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The Hon Kate Worden MLA  
Chair  
Public Accounts Committee  
Parliament House  
GPO Box 3146  
DARWIN NT 0801

Dear Ms Worden

Please find attached the Departments submission to the Public Accounts Committee inquiry into Taxi Licencing and Subleasing.

This submission has been prepared considering the inquiries Terms of Reference and provides background information on the taxi industry in the Territory, how the industry is currently regulated, licence allocation process and licence subleasing issues.

The submission does not provide commentary on the future of the taxi industry as those matters are policy considerations for government.

Consistent with the Guidelines for the Preparation of Submissions, the submission contains a number of appendices, some of which contain personal details and commercial information which may be considered confidential, as such, it is requested that appendices D and F are not published.

Should you require any further information in regard to this submission, please contact Executive Director Transport Safety and Services, Simon Saunders on (08) 89247598.

Yours sincerely



Andrew Kirkman  
Chief Executive

12 April 2017



# Public Accounts Committee

Department of Infrastructure,  
Planning and Logistics  
Submission

Inquiry into Taxi Licensing  
and Subleasing

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## 1. Introduction

On 15 February 2017 the Legislative Assembly of the Northern Territory resolved to refer to the Public Accounts Committee for inquiry and to report on the efficiency, effectiveness and probity of the regulation and licencing of the Northern Territory taxi industry, having particular regard to the allocation of taxi licences by the Department of Transport, the subleasing of taxi licences and the future of the taxi industry in the Northern Territory.

This submission to the inquiry has been prepared by the Department of Infrastructure, Planning and Logistics to assist the Public Accounts Committee in its consideration of the matters referred to it.

The submission provides background information on the taxi industry in the Territory, how the industry is currently regulated, licence allocation process and licence subleasing issues.

The submission does not provide commentary on the future of the industry as those matters are policy considerations for Government and will be influenced by decisions in creating a regulatory model to facilitate ridesharing services operating in the Territory.

The industry has been the subject of many reviews since the commencement of the *Commercial Passenger (Road) Transport Act* in 1992. The Department has identified six which are discussed within this submission and attached as appendices.

## 2. Background

The Department of Infrastructure, Planning and Logistics regulates the commercial passenger vehicle (CPV) industry including the taxi industry under the *Commercial Passenger (Road) Transport Act* (the Act). The Act was commenced in 1992. The Act provides for safety and industry capability through operator accreditation and licensing and fit and proper assessments of industry participants including drivers. The Act establishes various categories of operation for industry sectors including Taxi, Private Hire, Minibus, Tourist Vehicle, Limousine, Courtesy Vehicle and Special Passenger Vehicle. The categories each allow for the particular distinct operations ranging from walk up point-to-point transport, pre booked tour and charter and public bus services.

There are no regulatory restrictions under the Act on CPV licence numbers in any category with market forces and transport needs dictating the numbers of vehicles in each category. However taxi licence numbers are currently restricted in Darwin and Alice Springs by Ministerial direction under section 5A of the Act.

Prior to deregulation of taxi licence numbers in 1999, the industry in the Northern Territory operated similarly to the industry in other Australian jurisdictions and developed countries around the world. Numbers of taxi licences were tightly controlled by Government and issued via a tender process. Licences were owned and could be bought and sold on the open market similar to other items such as property or shares. Taxi licences attracted a scarcity value and grew in capital value in a similar manner to a tight property market.

In Darwin the capital value of licences grew to around \$230,000 in the mid to late nineties. Median house prices in Darwin at the same time were less than \$179,000. The owners of licences often leased the licences to taxi operators who in turn also subleased the licences to drivers or organised for drivers to operate the taxis. The licences were property and this was an accepted feature of the industry.

The industry in Darwin was characterised by absentee landlords living interstate or overseas. The rents for a licence in Darwin were up to \$500 per week in the late 90's, in comparison to a median house rental price in 1999 of \$148.

The numbers of taxis on the road at the time were unable to meet demand for services and service levels were poor in Darwin and Alice Springs, with long wait times and often no taxi services late at night. In particular the taxi industry was reluctant to provide services to Palmerston and the rural area.

Given the tight controls on the taxi market and unmet demand, entrepreneurial operators entered the market and set up similar services using other categories of CPV such as private hire cars. An operator also commenced a minibus servicing Palmerston and the rural area. These two operating models quickly grew, taking up the gap in supply and demand.

Private hire cars charged a similar fare as taxis and were very popular with many people contacting drivers direct for services. The number of licences in the NT in 1998 was: taxi 138, private hire cars 92, minibuses 62; totalling 292. Private hire car and minibus operators were openly encroaching on the taxi market and not complying with conditions of their licences in relation to pre bookings, causing concern in the taxi industry.

In order to address the range of compliance and service issues in the industry, the Government took the decision in 1999 to lift the economic regulation on the numbers of taxi licences. This resulted in the compulsory buy back of all existing taxi licences at a total cost of over \$27 million. Taxi licences were then available on application at the Motor Vehicle Registry at an annual fee of \$16,000 in Darwin and \$13,000 in Alice Springs. The level of the fee was set to recover the cost of the buy back, which was



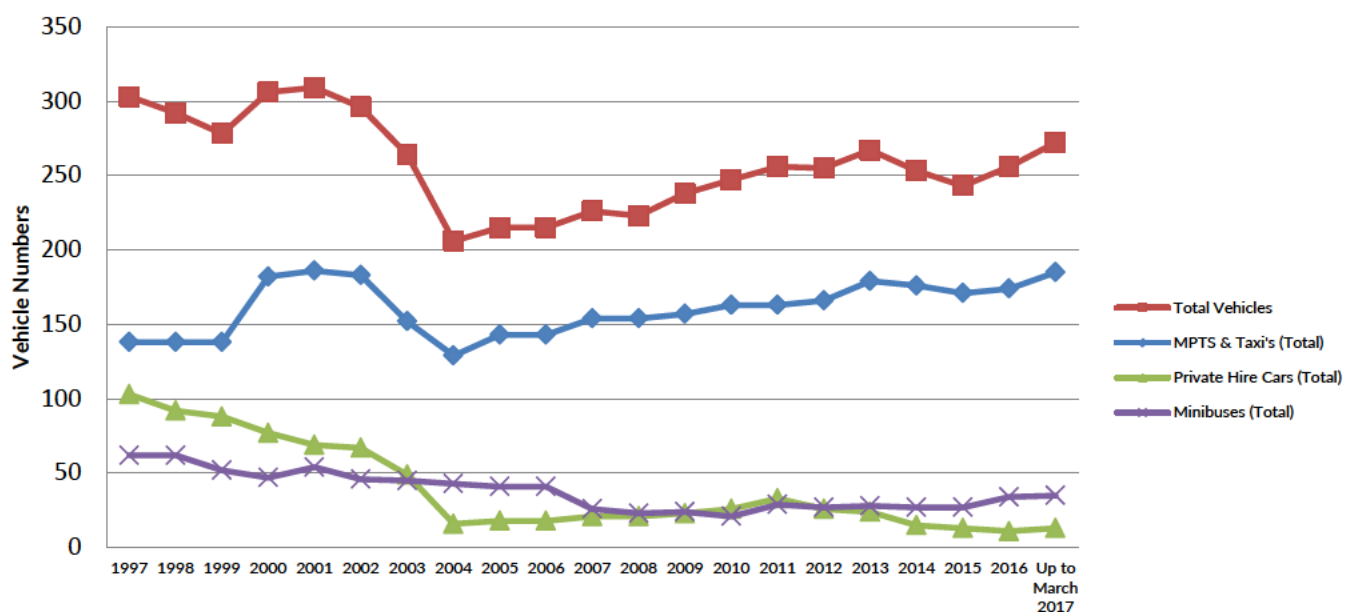
completed in the 2012-13 fiscal year. Licence fees are currently set at a level to recover the costs associated with regulating and supporting the industry.

Following deregulation the numbers of private hire cars and minibuses dropped and the number of taxi licences increased. The leasing and subleasing of taxi licences evaporated with many drivers who had no chance of obtaining a taxi licence pre 1999 obtained a licence and entered the industry as operators.

Post deregulation the taxi industry raised concerns that there was an oversupply of licences citing that vehicle standards were poor and incomes were not sustainable due to the increased number of licences in the market. A review in 2002 resulted in a temporary cap being placed on the issuing of taxi licences. The cap has remained in place since 2002 and taxi licences are now issued at the direction of the Minister under Section 5A of the Act. A ballot process has been adopted for the issuing of licences and the numbers of licences in the market are currently based on a one taxi for every 900 resident's ratio – Alice Springs has a ratio of 1:900 or 36, whichever is the greatest.

Graph 1 below shows that in the period prior to the reintroduction of numbers control in April 2002, the number of taxi licences increased by around 44, however the number of private hire cars and minibuses in the market also dropped as drivers migrated to the taxi industry. The total licences in the NT for all three categories increased by four between 1998 and 2002. Furthermore, current figures show there are less total vehicles operating when compared to 90's figures.

**Graph 1. Active Taxi, Minibus and Private Hire Car Licences in Darwin and Alice Springs 1997-2017**



The most recent review of the taxi industry in 2015-16 found that the community believed that taxi service levels in Darwin and Alice Springs were poor. Government decided to delay a decision on lifting the cap on licence numbers for 12 months and introduced Key Performance Indicators (KPIs) in order to give industry an opportunity to improve service levels to the public.

During the review, drivers (through workshops) all indicated that they would like the cap lifted so that they could run their own businesses and offer an improved standard of service. In Alice Springs the drivers formed an association and through that group have called for the cap on taxi licence numbers to be lifted.

Operators did not support a less restrictive market and expressed concerns about protecting the industry's viability. Some suggested that an unrestricted industry may result in mass industry entry causing financial instability for existing operators.

The ongoing restriction on the issue of taxi licences to the market has resulted in scarcity, and although all licences are owned by Government, has created a perceived licence value resulting in the practice of subleasing.

## 2.1. Licence Value

Prior to the re-acquisition of all taxi licences through the buy back in 1999, licences were seen as a property which could be bought and traded. Through the buy back, Government invested \$27.3 million to remove all property value of licences.

After the buy back, licences were issued to a person for an annual fee and could be renewed upon application. There is no inherent obligation for the Director to renew such a licence, although refusing to renew may be subject to appeal.

Express conditions were added to the *Commercial Passenger (Road) Transport Act* to prohibit the transfer of a licence as well as provisions requiring the vehicle be registered in the licence holder's name.

While the Department has been mindful to avoid re-establishing a value in licences through policy decisions, the nature of a protected market has ultimately led to industry profiting from holding (and thereafter subleasing/trading) taxi licences in these capped areas.



## 2.2. Scarcity Value

After the buy back and deregulation of numbers in 1999, in 2001, industry operators lobbied Government to restrict licence numbers, sighting low income for operators and drivers and resulting in poor service standards. From 2001, a series of temporary caps were introduced until in 2003 when, pursuant to section 5A of the Act, the Minister directed that taxi licence numbers would be strictly controlled at the ratio of one taxi per 900 head of population.

Section 5A of the Act provides the Minister with the power to direct the Director of Commercial Passenger (Road) Transport to control taxi licence numbers where it is in the public interest.

With a limit on the number of available taxi licences in Darwin and Alice Springs being based on a population ratio, a 'scarcity' value in taxi licences was again created which presented opportunities for the holders to return to pre buy back days, where they could receive profits from doing little more than holding the licence.

Anecdotally, this trade has become widespread throughout the capped regions with many operators choosing to accept substantial payments from third parties rather than directly operate their taxis. These deals continue to exist in the form of either verbal or written agreements.

Both parties are complicit in their subleasing arrangements and generally do not reveal details for fear of action by the Department.

## 2.3. Summary of Commercial Passenger Vehicle Industry Reviews

### 2.3.1. Come along for the ride – Commercial Passenger Vehicle Industry Review Report, Department of Transport, February 2014-2016

The review was conducted by the then Department of Transport with expertise outsourced as required. Community consultation was a major component of the review.

The review concluded that there was a need to improve services and safety and provide better drivers. A reduction of red tape was required and industry needed to take a more active role in regulating their own industry. Key performance indicators needed to be introduced and enforcement needed to be increased.

The review recommended that the cap on licences be retained for 12 months, the number of licence categories be reduced from nine to five, and a review of licence fees was needed. Refer Appendix A(i).

### **2.3.2. Commercial Passenger Vehicle Review – Fivenines Consulting Pty Ltd, February 2008-2010**

The review was undertaken by external consultants Fivenines Consulting via combination of industry consultation and research in Australia and overseas.

The review concluded that the current regulation was too complex and service standards were inconsistent. It stated there was a risk of investors returning due to the cap and that demand for services was not well met especially for disabled passengers.

The review recommended reducing the number of licence categories from nine to five and an industry fund be established for training and infrastructure. It also recommended that the cap on taxi licences be removed, the creation of a higher level of entry criteria and the development of a strategic plan for the sector. Refer Appendix A(ii).

### **2.3.3. The Impact of Deregulation on the Northern Territory Commercial Passenger Vehicle Industry – Professor Des Nicholls, Australian National University, February 2003**

Consultant Professor Des Nicholls prepared an academic paper that discusses the impacts of deregulation on the industry. He noted that the Northern Territory experience had been a classic example of the collision of economic theory and empiric reality.

Professor Nicholls argued the case against deregulation and identified that the number of taxi licences had increased since deregulation leading to erosion in driver and vehicle standards. Professor Nicholls made no specific recommendations. Refer Appendix A(iii).

### **2.3.4. Review of the Commercial Passenger Vehicle Industry Discussion Paper – Department of Infrastructure Planning and Environment, May 2002**

The Department of Infrastructure, Planning and Environment prepared the paper for industry and community consultation. The paper addressed concerns in relation to the effects of deregulation described as poor quality of service, reduction in incomes and disputation between industry sectors. The paper recommended the establishment of a Commercial Passenger Vehicle Board and the continuation of the cap on taxi licences. Refer Appendix A(iv).

### **2.3.5. Taxi Number Assessment in Darwin and Alice Springs – Ernst & Young, May 1996**

The Department of Transport and Works commissioned Ernst and Young to carry out a review and prepare a report on the number of taxis that can commercially operate in Darwin and Alice Springs. The report addressed whether taxi licences should be issued by either a ratio of population e.g. (1 taxi per 900 people) or based on performance standards measured in response times.

The review touched on leasing and indicated that leasing helped in driving up market prices and attracting investors. It also stated that an operator leasing a number of licences could potentially improve services through economies of scale and focus on customer services. Refer Appendix A(v).

### 2.3.6. Review of the Operation of the Commercial Passenger (Road) Transport Act - Joint Government/ Industry Committee, August 1994

The review was conducted by an Industry/Government Committee to review the operation of the *Commercial Passenger (Road) Transport Act*. Community consultation was a major component of the review.

As a result of the review Government approved industry developing codes of conduct for all sectors and the issue of four Darwin and two Alice Springs licences every six months from early 1996 until a rational method for determining the required number of licences could be developed. Government did not remove economic regulation of numbers retained or the accreditation system.

There have also been a number of competition and taxi sector reviews both nationally and interstate, three of the more recent ones are listed below and included at Appendix B.

- Competition and the Public Interest – Productivity Commission - Gary Banks, 2001.
- Competition Policy Review – Final Report – Professor Ian Harper, Peter Anderson, Sue McCluskey, Michael O'Bryan, March 2015.
- Customers First: Safety, Service, Choice – Taxi Industry Inquiry Final Report – Professor Allan Fels AO – September 2012.

## 2.4. Commercial Passenger Vehicle Board

In 2002, Parliament approved amendments to the *Commercial Passenger (Road) Transport Act* (the Act) to establish the Commercial Passenger Vehicle Board (the Board). These amendments taking effect in 2003.

Records show that from 2002 (refer CPV Board Annual Reports at Appendix C) the board was established as a pseudo self-regulating industry body. Powers conferred to the Board included powers of the Director giving it specific liberty to determine whether drivers, operators and networks met “fit and proper” requirements (even when in conflict with a decision of the Director). The Board’s powers also included the ability to set industry training levels, accredit industry trainers, and establish vehicle standards and Codes of Conduct as well as having the power to suspend industry members for breaching regulatory requirements. The Board’s membership consisted mainly of industry members, with additional members being sourced from the tourism, disability, consumer and economic sectors.

In 2006, Government amended the Board's role to that of strictly advisory, removing its statutory powers of the Director and additional functions.

Up until 2012 when the Board ceased operation, the Department required endorsement from the Board of all major policy requests prior to submitting to Government. This often led to ineffective decision making and extensive delays in the process. Conversely, the board continued to advise the Minister of the day directly on matters they saw as relevant.

In February 2016 as part of the recent review, Government approved the disbanding of the Board.



## 3. Allocation of Taxi Licences

### 3.1. Post 2002

After several temporary numbers restrictions being placed on taxi licences after the buy-back, in 2003, the Minister provided the direction to control taxi numbers in the Darwin and Alice Springs regions at the ratio of one taxi per 900 of population. At the time, and with endorsement from Government, the then Minister also directed that any new taxi licence would be issued through a ballot process.

In 2005, the Minister provided a new direction to the Director which modified the previous direction to a maximum number of taxi licences in Alice Springs based on one taxi per 900 population or 36 whichever is the greatest. There was no mention of how these licences would be issued, however the Director continued to issue licences strictly through the ballot.

In 2010, Government released 10 additional taxi licences into the Darwin market above the 900:1 ratio. These licences were issued as a special sub-category of taxis (Peak Period Taxis) which had restricted operational times aimed at providing increased levels of service during periods which had historically suffered from a lack of service, i.e. early hours of the morning and weekends.

### 3.2. Ballots

In 2004, the Department commissioned CT Alliance to undertake a probity audit of the ballot system and it was found that the Ballot process for the allocation of licences in Darwin and Alice Springs had been undertaken in accordance with the rules for the conduct of the draw, met probity requirements and was defensible. Refer Appendix D.

The Department has continued to use this method for all ballots conducted since adopting the recommendations. There is no mechanism in the Act to facilitate a ballot process. The Act simply provides the right to an accredited operator to apply for a taxi licence, where after, the Director must decide whether to grant or refuse it, with consideration to any lawful direction by the Minister.

Where the Director refuses an application for a taxi licence, the Act provides the applicant with the express right to appeal the decision through the Local Court.



### 3.2.1. Peak Period Licences

In February 2010, the Department investigated options to introduce additional taxi licences during peak demand periods. This was in response to concerns that taxi service in Darwin was not providing an adequate service for the late night/early morning and weekend periods, particularly:

- around the closing hours of late night licenced premises in the Mitchell Street precinct; and
- at Darwin Airport with large numbers of arriving passengers.

In response, ten Peak Period taxi licences were released through the ballot process. These licences would restrict the operation of the taxis to the identified problem times. To ensure the taxis remained operational, eligibility for the ballot was restricted to current taxi drivers who did not hold a taxi licence. The idea was the successful balloters would own, operate and drive their Peak Period taxis during each shift.

Unfortunately many of the operators elected to hire drivers for their Peak Period taxis due to the low income received for the shift, preferring to continue to drive for someone else during the day. Another difficulty for the Peak Period taxis was that they did not align with industry practice of a rotating 12 hour shift with changeover times of 6 am and 6 pm.

Ultimately all operators lobbied Government for conversion to full licences and in October 2012, Government directed that all Peak Period taxi licences be cancelled and new standard taxi licences be issued in their place. This allowed these vehicles to operate without any time restrictions. Table 1 provides a list of all licences issued from 2003 to 2017.

Table 1. Allocation of Commercial Vehicle Licences (CVL) in Darwin and Alice Springs 2003 – 2017

2003		2010	
CVLs issued through ballot system	Nil	CVLs issued through ballot system	Alice Springs - 1 Darwin - 5 Darwin - 10 (PPT)*
CVLs issued outside of ballot system	Nil	CVLs issued outside of ballot system	Darwin - 1 (deceased)
2004		2011	
CVLs issued through ballot system	Alice Springs - 4 Darwin - 3	CVLs issued through ballot system	Nil - 2011 Ballot Postponed
CVLs issued outside of ballot system	Nil	CVLs issued outside of ballot system	Darwin - 1 (deceased)
19 May 2005		2012	
CVLs issued through ballot system	Alice Springs - 4 Darwin - 8	CVLs issued through ballot system	Alice Springs - 2
CVLs issued outside of ballot system	Nil	CVLs issued outside of ballot system	Nil
27 October 2005		2013	
CVLs issued through ballot system	Alice Springs - 0 Darwin - 5	CVLs issued through ballot system	Nil
CVLs issued outside of ballot system	Nil	CVLs issued outside of ballot system	Nil
2006		2014	
CVLs issued through ballot system	Alice Springs - 4 Darwin - 7	CVLs issued through ballot system	Nil
CVLs issued outside of ballot system	Nil	CVLs issued outside of ballot system	Nil
2007		2015	
CVLs issued through ballot system	Alice Springs - 1 Darwin - 6	CVLs issued through ballot system	Nil
CVLs issued outside of ballot system	Nil	CVLs issued outside of ballot system	Alice Springs - 4 Darwin - 2
2008		2016	
CVLs issued through ballot system	Alice Springs - 2 Darwin - 6	CVLs issued through ballot system	Darwin - 15
CVLs issued outside of ballot system	Nil	CVLs issued outside of ballot system	Nil
2009		2017	
CVLs issued through ballot system	Alice Springs - 1 Darwin - 7	CVLs issued through ballot system	Darwin - 1
CVLs issued outside of ballot system	Nil	CVLs issued outside of ballot system	Nil

\*Note: Peak period licences issued in 2010 were converted to full licences in 2012.

### 3.3. Allocation of Licences outside the Ballot Process

Since 2003, the Department has continued to use the ballot process to issue taxi licences in the Alice Springs and Darwin regions. All other regions have remained an open market and licences have been freely available to operators upon application.

There have been some exceptions from the ballot policy and these are detailed below. In addition to the following for a short period between 2010 and 2012, at the request of the local industry and supported by the Commercial Passenger Vehicle Board, no new licences were issued in the Katherine region.

#### 3.3.1. Death of Licensee

In early 2008, the Taxi Council made representations to the Minister that an inability to transfer taxi business operations between family members in the event of death of the licence holder was creating unforeseen and significant hardship, affecting family members and taxi drivers.

In May 2008, to resolve the Taxi Council's concern the Minister under section 5A of the Act directed that on the death of a licensee, the licence could be cancelled and a replacement licence may be issued to a close family member of the deceased.

#### 3.3.2. Reallocated Licences – Policy 5.20 - Authority to Directly Allocate Taxi Licences Under Certain Conditions

Under the Act, the Director of Commercial Passenger (Road) Transport (the Director) has an obligation to ensure each person having a responsibility in the taxi industry is of good repute and is, in all other respects, a fit and proper person. In accordance with the Act, the Director is, at times, obligated to cancel or refuse renewal of a person's accreditation or taxi licence.

In 2015, pursuant to the provisions of the Act, for various reasons the Director cancelled the accreditation of several taxi operators, resulting in the cancellation of six licences; two in Darwin and four in Alice Springs.

Several industry members in Darwin approached the Minister's office, the Opposition and the Department claiming they could demonstrate an interest in the operation of the cancelled taxi licences and had been left without income. The Minister's Office requested the Department investigate the issue.

The persons provided documentation indicating sub-lease agreements with the licence holders and that they had invested considerable money in establishing the business, such as the purchase and modification of the taxi vehicle. They also claimed that the operation of the licence was their only source of income

and that they were experiencing financial hardship due to the cancellation of the licence and the resulting loss of their business.

As the Minister had previously determined there would be no taxi ballots until after the 2016 taxi review had been finalised, the Department considered options to ensure taxi services were maintained in the capped environment, particularly for the disabled community with the supply of wheelchair taxis and to reduce the financial stress on individuals whilst the review was being finalised.

Legal advice at the time suggested that clear policy should be developed and that the issuing of the licence under the policy is at the absolute discretion of the Director.

Subsequently, on 10 September 2015, *Policy 5.20 - Authority to Directly Allocate Taxi Licences under Certain Conditions (the Policy)* was approved by the Minister enabling the Director to reallocate cancelled taxi licences to a person meeting the conditions of the Policy. Refer Appendix E.

The Minister was advised at the time that industry may see the issuing of licences under these circumstances as tacit approval of subleasing, and taxi drivers or potential operators who had waited unsuccessfully, often for several years to get their own taxi licence through the ballot process, could see the reallocation of licences outside of the ballot as unfair and biased towards persons who have engaged in subleasing activity.

### 3.4. Six Taxi Licences Reallocated under Policy 5.20

As a result of the approval of *Policy 5.20 - Authority to Directly Allocate Taxi Licences Under Certain Conditions* the Department took action in Darwin and Alice Springs to reallocate the effected licences.

#### 3.4.1. Taxi Licence 1 (Darwin Region)

In June 2015, pursuant to section 9 of the *Commercial Passenger (Road) Transport Act*, the Department refused to renew the operator accreditation of a local taxi operator on becoming aware the operator was no longer financially solvent. The operator held the taxi licence issued in respect of TAXI564, which was subsequently returned due to it no longer being held by a valid operator.

Shortly after the taxi licence was returned, a local driver approached the Department claiming financial hardship as a result of the returned licence. The Department informed the driver that it was not in a position to grant taxi licences outside of a ballot due to Government's determination that all new taxi licences would be issued through the ballot.



The driver approached both Government and Opposition Government members requesting special consideration for his circumstances. Refer Appendix F(i).

As a result of the petitioning from local drivers, the Department developed Policy 5.20 to allow the issuing of taxi licences outside of the ballot under special circumstances.

With the Minister of the day approving the Director to issue taxi licences outside of the ballot, on 27 October 2015, the driver was granted a taxi licence upon which TAXI564 was endorsed. The driver elected to keep the same registration to enable the continuation of his service to clients.

#### 3.4.2. Taxi Licence 2 (Darwin Region)

In 2015 the Department received information that identified a local operator as living overseas and as a result of enquiries, on 21 July 2015, cancelled the taxi licence issued to the operator pursuant to section 75(5)(a) of the *Commercial Passenger (Road) Transport Act*.

During July and August 2015, a local driver approached the Department and the Minister's office stating that he had been subleasing the taxi for many years and was financially distressed due to the cancellation of the licence. Subsequently he requested the licence be reallocated to him. Refer Appendix F(ii).

The local driver provided documents to the Department which supported he had operated the taxi for a number of years under a lease agreement; had purchased the vehicle used as a taxi and had paid all costs associated with the taxi over that time.

In November 2015, the Department sent a letter to the driver advising of the approval of Policy 5.20 and consequently the driver submitted a claim for reallocation of the licence and applied for accreditation as an Operator.

On 8 December 2015, after reviewing available documentation, the Director was satisfied the driver met the intent of the Policy and granted a standard taxi licence to the driver upon which TAXI574 was endorsed.

#### 3.4.3. Taxi Licence 3 (Alice Springs Region)

On 3 July 2015, the Director cancelled the taxi licence issued to a local operator due to the licence not having a vehicle endorsed against it for more than three months as required under section 75(5)(b).

During November 2015, a local driver wrote to the Department claiming financial hardship and requested that he be issued with the taxi licence to operate the taxi. The driver stated that on 25 August 2011, he had entered into a 36 month subleasing agreement with the local operator.



The driver further stated that in December 2013, the operator had broken the deal to lease the plate to another local operator who had offered more money. Refer Appendix F(iii).

On 6 November 2015, after reviewing all available documentation, the Director was satisfied the driver sufficiently met the intent of Policy 5.20 and subsequently issued a standard taxi licence to him, upon which TAXI536 was endorsed.

#### 3.4.4. Taxi Licence 4 (Alice Springs Region)

On 30 October 2015, the Director cancelled the wheelchair taxi licence belonging to a local operator, for reasons of breach of licence conditions after receiving evidence of subleasing the licence.

On 1 November 2015, the Department received correspondence from a driver claiming financial hardship due to one of the licences being cancelled and requested the Department consider issuing a new taxi licence. Refer Appendix F(iv).

On 6 November 2015, the Director considered all documentation relevant to the driver's submissions and was satisfied that he met the intent of Policy 5.20. The Director subsequently issued a new wheelchair taxi licence to the driver upon which was endorsed TAXI535.

#### 3.4.5. Taxi Licence 5 and 6 (Alice Springs Region)

In 2011, two local drivers entered into a sublease agreement for a standard taxi licence with a local operator for a five year term. In April 2015, the operator broke the lease agreement, allegedly due to receiving a better offer from another local taxi operator.

In August 2015, one of the driver's commenced operating a wheelchair minibus in the Alice Springs region to focus on servicing the transport needs of wheelchair users.

In September 2015, the Department suspended the accreditation of the operator for six months due to him being charged with multiple drug offences. This rendered the taxi licence ineffective and the operator subsequently elected to surrender the licence in order to receive the refund amount – as the licence was surrendered, the operator could not reactivate it at any future stage.

During November 2015, the two drivers made separate submissions to the Director that they had been co-subleasing the taxi and sought consideration under the Department's Policy 5.20. Refer Appendix F(v)&(vi).

The Director considered their applications and took into account:

- Driver 1's commitment to already providing a high quality service to wheelchair passengers; and
- Driver 2 was himself, reliant on a wheelchair. While he was able to drive a standard taxi he was unable to drive a wheelchair taxi as he was not physically capable of assisting the loading and unloading of wheelchair passengers.

To provide an outcome which ensured wheelchair services were maintained in Alice Springs; the Director used a taxi licence previously held by a local operator that had recently been cancelled due to subleasing, to issue a wheelchair taxi licence to Driver 1 under which TAXI533 was endorsed. In doing so, the Alice Springs wheelchair accessible taxi fleet was increased by one.

To ensure that Driver 2 had the opportunity to drive their own standard taxi, the Director approved the reallocation of the standard taxi licence under which TAXI534 was endorsed.

### 3.5. Response to Driver Concerns

In 2016, some drivers in the Alice Springs region approached the Department in relation to the use of Policy 5.20. Drivers raised the concern that they felt the reallocation of the taxi licences outside of a ballot was unfair.

While the Department met with the drivers and discussed their concerns, a group of drivers employed legal representation to seek further information on the Policy.

During April 2016, Cozens Johansen Lawyers wrote to the Department stating that they represented a group of drivers from Alice Springs and requested information on the recent allocation of four taxi licences in Alice Springs.

The Department sought legal advice and provided a response to Cozens Johansen Lawyers. The Department's Chief Executive undertook an internal review of the process leading to the issuing of the four licences and concluded that the new taxi licences were issued in accordance with the intent of Policy 5.20.

The CPV Reform package was announced in February 2016, including the decision to maintain restrictive taxi markets in both Darwin and Alice Springs. The use of the 2015 policy was suspended following the release of the Review.

## 4. Subleasing

### 4.1. History

Prior to the 1999 reforms which included Government buying back taxi licences, industry owned each licence as a property and could lease these licences out to the highest bidder. The Department could monitor which operator was operating the licence, although this was sometimes difficult to maintain as the licence was a property that could be traded many times over. Information at the time suggested many licences were traded without industry advising of the full costs of the deal.

From time to time Government would release further licences to industry at the going market value, at the time of buy back about \$230,000. The high price attracted investors into the industry and largely excluded many of industry's working members.

Investors saw buying a taxi licence as a long term investment, many citing it as their pseudo superannuation fund. Once purchased, licence holders could be assured of a steady weekly income without the need for them to maintain the operation.

With numbers deregulation in 1999, the previous accepted practice of leasing licences ceased. In the short time that followed the introduction of the 1999 reforms, any person could apply and gain a taxi licence and commence operating, needing only sufficient capital to obtain a suitable vehicle, fit it out as a taxi and pay a three months licence period which at the time was \$4000 (from an annual fee of \$16,000). This effectively removed any desire to on-lease (sublease) taxis.

While many individual operators took up the opportunity to operate their own taxi, several persons in Darwin established companies and became taxi fleet operators. With the cap on licence numbers returning in 2003, these large operators began controlling much of the taxi industry, with the largest of these fleet operators, having a fleet of about 25 taxis in Darwin.

The licence cap created an unintentional value in licences and industry soon understood that holding a taxi licence was again a source of reliable and substantial income.

### 4.2. Bailment Agreements – Not Subleasing

The term subleasing is often incorrectly used in respect to accepted legal practice in the taxi industry where a licence holder and driver share income from the monies made from fares. While the main issue with subleasing is the transfer of operational responsibility from the licence holder to another person,

however, it is standard practice for a licence holder to transfer the operation of the taxi licence to the driver for a shift.

Providing the driver only uses the taxi licence in the capacity of a driver, there is not seen to be any transfer of responsibility of the licence – this is expressly supported by the Act. This type of arrangement is referred to as a bailment agreement which means the taxi licence can be operated by that driver outside of an employer/employee relationship. Most jurisdictions, including the Northern Territory, do not involve themselves in bailment agreements or conditions as it is seen as a business decision between the two parties, although the Queensland Government has developed a model agreement for its industry.

The two accepted types of bailment agreements are a fixed price agreement or a split of the shift takings. In a bailment agreement, the licence holder continues to pay all operational costs such as annual licence fees, registration, maintenance, insurance as well as purchasing and owning the vehicle.

In the fixed price agreement, the driver pays a set amount, say \$120, for a 12 hour shift. The driver then pays for the fuel used, but keeps all fares earned. This is commonplace in the Alice Springs region. Some fixed price agreements can span over prolonged periods and begin to closely resemble sublease agreements. As an example, if a driver pays the licence holder \$120 per shift and agrees to continue this arrangement for 12 months, the driver and licence holder may agree to monthly instalments of \$2880 (\$120 six days a week for four weeks). In this scenario, the total payment to the licence holder would be close to \$40,000 per year. The licence holder may have several agreements in place for the same taxi licence e.g. two shifts per day at \$120 per shift and additional agreements for weekend drivers.

The most common bailment agreement in use in the taxi industry is a percentage split of the shift takings. In this scenario, the licence holder permits a driver to operate the taxi for a shift – usually for a period of 12 hours. The driver may be required to pay for the fuel used during the shift and at the end of the shift, the total moneys taken is split between the driver and licence holder; usually at the rate of 50% each. Victoria is the only Australian jurisdiction currently regulating the driver to operator split at the rate of 60% in favour of the driver.

Another misconceived notion of subleasing is where a licence holder employs a fulltime manager to manage the day to day operations of a taxi fleet. The manager, in his employed capacity, may have authority to act on the licence holder's behalf e.g. making payments associated with regulation and vehicle maintenance, and also hiring and management of drivers. Provided the arrangement is purely employer to employee (e.g. wage or commission based) in nature and does not transfer operation responsibility of the taxis, it would not constitute a sublease arrangement.



The above scenarios are recognised practices for the taxi industry and taxi drivers are not considered employees or subcontractors for taxation purposes. They are also not provided with leave entitlements or superannuation. These issues further add to the difficulties with regulating the industry and give further cause for the Department to gather clear evidence before any action can be taken in respect to subleasing allegations.

### 4.3. Subleasing Agreements

Anecdotal information has been received by the Department that some taxi licence holders in Alice Springs would demand new drivers enter into subleasing deals, preventing them from working unless they sign exorbitant subleasing deals before they are allowed to work as a taxi driver.

While the above is convenient for taxi licence holders as they receive guaranteed income from drivers (for no other reason other than they were successful in a taxi ballot), it shifts the burden of operation from the licence holder directly to the driver. Some representatives of the Alice Springs industry have complained that these arrangements are grossly unfair on drivers and compel drivers working under these circumstances to potentially overcharge in an effort to make enough money to pay lease fees and a minimum wage. Unfortunately, drivers are not forthcoming with providing documentation on the arrangement to the Department as doing so may jeopardise their only source of income. It is understood that many drivers also fear they will be ostracised from industry if they expose industry practice.

In 2015, the Department received a copy of a contract relating to a third and fourth party sublease agreement. The contract detailed an arrangement whereby a person connected to a network, not being a licence holder, leased a taxi to a driver for approximately \$80,000 per year plus all costs of regulation being borne by the driver. This amounted to approximately \$120,000 per year that the driver needed to make through fares prior to that driver receiving any personal income. It was rumoured that the licence holder subleased his taxi to the third party for about \$40,000, after which the third party on-leased the licence to a driver.

While the Department did investigate the above matter, without the cooperation of any of the parties involved, and lacking any evidence connecting the licence holder to the deal, the Department was unable to establish sufficient evidence to take action.

Subleasing of taxi licences in Darwin and Alice Springs has value due to the restricted market. Persons wishing to operate their own taxi are unable to obtain new licences and there are low odds of being successful through a ballot when they occur. Considering the population growth in the Alice Springs region has been stable for many years, new licences in that area are generally only issued when a holder



surrenders their licence. However, licence holders wishing to leave the industry see holding onto the licence as an asset and ready source of income. As such, it is understood that some of these operators do not surrender their licence, but sublease them for a healthy profit to a willing industry which does not otherwise have access to operate their own taxi plate.

Over the years, the Department has written to many operators rumoured to have left the Territory. However, licence holders generally produce evidence of residency in the form of property ownership or rental agreements.

The Department is not aware of any subleasing of taxis in uncapped areas such as Katherine and Gove.

The Darwin taxi industry has previously lobbied the Department and previous Governments to allow transferability of taxi licences. The Department has not been supportive of this request as it provides tacit endorsement of the 'black market' trade in taxi licences and creates a value in the licence as a commodity – effectively undermining Government's investment in the 1999 buy back of licences.

## 5. Enforcement Action

### 5.1. Background

The Department of Infrastructure, Planning and Logistics administers the *Commercial Passenger (Road) Transport Act* (the Act) and related regulations, Codes of Conduct and vehicle in-service maintenance standards through the Commercial Passenger Vehicle (CPV) Branch. Core tasks of the branch include assessments of commercial vehicle licences (e.g. taxi licence applications), driver authorities (e.g. ID cards and 'h' endorsements) and operator accreditation. The branch also has an inspectorate function.

Motor Vehicle Registry provides the front line service to industry in all major centres.

The branch has two CPV permanent Inspectors dedicated to on-road enforcement activities, investigating complaints and conducting industry auditing; the two inspectors being supervised by a Senior Inspector and supported by an administrative officer.

The Department's Transport Inspectors across the Territory undertake vehicle inspections and on road auditing of CPVs. In regional areas Inspectors also undertake complaint investigation and handling. Table 2 below provides statistics of the activities undertaken by Inspectors in Darwin and Alice Springs.

**Table 2. Commercial Passenger Vehicle Enforcement Statistics Darwin and Alice Springs**

Commercial Passenger Vehicle Enforcement Statistics							
	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17*
<b>Vehicles Audited On Road (Total)</b>	<b>2427</b>	<b>2612</b>	<b>2780</b>	<b>2543</b>	<b>1955</b>	<b>2829</b>	<b>1762</b>
Taxi	2019	2234	2312	2204	1633	2533	1446
Private Hire Car	142	111	115	132	65	46	16
Minibus	266	267	353	207	257	250	300
<b>Non-Compliance Infringements (Total)</b>	<b>717</b>	<b>476</b>	<b>439</b>	<b>483</b>	<b>458</b>	<b>404</b>	<b>245</b>
Taxi	629	427	376	440	409	378	216
Private Hire Car	31	11	12	10	1	3	1
Minibus	57	38	51	33	48	23	28
*Figures as at 28 February 2017							

## 5.2. Processes – Lawful vs Unlawful

The Director of Commercial Passenger (Road) Transport grants and renews taxi licences to eligible persons upon application and with consideration to any direction by the Minister. Licences are not transferrable and are issued in good faith to a person for that person to be responsible for the operation and maintenance of that licence. A transfer of operational responsibility by the licence holder to another party (other than a person performing in the capacity of a driver only) is a breach of the conditions of licence issue and could result in the Director cancelling that licence.

The Department regularly receives information from industry on suspected subleasing of taxis. While each case is investigated, the majority of submissions are poorly informed, provide incorrect information, or at best, amount to unsubstantiated hearsay with a lack any supporting documentation or evidence.

The Department acknowledges that subleasing is most likely prevalent in the taxi industry (in capped regions) and is a direct consequence of economic regulation and limits to numbers of taxis to a level which creates a scarcity value. The Department is nonetheless restricted in law and bound by rules of evidence and natural justice. As a result of these restrictions, the Department must follow due process prior to taking any actions which affects the rights of a person.

While an action such as cancellation of a taxi licence is an appealable action to which the standard of 'balance of probabilities' applies, that standard of proof is relative to the effect of the action, i.e. minor administrative decisions may only require minimal evidence to prove balance of probabilities, however an action which removes a person's ability to make a living (such as taxi licence cancellation) requires a much higher level of evidence similar to that required by a criminal court.

Previous advice has indicated the Director may cancel a taxi licence where sufficient evidence is available to prove subleasing, however such an action is subject to appeal to the Local Court.

## 5.3. Taxi Endorsement / Residency Requirements

Section 75(5)(a) of the *Commercial Passenger (Road) Transport Act* (the Act) requires the Director to cancel a taxi licence where a taxi vehicle has not been endorsed on the licence for more than three months. The Department has been presented with instances where (alleged) subleasing taxi operators have failed to ensure a taxi remains endorsed on the licence as required under section 75(5)(a). Possible factors for non-compliance to this requirement may be due to lack of involvement by the licence holder in their business.

Section 75(5)(b) of the Act requires the Director to cancel a taxi licence where the holder has not maintained residency in the Territory for more than six months. Many subleased taxis are the result of the licence holder moving interstate or overseas. Where the Department obtains sufficient evidence to prove a licence holder is living outside of the Territory for more than six months, the Department must then cancel any taxi licence held by that person.

The fit and proper test is an accepted legal concept which sets standards for entry (and retention) into certain fields of work such as a taxi driver and taxi operator. The Department has published guidelines and policies on what it means to be of a fit and proper character to engage in the CPV industry and includes Department processes when dealing with fit and proper assessments. Refer Appendix G.

Where a person has been refused accreditation or driver authority for reasons of not being fit and proper, the Act provides an appeal mechanism through the local court. The Director must not approve, or must cancel, a person's authorities to engage in the CPV industry on becoming aware that person has been convicted of a disqualifying offence as prescribed in the Commercial Passenger (Miscellaneous) Regulations.

As there are no provisions of the Act to clearly identify subleasing as an offence, it is questionable whether a licence holder, having been found to sublease, would be deemed not fit and proper. Even so it is considered that such an operator has acted against the intention of the licensing provisions of the Act.

## 5.4. Procedural Fairness

Notwithstanding the silence of the *Commercial Passenger (Road) Transport Act* (the Act) in dealing with the practice of subleasing (primarily because the Act was conceived for an open market environment), the Department does not often receive credible evidence relating to subleasing allegations. The Department sees obtaining a written contract relating to a subleasing arrangement as the crucial piece of evidence in the establishment of subleasing – providing the contract expressly transfers some of the operational responsibility from the licence holder to the sublessee. Until the establishment of the Department's Policy 5.20, no industry member has ever approached the Department willing to give evidence that they have been involved in subleasing.

Where the Department receives information surrounding a potential subleasing arrangement which is sufficient enough to support the possibility of the arrangement, the Department must provide the licence holder with the opportunity to respond to the allegations in the first instance. It is Department policy to provide this through written correspondence which details the allegation and provides a specified time for that party to respond.



Where the party refutes the allegation, the Department must be reasonably confident that any action taken against the party, such as cancellation of the taxi licence in question, is supported by evidence. This evidence must be of sufficient quality, that if challenged through the local court, the Department has a reasonable chance of successfully defending the action. It is encumbered on the Department that it takes all reasonable steps to mitigate any potential risk to Government.

Sound evidence of subleasing provided through industry is lacking. Even where the Department has been made aware of subleasing deals gone badly, sublessees are still reluctant to provide the Department with evidence needed for the Department to take action.

Information received by the Department also suggests that many licence holders do not formalise their sublease agreement in writing. Licence holders will often opt to make verbal agreements with drivers. While this may reduce available evidence to prove the practice, sublessees may still hold sufficient evidence in the form of proof of vehicle purchase, maintenance costs of the business (e.g. payment of bills) and driver hiring agreements. This together with a commitment from the sublessee to provide verbal evidence may be sufficient to prove the agreement existed to the satisfaction of a court.

In the absence of any tangible incentive to sublessees to produce such evidence on their own volition and the potential consequences which may involve losing the ability to operate the taxi, they are generally reluctant to provide any information.



## 6. Appendices

- Appendix A (i) Come along for the ride – Commercial Passenger Vehicle Industry Review Report, Department of Infrastructure, Planning and Logistics, February 2014-2016
- Appendix A (ii) Commercial Passenger Vehicle Review – Fivenines Consulting Pty Ltd, February 2008-2010
- Appendix A (iii) The Impact of Deregulation on the Northern Territory Commercial Passenger Vehicle Industry – Professor Des Nicholls, Australian National University, February 2003
- Appendix A (iv) Review of the Commercial Passenger Vehicle Industry Discussion Paper, Department of Infrastructure Planning and Environment, May 2002
- Appendix A (v) Taxi Number Assessment in Darwin and Alice Springs – Ernst & Young, May 1996
- Appendix B (i) Competition and the Public Interest – Productivity Commission - Gary Banks, 2001
- Appendix B (ii) Competition Policy Review – Final Report – Professor Ian Harper, Peter Anderson, Su McCluskey, Michael O'Bryan, March 2015
- Appendix B (iii) Customers First: Safety, Service, Choice – Taxi Industry Inquiry Final Report – Professor Allan Fels AO – September 2012
- Appendix C (i) Commercial Passenger Vehicle Board Annual Reports 2002-2013
- Appendix D (i) CT Alliance Probity Report - Final Recommendations - 2004
- Appendix D (ii) CT Alliance Taxi Ballot Implementation Strategy Master - 2004
- Appendix D (iii) CT Alliance Taxi Ballot Probity Plan - 2004
- Appendix D (iv) CT Alliance Probity Ballot Risk Plan – 2004
- Appendix E Policy 5.20 – Authority to Directly Allocate Taxi Licences Under Certain Conditions
- Appendix F Matrix of Six Reallocated Taxi Licences Under Policy 5.20
- Appendix F (i) Taxi Licence 1 - Darwin Region
- Appendix F (ii) Taxi Licence 2 - Darwin Region
- Appendix F (iii) Taxi Licence 3 - Alice Springs Region

Appendix F (iv) Taxi Licence 4 - Alice Springs Region

Appendix F (v) Taxi Licence 5 - Alice Springs Region

Appendix F (vi) Taxi Licence 6 - Alice Springs Region

Appendix G (i) Commercial Vehicle Information Bulletin: CPV03-Fit and Proper Assessments and Disqualifying Offences for the Commercial Passenger Vehicle Industry

Appendix G (ii) Commercial Vehicle Information Bulletin: CPV09 - Taxi Licence

Appendix G (iii) Commercial Vehicle Information Bulletin: CPV10 - Multi Purpose Taxi (MPT) Licence