi regulations to allow Uber and other TNCs to file for taxi licences. The Government issued several requirements which would need to be fulfilled in order for TNCs to receive taxi licences:

- TNCs like Uber must follow all relevant legislation and regulation, including the Motor Vehicles Act 1988 and the Information Technology Act 2000;
- TNCs must be registered under the Companies Act 1956<sup>172</sup> and must have a mandate to provide public transport services;
- drivers must not have criminal records;
- TNCs will be fully responsible for the quality of drivers, their police verification and their conduct with passengers;
- TNCs must have a registered office in Delhi, with details of such office being submitted to the Department of Transport;
- TNCs must establish a call centre or web portal;
- TNCs are required to maintain a fleet of at least 200 vehicles; and
- vehicles must be fitted with a panic button which is capable of transmitting a signal to the nearest police station.<sup>173</sup>

The court, however, did not lift the ban on Uber's services and licence applications were rejected from all TNCs seeking to operate in Delhi.<sup>174</sup> Uber thus temporarily suspended its services in Delhi, but in

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<sup>167</sup> [The Information Technology Act 2000](#) (India)

<sup>168</sup> S. Chakraborty & S. Poovanna (2015) '[Govt frames rules for cab aggregators like Ola, Uber](#)', *Live Mint*, 14 October.

<sup>169</sup> National Ministry of Road Transport and Highways (2015) [Advisory for Licensing, Compliance and Liability of On-demand Information Technology based Transportation Aggregator \[Taxis \(4+1\)\] operating within the jurisdiction of India](#), New Delhi, The Ministry.

<sup>170</sup> *ibid.*

<sup>171</sup> BBC (2014) '[Uber banned in Delhi over taxi driver 'rape'](#)', *BBC News*, 8 December.

<sup>172</sup> [Companies Act 1956](#) (India).

<sup>173</sup> I. Basu (2016) '[Delhi gets new taxi rules; Uber, Ola will find it hard to comply](#)', *The Huffington Post*, 15 July.

<sup>174</sup> PTI (2015) '[Delhi rejects fresh applications for licence by Uber, Ola and TaxiForSure](#)', *The New Indian Express*, 3 June.

January 2015 resumed operations, amid legal threats from the Transport Department.<sup>175</sup> In July 2015, the Delhi High Court revoked a ban on Uber, effectively allowing the company to operate in New Delhi while it sought a licence from the Transport Department.

Similar legal proceedings have taken place in other Indian states, such as Karnataka and Maharashtra.<sup>176</sup>

## Philippines

The Philippines was one of the first jurisdictions where a regulatory framework for Uber and other TNCs was implemented on a national scale, legalising Uber's services.<sup>177</sup> In May 2015 the Department of Transportation and Communication (DOTC) introduced guidelines for TNCs operating in the Philippines.<sup>178</sup> Within the regulatory framework, partners, operators and drivers are considered contractors and as such fall into the category of providing a Transportation Vehicle Network Service (TVNS). Drivers are thus required to secure a Certificate of Public Convenience (CPC) from the Land Transportation Franchising and Regulatory Board (LTFRB). TVNS drivers/providers are subject to several terms and conditions, such as:<sup>179</sup>

- TVNS operators must obtain a CPC from the LTFRB to Operate a TVNS;
- TVNS drivers must be accredited by a TNC, and hold a professional driver's license;
- during the pre-arranged ride, TVNS drivers must always carry an internet-connected digital device that is connected to the TNC-provided app;
- TVNS drivers may not accept or respond to requests from passengers via street hail, hand gestures, verbal statements or phone calls. TVNS drivers may only take passengers through booking services provided by TNC-apps on an internet-connected device; and
- TVNS drivers may not pick up or drop off passengers at designated taxi stands, loading or unloading zones, or other restricted areas.

TNCs are required to secure a Certificate of Accreditation, which is valid for two years, and must follow several requirements as set out by the LTFRB, namely:<sup>180</sup>

- TNCs must ensure that passengers can view their TNC-accredited driver's name and photograph, vehicle's licence plate number, and the case number issued by the LTFRB on the device used to connect with the digital technology application;
- TNCs app must clearly display the total fare, fare range or rate by distance or time;
- TNC's app must include a complaint mechanism through which passengers can submit complaints or report lost items. The app must also include the LTFRB's hotline number; and
- TNCs must transmit to the passenger, either by email or text message, an electronic receipt or any BIR-approved official receipt upon the completion of a pre-arranged ride. The receipt must indicate the point of origin and destination, total distance and duration of the ride, and total fare paid.

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<sup>175</sup> A. Kalra & S. Miglani (2015) 'Uber restarts service in Delhi; government says company still banned', *Reuters*, 23 January.

<sup>176</sup> A. Sinha (2015) 'Uber takes on Maharashtra Government over Mumbai Taxi Scheme', *NDTV*, 18 November.

<sup>177</sup> S. Toppa (2015) 'Uber is now legal everywhere in the Philippines', *Time*, 12 May.

<sup>178</sup> Land Transportation Franchising & Regulatory Board (date unknown) [Terms and Conditions of a Certificate of Public Convenience to Operate a Transportation Network Vehicle Service](#), Quezon City, The Board, accessed 15 September 2016.

<sup>179</sup> *ibid.*

<sup>180</sup> Land Transportation Franchising & Regulatory Board (date unknown) [Terms and Conditions of a Certificate of Transportation Network Company Accreditation](#) Quezon City, The Board, accessed 15 September 2016.

## China

China has introduced legislation that will legalise TNCs, as of 1 November 2016. The legislation sets out specific guidelines that TNCs, like Uber, must follow in order to participate in the Chinese market. The new legislation stipulates that:

- the Government will encourage the development of the sharing economy;
- the Government will encourage online car booking and non-cash payments;
- drivers must have a minimum of three years of driving experience;
- cars must be retired from service upon reaching 600,000km;
- user information and data collected by TNCs must be stored within the country for at least two years; and
- cars cannot exceed seven seats.<sup>181</sup>

In August 2016, Uber left the Chinese market, conceding to its Chinese TNC rival, Didi Chuxing.<sup>182</sup>

## Reaction from the taxi industry

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The entry of Uber and other TNCs into the transport market has caused a disruption to long-established taxi industries. There are several reasons why Uber has been able to do so:

- the taxi market in most of the Western world is mostly a monopoly or duopoly and is therefore uncompetitive;
- because the market is a monopoly or duopoly there are often high barriers to entry, notably taxi licences/medallions, which often cost hundreds of thousands of dollars;<sup>183</sup>
- the Uber model has made the need for a taxi licence redundant, allowing drivers to avoid exorbitant costs and bypass the biggest barriers to entry;
- drivers are often able to make more money driving for Uber than for traditional taxi companies and have little incentive to stay in the taxi industry; and
- Uber reduces search costs and potentially uncertain outcomes that are common to finding and/or hailing taxi transport.

The entry of Uber into the European market, for example, triggered substantial protests from the taxi industry, which employs over one million people in the EU and represents 8 per cent of all employment in the EU transport sector.<sup>184</sup> Taxi drivers have expressed discontent primarily because they are subjected to restrictive regulatory standards but Uber drivers are not.<sup>185</sup> Organised opposition from the industry has at times turned violent.<sup>186</sup> Moreover, taxi drivers have carried out wide-scale protests and strikes, severely limiting transport services in major cities.<sup>187</sup>

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<sup>181</sup> Bloomberg News (2016) '[China said to legalize Uber, Didi ride-hailing as war rages](#)', *Bloomberg*, 28 July.

<sup>182</sup> A. Goldfarb (2016) '[Uber Leaves China](#)', Goldfarb Financial website, 10 August.

<sup>183</sup> Taxi Services Commission (2016) '[Metropolitan taxi licence transfer prices](#)', Taxi Services Commission website, 29 August.

<sup>184</sup> F. Azevedo & M. Maciejewski (2015) *Social, Economic and Legal Consequences of Uber and Similar Transportation Network Companies (TNCs)*, European Parliament.

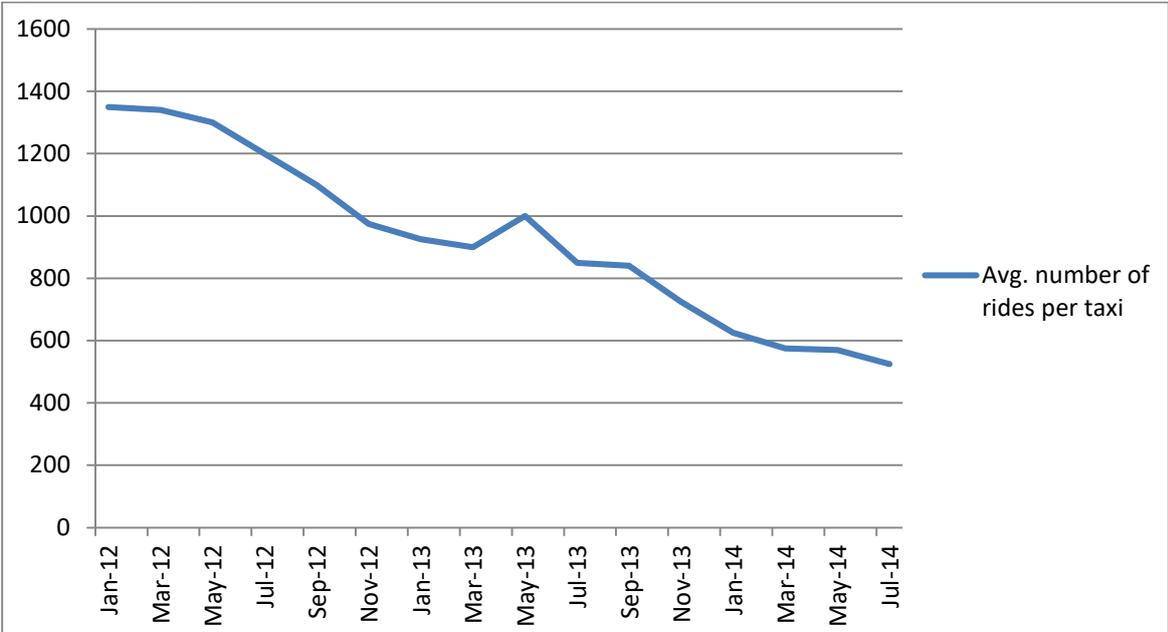
<sup>185</sup> A. Cuthberston (2014) '[Uber experiences global backlash from taxi drivers](#)', *International Business Times*, 9 May.

<sup>186</sup> Sky News (2016) '[Anti-Uber protests turn violent in France](#)', *Sky News*, 4 July.

<sup>187</sup> A. Chrisafis (2016) '[France hit by day of protest as security forces fire teargas at taxi strike](#)', *The Guardian*, 27 January.

In California, taxi use has decreased dramatically since the introduction of Uber and other TNCs.<sup>188</sup> The number of taxi trips in Los Angeles arranged in advance has fallen by 42 per cent and the total number of trips has reduced by nearly 30 per cent.<sup>189</sup> The decline in taxi usage in Los Angeles tends to mirror trends in the rest of the US. A decline in taxi usage has likewise been observed in San Francisco, with average trips per taxi dropping from 1,424 a month in March 2012 to 504 as of July 2014, representing a change of almost 65 per cent, as shown in the graph below:<sup>190</sup>

**Figure 3: Average number of rides per taxi – San Francisco**



Source: J. Kwong (2014) ‘Report says SF taxis suffering greatly’, *The Examiner*, 16 September.

Declining taxi licence prices have also been central to opposition from the taxi industry. Many jurisdictions require drivers to hold a licence to operate a taxi, to limit the number of taxis in service.<sup>191</sup> The value of taxi licences, which in major US cities varied between \$350,000 (A\$462,000) and \$1m (A\$1.321m), has fallen drastically since Uber has entered the market. Previously, relatively tight government regulations kept the taxi industry insulated from competition and allowed licence holders to increase the value of their assets. The value of licences has fallen because of the asymmetrical regulatory framework applying to Uber on the one hand and taxis on the other. There is now less incentive to participate in the market by purchasing a taxi licence, when driving with Uber offers comparative opportunities with little or no barriers to entry. Licence holders are no longer able to monetise their assets and enjoy a return on their investment. Thus, Uber’s growing market share has reduced demand for traditional taxis.<sup>192</sup>

<sup>188</sup> L. J. Nelson (2016) ‘Uber and Lyft have devastated L.A.’s taxi industry, city records show’, *LA Times*, 14 April.

<sup>189</sup> *ibid.*

<sup>190</sup> J. Kwong (2014) ‘Report says SF taxis suffering greatly’, *The Examiner*, 16 September.

<sup>191</sup> S. Golovin (2014) ‘The economics of Uber’, *Bruegel.org blog*, 30 September.

<sup>192</sup> G. Petropoulos (2016) ‘Uber and the economic impact of sharing economy platforms’, [Web blog post] *Bruegel*, 22 February.

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## Relevant Legislation

### Victoria

- [Transport \(Compliance and Miscellaneous\) Act 1983 \(Vic\)](#)
- [Transport \(Compliance and Miscellaneous\) Amendment \(Public Safety\) Act 2016 \(Vic\)](#)
- [Transport Integration Act 2010 \(Vic\)](#)
- [Ridesharing Bill 2016 \(Vic\)](#)

### Other Jurisdictions

- [Acts Interpretation Act 1915 \(SA\)](#)
- [Companies Act 1956 \(India\)](#)
- [Information Technology Act 2000 \(India\)](#)
- [LOI n° 2014-1104 du 1er octobre 2014 relative aux taxis et aux voitures de transport avec chauffeur 2014 \(France\)](#)
- [Motor Vehicles Act 1988 \(India\)](#)
- [Passenger Transport Act 1990 \(NSW\)](#)
- [Passenger Transport Act 1994 \(SA\)](#)
- [Passenger Transport Regulation 2007 \(NSW\)](#)
- [Passenger Transport Regulations 2009 \(SA\)](#)
- [Passenger Transport Regulation 2014 \(NSW\)](#)
- [Passenger Transport Services Act 2011 \(Tas\)](#)
- [Passenger Transport \(Taxi Fares\) Variation Regulations 2016 \(SA\)](#)
- [Personenbeförderungsgesetz 1961 \(Germany\)](#)
- [Point to Point Transport \(Taxis and Hire Vehicles\) Act 2016 \(NSW\)](#)
- [Point to Point Transport \(Taxis and Hire Vehicles\) Regulation 2016 \(NSW\)](#)
- [Road Traffic \(Authorisation to Drive\) Act 2008 \(WA\)](#)
- [Road Transport \(Public Passenger Services\) Act 2001 \(ACT\)](#)
- [Road Transport \(Public Passenger Services\) Regulation 2002 \(ACT\)](#)
- [Road Transport \(Public Passenger Services\) \(Exemptions\) Amendment Regulation 2015 \(No 1\) \(ACT\)](#)
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