



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Public Accounts Committee

**Inquiry into
Taxi Licensing and Subleasing**

November 2017

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Chair's Preface

The Legislative Assembly will often refer an issue to a committee because there are no easy answers and it requires frank public input and bipartisan consideration of the details. This inquiry fits this description.

The regulation of the taxi industry has been in a state of flux for some time, and now the industry is also preparing to face the new challenge of competing with ridesharing services.

Problems with a licence allocation process in Alice Springs have proved to be a symptom of broader regulatory issues. With the vital role that taxi services play for many in our community and our economy, it is important that these issues be addressed.

The Assembly referred the issues of taxi licence allocation and subleasing to the Public Accounts Committee for inquiry following allegations of corrupt regulation and illegal dealings with taxi licences in Alice Springs. The issues raised by the inquiry were of concern to many Territorians, with the Committee receiving over 70 submissions.

Rather than corruption, the Committee found a regulatory system with some significant shortcomings. Over time, laws governing taxis had been partially adapted in response to some radical changes to the regulatory model but had not kept up with changes to Government policy. As a result, they were difficult to interpret and at times application appeared arbitrary. They also inadvertently created incentives for practices with negative outcomes. Well intentioned attempts to deal with the unintended effects of this system created further inconsistencies and exacerbated other problems.

The history of taxi regulation in the Northern Territory is key to understanding where we are now. In 1999, we became the first jurisdiction in Australia to implement National Competition Policy agreements relating to the taxi industry and remove restrictions on taxi licence numbers. However, implementation of these reforms struck problems. While the Government compensated licence holders for the loss of ownership of their taxi licences, it did not successfully manage the disruption caused by moving to an unrestricted market. This resulted in a temporary reintroduction of the cap on licence numbers which has continued to date. Most recently, the Minister announced a continuation of the licence cap for another two years. The weight of evidence, as discussed in this report, indicates that keeping a restriction on taxi licence numbers has a number of adverse consequences and limits opportunities for drivers wanting to operate their own taxis. However, transitioning to an uncapped taxi market can have adverse impacts on existing licence holders. These competing policy considerations have not been resolved over the last 16 years.

It is within this environment that the problem of subleasing has emerged. Prior to 1999, when licence holders could buy and sell licences, there was no law or policy against leasing licences. With the 1999 buyback, ownership of licences ended and licences could only be leased from the Government on an annual basis. As there was no restriction on licence numbers, any accredited person could obtain a licence from the Government for the annual fee. The legislative reforms did not address the question of whether a licence holder could sublease their licence as there was no reason for a

person to pay the extra expense of entering a sublease if they could get a licence directly from the Government. Later, when licence restrictions were reintroduced, subleasing became the only means of accessing a licence apart from the rare licence allocation by ballot. Consequently, some drivers wishing to operate a taxi were willingly paying tens of thousands of dollars a year to sublease a licence.

Such subleasing has adverse impacts on the Northern Territory for a number of reasons outlined in this report. However, the law has not been amended to make it illegal. That has left licence holders who wish to no longer operate a taxi with two choices: they can return the licence to the Government in accordance with departmental policy, or they can sublease the licence and earn ongoing sublease fees due to the scarcity of licences. The attractiveness of the second option has resulted in subleasing being widespread.

There are two approaches that can be taken to address the problem of subleasing: the cap on licence numbers can be removed so an accredited person can lease a licence directly from the Government, or it can be prohibited by law and the Department empowered and funded to enforce that prohibition. Both these options involve the Government making a long term decision about whether the cap on the number of licences should be maintained. This has forced the Committee to consider the merits of making permanent or lifting the cap on licence numbers.

Neither option is straightforward.

Removing the cap will increase competition between licence holders. While a greater number of taxis will reduce waiting times in busy periods to the benefit of customers and other businesses, it will increase pressure on licence holders. Licence holders are already under increased pressure with the potential arrival of ridesharing services. Therefore there is an argument for limiting changes to the regulation of taxis when there are new external pressures afoot.

Alternatively, limiting the number of taxi licences can come at a significant costs, such as the loss of opportunity for drivers to operate their own taxi, reduced services for customers who have trouble getting a taxi at peak times, and the pressure on sublessees to compromise standards to meet the additional costs of subleasing fees.

Having considered the range of issues raised in this inquiry, the Committee has concluded that maintaining the cap on licence numbers cannot be justified.

The future of the taxi industry cannot be sustained through protective measures. It requires innovation to meet the changing environment. The Government can assist by increasing long-term certainty, moderating the pace of regulatory change where possible, and assisting the industry to develop its competitive advantages such as connections with the tourism industry. Such changes would need to be implemented over time and in consultation with the industry to minimise disruption. It is recognised that assistance will be required to manage the transition. Addressing these issues with the regulatory framework for the taxi industry for the longer term will better equip it to continue to provide quality taxi services.

The Committee thanks all those who have made submissions to the inquiry and appeared before it at hearings. We are grateful for time given by those assisting the

Committee and the open and helpful approach they have taken. I also thank my fellow Committee Members for the careful and robust consideration they have given to the issues raised.

A handwritten signature in black ink that reads "Kate". The signature is written in a cursive style with a large loop at the end of the word.

Kate Worden MLA

Chair

Committee Members

	Mrs Kate Worden MLA: Member for Sanderson	
	Party:	Territory Labor
	Committee Membership	
	Standing:	Public Accounts
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	Mrs Lia Finocchiaro MLA: Member for Spillett	
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	Mr Terry Mills MLA: Member for Blain	
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	Sessional:	Economic Policy Scrutiny
<p>On 15 February 2017, Member for Stuart, Mr Scott McConnell MLA was discharged from the Committee and replaced by Member for Brennan, Mr Tony Sievers MLA. On 23 June 2017, Member for Nhulunbuy, Mr Yingiya Guyula MLA was discharged from the Committee and replaced by Member for Nelson, Mr Gerry Wood MLA.</p>		

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Acknowledgments

The Committee acknowledges the individuals and organisations that provided written submissions and attended private and public hearings.

Acronyms and Abbreviations

CBD	Central Business District
CPV	Commercial Passenger Vehicle
MPT	Multiple Purpose Taxi
NCC	National Competition Council
NCP	National Competition Policy
OECD	Organisation for Economic Co-ordination and Development

Terms of Reference

On 15 February 2017, the Assembly resolved:

1. That the Assembly refers to the Public Accounts Committee for inquiry and report the efficiency, effectiveness and probity of the regulation and licensing of the Northern Territory Taxi Industry, having particular regard to:
 - (a) the allocation of taxi licences by the Department of Transport
 - (b) the subleasing of taxi licences
 - (c) the future of the taxi industry in the Northern Territory

2. This resolution has effect despite any inconsistency with the Standing Orders

Key Findings

Subleasing is widespread in Darwin and Alice Springs, including some licence holders subleasing their licences while residing interstate or overseas.

Subleasing is a consequence of Government imposed market entry restrictions which have created a licence scarcity value and provided incentives for rent-seeking behaviours by licence holders.

Successive Governments have maintained the temporary cap, however none have decided to make the cap permanent. None of the various reviews conducted concluded that a permanent cap was in the public interest.

Under the current system, subleasing does not appear to be of any public benefit but has enabled individuals to profit from licence scarcity. This profit comes at an expense to others and ultimately taxi customers.

Subleasing is not illegal under the existing legislative framework. While subleasing is against good public policy, it is not against the law.

The Department of Infrastructure, Planning and Logistics (the Department) received legal advice from the Solicitor for the Northern Territory in 2004 stating the *Commercial Passenger (Road) Transport Act* does not prohibit a licence holder from permitting another person to operate the licence and legislative amendments are required if transferring operational responsibility is to be prohibited by law.

The Department publically states that subleasing is against the intention of the Act, despite legal advice indicating otherwise. However, it also acknowledges that there may not be a firm legal basis upon which to prosecute parties for subleasing a taxi licence.

The Department has likely contributed to the industry's confusion regarding subleasing through public statements that subleasing is illegal and the inconsistent application of policy and practice.

The Department's position that subleasing is illegal has pushed sublease parties out of the regulatory environment and removed regulatory oversight of who is actually operating the taxi. Sublessees have exposed themselves to significant risk and as a result some licence holders have unilaterally terminated sublease agreements.

The Department arguably contributed to the practice of subleasing through the reallocation of cancelled licences to parties that had previously been subleasing a licence. A temporary policy on licence allocation (*Policy 5.20*) permitted the reallocation contrary to advice to industry that subleasing is illegal.

The Department did not broadly consult on the creation of *Policy 5.20*, nor did it advertise the existence of the Policy or publish the details of licence allocations made under the Policy. Not publishing the names of individuals allocated licences was inconsistent with previous practice.

If the licence cap remains in place, the preferred and fairest method for allocating licences is through a properly conducted ballot. Eligibility criteria should restrict the ballot to existing industry participants who have worked in the industry for a specified timeframe and to those who do not already hold a licence.

The population based ratio used to limit the number of taxi licences issued is an unsuitable model as the ratio is arbitrary and does not take into account the cyclical fluctuations inherent in the industry, and population demographics affecting customer demand.

The removal of the cap on taxi numbers is likely to increase the number of taxis, at least in the short term, however economic theory and industry evidence suggests that over time a market equilibrium will eventuate.

Entry deregulation could lead to holders of multiple licences experiencing driver shortages if a large number of taxi drivers obtain their own licences. This could result in existing licence holders, particularly those with multiple licences, choosing to surrender licences if they cannot secure sufficient drivers.

The lack of transparency in decision making, particularly in regard to the reallocation of licences in 2015, has led to allegations of corruption by the Department and a mistrust of the Department. No evidence has been given to support these allegations.

The Northern Territory taxi industry has been subject to numerous reviews that have resulted in little substantive change with the exception of the removal and reimposition of entry restrictions.

Recommendations

Recommendation 1

The Committee recommends that the cap on taxi licence numbers in Darwin and Alice Springs be removed through a staged reform process. The staged reform process should be established in consultation with industry with a view to maximising the quality of taxi services while minimising any potentially adverse consequences of change.

Recommendation 2

The Committee recommends that the requirements to hold a licence should be reviewed and revised to ensure that they adequately promote community safety and service standards without unfairly restricting entry to licence holding.

Recommendation 3

The Committee recommends the Department develop and implement a strategy for improving service standards and safety requirements.

Recommendation 4

The Committee recommends that, if the cap is maintained, the Department develop and implement a comprehensive strategy to prevent subleasing, including any necessary changes to legislation, regulations or licence conditions, and the development of effective means of enforcement. In developing this strategy, the Department should have regard to any need for transitional arrangements for existing sublease agreements.

Recommendation 5

The Committee recommends that, if the cap is maintained, the Department undertake proactive and comprehensive investigations to determine if licence holders are complying with current residency requirements.

Recommendation 6

The Committee recommends that, if the cap is maintained, taxi licences should be allocated through the ballot process between existing drivers who do not already hold a licence and have worked as a driver in the Northern Territory for at least five years.

Recommendation 7

The Committee recommends the Department take action to restore trust through open, transparent and accountable decision making.

Recommendation 8

The Committee recommends the Department develop and implement an extensive education program to improve the industry's understanding of the regulatory framework, compliance with regulatory requirements and industry and consumer expectations.

Recommendation 9

The Committee recommends that the Department and the Department of Tourism and Culture work collaboratively with the industry to enhance the role of taxis in providing tourist services.

Recommendation 10

The Committee recommends that all future industry reviews incorporate both industry consultation and comprehensive and objective analysis of the options for regulatory reform and their implications.

Recommendation 11

The Committee recommends that the Government, as far as possible within the current changing environment, avoid any further reviews of the taxi industry, and make clear decisions about the appropriate policy settings, and amend the applicable legislation to provide clear laws consistent with policy choices.

1 Background

Origins of the Inquiry

- 1.1 The Assembly referred this inquiry to the Public Accounts Committee by a motion moved by the Member for Araluen, Mrs Robyn Lambley MLA, who was responding to concerns raised by people in the Alice Springs taxi industry about allegations of corruption in the allocation of taxi licences and a black market in the subleasing of licences.
- 1.2 In November 2015, the former Department of Transport allocated four taxi licences in Alice Springs outside of the standard ballot process. The former licence holders had had these licences cancelled and the licences were reissued through a temporary policy to parties who had previously been subleasing licences.
- 1.3 This led to a group of taxi drivers in Alice Springs forming the Alice Taxi Drivers Association which sought an explanation from the Department as to why the ballot process was not used to allocate the taxi licences. The drivers were informed that the Director of Commercial Passenger (Road) Transport had the authority to allocate taxi licences outside of the ballot process.
- 1.4 The Alice Taxi Drivers Association became “frustrated and dissatisfied with the lack of details and responses they received”¹ which led them to engage a solicitor to seek explanations from the Government and approach Mrs Lambley about the matter. When moving the motion to establish the inquiry, Mrs Lambley stated:

Most people involved in the Alice Springs taxi industry are of the view that this decision, although technically within the determination of the Act, was unfair, peculiar, not transparent, highly controversial and lacking goodwill. But, most of all, the perception is that this decision, made by the Director, effectively condoned the unlawful practice of subleasing taxi licences in the NT.

The decision effectively rewarded the four parties who were subleasing those taxi licences. The decision took away the right of anyone else to have a chance of being allocated a taxi licence by not using a ballot. The process was not done openly and transparently. Interested parties had to wait many months for the Department of Transport to give a full explanation as to why this extraordinary decision was made to allocate these four Alice Springs taxi licences without using a ballot...

Why was there such secrecy? If this process is acceptable, fully legal and well known in the taxi industry, why were people not informed of these decisions made by the Director of Commercial Passenger (Road) Transport in advance rather than in hindsight? One reason for the Director to do this discreetly is obviously because it would have created a furore.

The decision not to use a ballot has been met with considerable anger by many people in the taxi industry in Alice Springs. Understandably, people

¹ Mrs Robyn Lambley MLA, Member for Araluen, Northern Territory Legislative Assembly, *Debates*, 15 February 2017.

feel they have been deceived, ripped off and treated unfairly and that there has been an injustice.²

- 1.5 In addition to the 2015 licence allocations outside of the ballot process, the practice of subleasing of taxi licences in both Darwin and Alice Springs was a driving force behind this inquiry. There has been a longstanding belief that subleasing is illegal, which has been supported by Government publications.
- 1.6 At the commencement of the inquiry, it was unclear whether subleasing was illegal, against the intention of the *Commercial Passenger (Road) Transport Act* (the Act) or simply not dealt with by the Act. The question of the legality of subleasing is examined in this report in detail and has led the Committee to conclude that it is not in fact illegal under the existing legislative framework. However, the industry has long believed that this practice is not condoned by Government which has led to clandestine subleasing arrangements.
- 1.7 Despite the clandestine nature of subleasing arrangements, the industry and the Department have been well aware that subleasing is rife within the industry with Mrs Lambley informing the Assembly:

In Alice Springs it is estimated that up to 50% of all Alice Springs taxi licences are subleased... It is clear that the *Commercial Passenger (Road) Transport Act* does not provide for the practice of subleasing taxi licences. The taxi industry is, by provisions in the legislation, a highly-regulated industry that does not provide for what is corrupt, black market trading of taxi licences. Even within the taxi industry the trading of taxi licences is referred to as the black market.

If the Member for Araluen knows about this black market of trading taxi subleases, the Department of Transport must also know... The Department of Transport has been turning a blind eye to this market for a long time and I want to know why. Why does the Department of Transport continue to ignore unlawful activity in one of its core areas of business and responsibility; that is, regulating and ensuring compliance in the taxi industry in the Northern Territory?³

- 1.8 The Minister for Infrastructure, Planning and Logistics confirmed that while subleasing is a known issue, its extent is unknown and the inquiry would provide an opportunity to:

get a grasp on how far and how wide this issue extends throughout the Northern Territory's taxi industry. It is a very murky issue. As the Minister, I want to get to the bottom of this and have clarity on the issue. It was deeply concerning how frank people were, including drivers, plate holders and people from peak representative groups. The figures I have seen quoted range between 30% and 60%, which is deeply concerning.⁴

- 1.9 It is apparent that there are a range of reasons why licence holders enter into a sublease in an environment where the number of licences available is limited:

² Mrs Robyn Lambley MLA, Member for Araluen, Northern Territory Legislative Assembly, *Debates*, 15 February 2017.

³ Mrs Robyn Lambley MLA, Member for Araluen, Northern Territory Legislative Assembly, *Debates*, 15 February 2017.

⁴ Hon Nicole Manison, Minister for Infrastructure, Planning and Logistics, Northern Territory Legislative Assembly, *Debates*, 15 February 2017.

Some have left the Northern Territory and can no longer personally operate their taxis. Subleasing generates a generous income for the licence holder because they can name the price and people will pay it to sublease the licence. Taxi licence holders sometimes do not want to work, but still want to generate an income from their precious taxi licence.⁵

1.10 Despite legislative requirements that a taxi licence must be cancelled if the licence holder ceases to reside in the Northern Territory for a period of more than six months, it is evident that a number of licence holders are residing interstate and overseas, and are subleasing their licences.

1.11 Restricting licence numbers protects the interests of incumbent licence holders, provides incentives to sublease licences, and enables the licence holder to extract rent from taxi drivers who have been unable to secure their own licence. In the establishment of this inquiry, the Assembly was informed that subleases cost up to \$30,000 per annum in addition to a weekly payment of around \$200.⁶ While subleasing serves the interests of incumbent licence holders, no public benefit can be identified from this practice.

1.12 There was a clear perception that the former Department of Transport had failed to effectively regulate the industry and address the practice of subleasing:

For a long time the Northern Territory taxi industry has been poorly regulated, which has fostered a culture of dodgy activity. For whatever reason, it seems the Department of Transport is not doing its job effectively. It is not regulating the taxi industry in a diligent, fair and transparent manner. It must take the large part of the responsibility for these questionable and unethical practices dominating the taxi industry...

All stakeholders know this is a dysfunctional system. Most stakeholders would agree the system is broken and needs to be fixed. If you are to have a regulated taxi industry, the government needs to properly regulate it. The Department of Transport needs to allocate the resources to ensure compliance with all the rules, legislation and requirements. The Department of Transport either does not have the resources or it has chosen not to allocate the resources into this area.⁷

1.13 This perceived failure to address the well-known practice of subleasing, in conjunction with the use of a temporary policy to allocate licences outside of the ballot process, has led to the establishment of this inquiry.

Parameters for the inquiry

1.14 The Committee was directed by the Assembly to inquire into the allocation of taxi licences and the subleasing of licences. In examining these issues, the Committee had as its objectives quality, reliable and affordable taxi services for Territorians and a prosperous economy.

⁵ Mrs Robyn Lambley MLA, Member for Araluen, Northern Territory Legislative Assembly, *Debates*, 15 February 2017.

⁶ Mrs Robyn Lambley MLA, Member for Araluen, Northern Territory Legislative Assembly, *Debates*, 15 February 2017.

⁷ Mrs Robyn Lambley MLA, Member for Araluen, Northern Territory Legislative Assembly, *Debates*, 15 February 2017.

- 1.15 While the Committee sought evidence on the issues of licence allocation and subleasing, a range of other issues arose affecting these objectives that warranted comment by the Committee, even though they were not the issues on which the Committee had called for submissions. The Committee's recommendations remain targeted on the core issues the Assembly referred to it. However, it is evident that there are a range of opportunities to improve the regulation of the taxi industry.
- 1.16 Taxis provide vital transport services that are essential for the social and economic wellbeing of the Northern Territory. For many they are the only viable transport option, and the quality and affordability of taxi services has a direct impact on many individuals and businesses.
- 1.17 The taxi industry is also facing significant challenges and opportunities with the development of new technologies and the imminent arrival of ridesharing services. The industry may require support as it adapts to this changing environment, however such support needs to help the industry to transition to be strong in the future rather than seek to maintain the status quo.
- 1.18 The Committee was mindful of this background while it examined the issues of licence allocation and subleasing, and the need to assist the businesses that have been serving the Northern Territory over decades to provide even better services in this changing environment.

Conduct of the Inquiry

- 1.19 The Committee called for submissions on 28 February 2017 by advertising on the Assembly's website and Twitter feed, writing to identified stakeholders and placing an advertisement in the *NT News*, *Centralian Advocate*, *Katherine Times* and *Tennant & District Times*.
- 1.20 When it became apparent that significant sectors of the industry, particularly in Darwin, had not responded to the call, the Committee extended the period for submissions and wrote to over 1000 taxi drivers and licence holders registered in the Northern Territory seeking their views on subleasing and licence allocation.
- 1.21 When inviting submissions to the inquiry, the Committee prompted submitters to request confidentiality if they had concerns about their evidence being made public, which many submitters did. It is usual practice for the Committee to publish all submissions unless confidentiality is requested. However, as many submissions raised sensitive issues that could impact adversely on the submitters' livelihoods or the reputation of others, the Committee decided to keep all submissions confidential, irrespective of whether the submitter had requested confidentiality, with the exception of the submission from the Department of Infrastructure, Planning and Logistics.
- 1.22 The Committee held a number of private hearings as well as public hearings in Darwin and Alice Springs. In each of the public hearings the witnesses were given the option for the Committee to take evidence *in camera* (in private), however this option was not taken up.

- 1.23 The Committee is grateful to all parties who provided submissions, or presented evidence at the hearings. The decision to keep the submissions confidential has meant that they have not been quoted throughout this report. However, the information provided through these submissions has informed the Committee's deliberations of the issues under investigation throughout this inquiry and the recommendations to the Assembly.
- 1.24 The Committee received over 70 submissions to this inquiry. Although it is standard practice to publish the names of submitters in committee reports, these details will not be included in this report as the submissions have remained confidential. Details of the public hearings are at Appendix 2.

History of NT industry

- 1.25 The taxi industry has historically been one of the most regulated industries within Australia. Taxi regulation in Australia commenced in the 1930s, with industry regulation primarily being split between safety controls focussed on driver qualifications, vehicle quality and standards, and economic controls on entry to the industry via limitations on the number of taxi licences issued and setting taxi fares.⁸ The market entry restrictions imposed by Governments led to taxi licences attracting a scarcity value and these licences were considered to be investments.
- 1.26 Prior to 1999, these characteristics were representative of the Northern Territory taxi industry. Licences were sold by the Government through public auction and tenders. The *Commercial Passenger (Road) Transport Act* allowed the Minister to limit the number of licences that could be issued (known as the licence cap) and licences were a commodity that could be transferred (sold) on the open market. There were no restrictions on leasing and subleasing taxi licences.
- 1.27 This attracted investors who purchased licences, either from the Government or on the open market, and often leased them to operators or drivers. In some instances, the lessees entered into sublease arrangements with other parties, particularly taxi drivers. It was estimated that 80% of Darwin licences and 50% of Alice Springs licences were owned by investors.⁹
- 1.28 In 1994, the Industry Commission found that "the most noticeable effect of government regulation on the taxi industry is the high values attaching to taxi licences resulting from the restriction on taxi numbers."¹⁰ The scarcity value became more prominent as the sale price of taxi licences, whether by the Government or on the open market, increased over time. In the mid to late 1990s, the capital value of Darwin licences was around \$230,000 compared to median

⁸ Industry Commission, *Urban Transport: Volume 1 Report*, Australian Government Publishing Service, Melbourne, 15 February 1994, p. 381.

⁹ Hon Barry Coulter MLA, Minister for Transport, Infrastructure and Development, Northern Territory Legislative Assembly, *Debates*, 15 October 1998.

¹⁰ Industry Commission, *Urban Transport: Volume 1 Report*, Australian Government Publishing Service, Melbourne, 15 February 1994, p. 388.

house prices of less than \$179,000. Darwin licences were leased for up to \$500 per week in contrast with median house rental prices of \$148 per week in 1999.¹¹

- 1.29 In their submission to the Committee, the Department of Infrastructure, Planning and Logistics (the Department) noted:

The high price [of licences] attracted investors into the industry and largely excluded many of the 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.¹²

- 1.30 There were a number of criteria that had to be met by individuals and body corporates to be eligible to hold a taxi licence. The Director of Commercial Passenger (Road) Transport (the Director) could only issue a licence to a party who was accredited under the Act. The accreditation process was designed to ensure that a licence holder was "considered to be of good repute and in all other respects fit and proper to be responsible for the operation of a commercial passenger vehicle"¹³ and could meet the compulsory safety standards for passengers and the public.
- 1.31 In addition to the accreditation requirements, an individual licence holder needed to be 'ordinarily a resident' of the Northern Territory and a body corporate licence holder needed to have its principal place of business in the Northern Territory. If the licence holder ceased to reside in the Northern Territory, or the principal place of business relocated outside of the Northern Territory, the licence holder was required to transfer (sell) the taxi licence. Despite the legislative residency requirements, the industry was characterised by absentee landlords living interstate and overseas.¹⁴
- 1.32 Although entry to the taxi industry was tightly controlled, there were no such entry restrictions on other categories of commercial passenger vehicles (CPV) such as minibuses and private hire cars. The number of taxis in Darwin and Alice Springs were unable to meet demand and this was characterised by long wait times and a lack of service at night. Furthermore, taxis were often reluctant to service Palmerston and the rural areas, particularly if this required driving to Palmerston to then undertake a short fare.¹⁵ This unmet demand provided an opportunity for entrepreneurial operators to enter the market with private hire cars and minibuses.
- 1.33 While taxi licences attracted a high scarcity value, a private hire car licence could be purchased outright for \$10,000 and a three year minibus licence cost only \$500. Despite legislative controls on how each category of CPV could operate, a

¹¹ Department of Infrastructure, Planning and Logistics (DIPL), Submission No. 15, 2017, p. 5.

¹² DIPL, Submission No. 15, 2017, p. 20.

¹³ Section 7, *Commercial Passenger (Road) Transport Act*.

¹⁴ DIPL, Submission No. 15, 2017, p. 5.

¹⁵ John Bailey MLA, Member for Wanguri, Northern Territory Legislative Assembly, *Debates*, 15 October 1998; DIPL, Submission No. 15, 2017, p. 5.

situation developed whereby these controls were not effectively enforced and operators were poaching work from other sectors in contravention of the regulatory requirements.¹⁶

- 1.34 During 1997-98 the Government commissioned a review of the CPV industry as the landscape of the industry had changed considerably over the previous decade with the growth of the minibus and private hire sectors. The increase in these sectors was attributed, in part, to the significantly cheaper entry costs in comparison to taxi licences and the absence of entry restrictions.
- 1.35 The Government established a moratorium on the issuing of minibus and private hire licences while the review was underway to allow an evaluation of the industry, and the impact of the increased number of minibuses and private hire cars operating in the market.¹⁷ The licence moratorium created a scarcity value for existing licences with private hire car licences being traded on the open market for up to \$20,000, double their original value.¹⁸

Deregulation

- 1.36 In August 1998, the Government agreed to a number of reforms which included market entry deregulation (removing the licence cap) from 1 January 1999, and the cancellation of all existing taxi licences through a compulsory buyback scheme valued at \$27.3 million (equivalent to \$44 million in 2016¹⁹).
- 1.37 The Commercial Passenger Vehicle (Cancelled Licences) Regulations provided for the compulsory buyback of taxi licences with the licence value dependent on the declared taxi area.
- 1.38 Amendments to the *Commercial Passenger (Road) Transport Act* removed the Minister's statutory power to limit the number of licences in each taxi area. Licences became available on application to the Motor Vehicle Registry with an annual fee at the time of \$16,000 in Darwin and \$13,000 in Alice Springs. The fees were designed to recover the cost of the buyback which was fully recovered in 2012-13.²⁰
- 1.39 The legislative amendments also removed the provisions to transfer a taxi licence. Presumably it was considered that licence transfers would be unnecessary following the removal of entry restrictions.
- 1.40 The deregulation resulted in a significant increase in the number of taxis licences in operation. Prior to deregulation there were 138 taxi licences in the Northern Territory, which rose to 186 by November 2001, an increase of 35%. However,

¹⁶ Hon Barry Coulter MLA, Minister for Transport, Infrastructure and Development, Northern Territory Legislative Assembly, *Debates*, 15 October 1998.

¹⁷ Hon Barry Coulter MLA, Minister for Transport, Infrastructure and Development, Northern Territory Legislative Assembly, *Debates*, 7 October 1998.

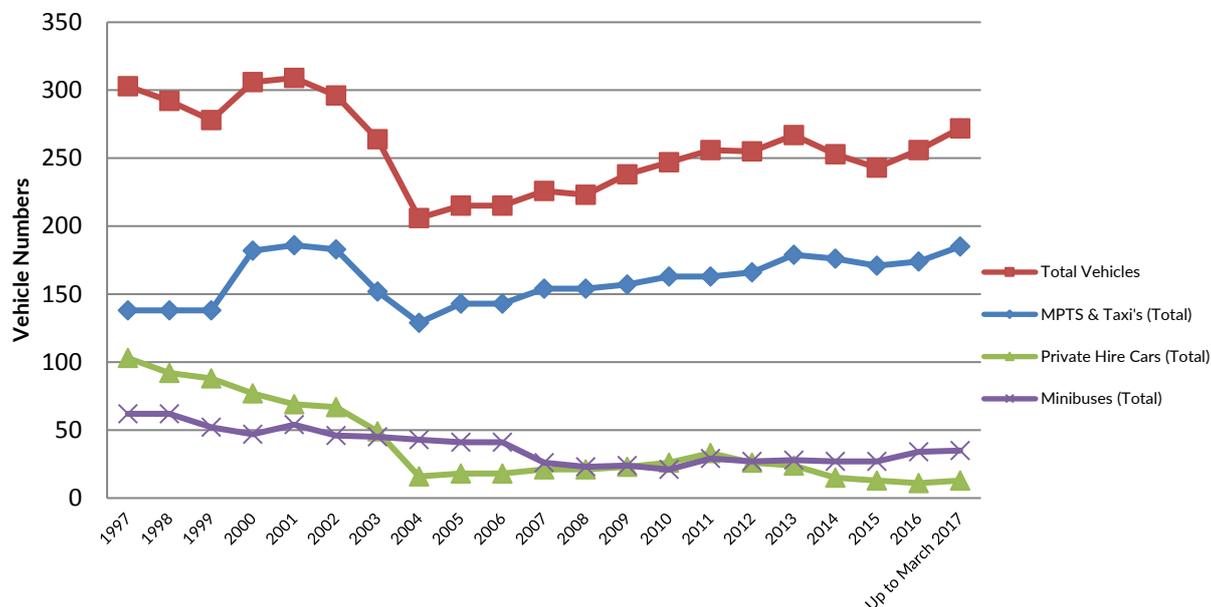
¹⁸ John Bailey MLA, Member for Wanguri, Northern Territory Legislative Assembly, *Debates*, 7 October 1998.

¹⁹ Reserve Bank of Australia's Inflation Calculator: <http://www.rba.gov.au/calculator/annualDecimal.html>

²⁰ DIPL, Submission No. 15, 2017, pp. 5-6.

as shown below, the number of private hire and minibus licences fell over this period, with the overall number of CPVs in operation remaining relatively stable.

Figure 1: Taxi, Minibus and Private Hire Car Licences in Darwin and Alice Springs 1997-2017²¹



1.41 With unrestricted entry to the industry, the practice of leasing and subleasing taxi licences evaporated as drivers were able to obtain their own licence for an annual fee and become operators. It was reported that waiting times for taxis improved, however critics of deregulation cited a decrease in vehicle standards and safety, as well as poor incomes for owner operators and taxi drivers. Sectors of the industry lobbied the Government to intervene.²²

Reregulation

1.42 In November 2001, the Government announced a six month moratorium on the issuing of taxi, minibus and private hire licences to again undertake a review of industry regulation. The moratorium was first extended to November 2002, and later extended to March 2003.

1.43 Multiple purpose taxis (MPT), designed to accommodate passengers with wheelchairs, were initially excluded from the licence moratorium, however in August 2002 it was extended to include MPT licences. During a Ministerial Statement in November 2002, the Minister for Transport and Infrastructure told the Assembly that the Government had “not capped or frozen numbers

²¹ DIPL, Submission No. 15, 2017, p. 6.

²² DIPL, Submission No. 15, 2017, p. 6.

permanently” nor had they “placed limits on the population ratio”.²³ The Minister further stated “this will be the final extension of the cap.”²⁴

- 1.44 The insertion of s. 5A(2) into the Act in August 2003 reinstated the Minister’s statutory power to control the number of licences in force for any CPV category. During his second reading speech in June 2003, the Minister informed the Assembly that a ratio cap of one taxi to 900 head of population would be introduced in Darwin and Alice Springs. At the time, the licence numbers in Darwin and Alice Springs slightly exceeded this ratio and the reductions were to be achieved by not reissuing surrendered licences until the ratio was met.²⁵
- 1.45 The Minister also announced a Cabinet decision that future taxi licences for Darwin and Alice Springs would be allocated through a ballot system. It should be noted that the ballot allocation system is only a policy and under the Act, the granting of licences is at the discretion of the Director, subject to any Ministerial Directions, provided eligibility criteria are met.
- 1.46 In 2011, s. 69A was inserted into the Act to specifically prohibit the transfer of licences in accordance with the *Personal Property Securities (National Uniform Legislation) Implementation Act 2010* (Cwlth).
- 1.47 The following table outlines the historical changes in taxi licence regulation specifically in relation to licence ownership, entry restrictions, licence allocation, leasing, subleasing and transfer of licences.

²³ Hon Kon Vatskalis MLA, Minister for Transport and Infrastructure, Northern Territory Legislative Assembly, *Debates*, 26 November 2002.

²⁴ Hon Kon Vatskalis MLA, Minister for Transport and Infrastructure, Northern Territory Legislative Assembly, *Debates*, 26 November 2002.

²⁵ Hon Kon Vatskalis MLA, Minister for Transport and Infrastructure, Northern Territory Legislative Assembly, *Debates*, 17 June 2003.

Table 1: Major changes in Northern Territory taxi licence regulation

	Pre 1999	1999 - 2003	August 2003 onwards
Ownership	Licences purchased from the Government or from an existing licence holder (transfer).	Licences leased from the Government on an annual basis.	Licences leased from the Government on an annual basis.
Licence cap	Licence numbers can be capped by direction of the Minister.	No provision in the Act for limiting number of licences, however from November 2001 to March 2003, the Government implemented a freeze on issuing new licences.	Licence numbers can be capped by direction of the Minister. A policy cap of one taxi per 900 people in Darwin and Alice Springs.
Allocation by Government	Licences available by tender and auction.	Removal of licence number limitations allowed licences to be issued provided eligibility criteria met. As noted above, a licence freeze was implemented in 2001.	Policy to allocate licences through a public ballot, however the Director has discretion on allocating licences. <i>Policy 5.20</i> used in 2015 to reallocate six licences. <i>Policy 5.20</i> ceased in 2016.
Leasing and subleasing	Licence owners could lease licences to another party who could in turn sublease the licence.	Subleasing not supported by Government, however not illegal under the Act.	Subleasing not supported by Government, however not illegal under the Act.
Transfer	Licence transfer on application to the Director.	Not transferable.	Not transferrable.

National Competition Policy

1.48 In 1995, the Council of Australian Governments entered into a number of intergovernmental agreements that established the National Competition Policy (NCP) which aimed to promote competitive markets that would best serve consumers and the wider community.

1.49 The Competition Principles Agreement required signatories to review regulations that limited competition, including regulations governing the taxi industry. The Agreement states that legislation should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and

(b) the objectives of the legislation can only be achieved by restricting competition.²⁶

1.50 The National Competition Council (NCC) was created to oversee implementation of the intergovernmental agreements and has published a number of reports assessing each jurisdictions' regulatory reform progress and achievement in meeting their obligations under the NCP.

1.51 Through the 1999 entry deregulation, the Northern Territory Government met its obligations under the NCP regarding regulation of the taxi industry with the NCC stating in their 1999 report that the "Northern Territory is commended for its reforms to taxi licensing arrangements, introducing competition in taxi services for the first time and eradicating speculation on licence plate values."²⁷

1.52 Praise of the Northern Territory's regulatory reform was somewhat watered down in the NCC 2002 report which stated:

At the 2001 NCP assessment, only the Northern Territory had implemented significant reform. The Territory removed all restrictions on taxi supply in January 1999... The Northern Territory backtracked by 2002 imposing a temporary (12 month) moratorium on the issue of new licences in November 2001 to assist the taxi industry to adjust to deregulation. It has also released a discussion paper (May 2002) foreshadowing a possible partial re-regulation.²⁸

1.53 By 2003, following the reintroduction of entry restrictions, the NCC determined:

The Territory had one area in which review and reform outcomes were assessed as not meeting NCP obligations. This related to the re-imposition of entry restrictions to the taxi industry (*Commercial Passenger (Road) Transport Act*) — notwithstanding that it had already compensated all former taxi licence owners when it previously liberalised entry restrictions.²⁹

The Current Industry

Criteria to hold a licence

1.54 There are a number of criteria that must be met to be eligible to be granted a taxi licence. Before a licence is granted, the Act requires that the person or body corporate hold operator accreditation which indicates that the person is considered to be of good repute, is fit and proper to be responsible for the operation of a taxi, and will meet passenger and public safety standards. Operator accreditation is granted for a period of five years and can be renewed upon application.

²⁶ Council of Australian Governments, *Competition Principles Agreement*, 11 April 1995, viewed on 21 September 2017, <https://www.coag.gov.au/about-coag/agreements/competition-principles-agreement>

²⁷ National Competition Council, *Second Tranche Assessment of Governments' Progress with Implementing National Competition Policy and Related Reforms: Volume 1*, 30 June 1999, p. 24.

²⁸ National Competition Council, *Assessment of governments' progress in implementing the National Competition Policy and related reforms, Volume one: Assessment*, AusInfo, Canberra, 2002, pp. 5.23-5.24.

²⁹ National Competition Council, *Assessment of governments' progress in implementing the National Competition Policy and related reforms: Volume one – Overview of the National Competition Policy and related reforms*, AusInfo, Canberra, 2003, p. 52.

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- 1.55 Accreditation cannot be granted to a person who is bankrupt or has been convicted of a disqualifying offence. If either of these occur, the Director must cancel the operator's accreditation.
- 1.56 Residency requirements are prescribed in legislation and s. 75(5)(b) of the Act requires the Director to cancel a taxi licence where the licence holder has not been ordinarily a resident of the Northern Territory for six months or in the case of a body corporate, where the principal place of business has ceased to be in the Northern Territory.
- 1.57 Licence holders are required to show proof of residency when they are first granted a licence. However, unless the Department receives information that a licence holder no longer meets the residency requirements, no further checks are conducted. When the Department receives such information, the licence holder is provided with the opportunity to demonstrate that they still meet the requirements.
- 1.58 Documentation to prove residency can include a bank statement, rates notice or rental agreement, as well as a Northern Territory driver licence. More recently, the Department has started requesting additional evidence such as bank statements showing purchases made in the Northern Territory and receipts for costs associated with operating a taxi. The Department informed the Committee that it is currently seeking detailed evidence of residency from a number of licence holders.³⁰
- 1.59 The Committee has received numerous submissions alleging that many licence holders are living interstate or overseas and are subleasing their licences, as opposed to surrendering them to the Director. The Department noted in their submission that "many subleased taxis are the result of the licence holder moving interstate or overseas."³¹

Industry composition

- 1.60 The taxi industry in the Northern Territory is a small, yet factionalised, industry. The industry can be divided into licence holders, network dispatch companies and taxi drivers although industry participants may fall into more than one group. Licence holders are represented by the NT Taxi Council, while taxi drivers are not represented by a peak body, with the exception of drivers who have recently formed the Alice Taxi Drivers Association.
- 1.61 There are 156 taxis in Darwin and each of these taxis is associated with a taxi network company that dispatch bookings to drivers, with around one third affiliated with the Blue Taxi Company and the remainder with Darwin Radio Taxis. In Alice Springs, there are 36 taxis of which 26 are affiliated with Alice Springs Taxis and 10 with 13CABS.

³⁰ Department of Infrastructure, Planning and Logistics (DIPL), Committee Transcript (private hearing), 30 May 2017, p. 12.

³¹ DIPL, Submission No. 15, 2017, p. 26.

- 1.62 While many licence holders have a single licence, a number of individuals hold multiple licences with the largest number being 23 licences. There are also a number of companies that hold licences. While there are no provisions for individuals to transfer their licence, company licences can be transferred through the sale of the company.
- 1.63 It is apparent that the landscape of the current industry has been shaped by the removal of entry restrictions and subsequent reimposition of the licence cap. The continuation of the 'temporary' cap after a number of stakeholders were able to obtain an increased number of licences has resulted in an inequitable power distribution across the industry. The Department of Infrastructure, Planning and Logistics noted in their submission that with the removal of the cap:
- Many individual operators took up the opportunity to operate their own taxi, several persons in Darwin established companies and become 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.³²
- 1.64 The Committee notes that while there are taxis operating in Katherine, Nhulunbuy and Tennant Creek, the taxi industry in these locations has not been examined as the focus of this inquiry is on licence allocation and subleasing. These are issues that arise in a capped market and in the aforementioned regions, licence numbers are not restricted.

Industry reviews

- 1.65 There have been a significant number of reviews of the Northern Territory CPV industry undertaken over the past three decades, however since the 2003 legislative reforms there has been very little regulatory change in the industry. The CPV industry reviews have included:
- *Taxi Number Assessment in Darwin and Alice Springs – Ernst & Young, May 1996.*
 - *Review of the Commercial Passenger Vehicle Discussion Paper – Department of Infrastructure, Planning and Environment, May 2002.*
 - *The Impact of Deregulation on the Northern Territory Commercial Passenger Vehicle Industry – Professor Des Nicholls, Australian National University, February 2003.*
 - *Commercial Passenger Vehicle Review – Fivenines Consulting Pty Ltd, February 2008-2010.*
 - *Come along for the ride – Commercial Passenger Vehicle Industry Review Report – Department of Transport, February 2014-2016.*
 - *Ridesharing Steering Committee Position Paper – Department of Infrastructure, Planning and Logistics, February 2017.*

³² DIPL, Submission No. 15, 2017, p. 20.

1.66 The Committee found that while subleasing appears to have been occurring since the reintroduction of entry restrictions, very little attention has been paid to this issue in the reviews and no recommendations in the reviews address the practice of subleasing.

1.67 The Committee heard evidence that the ongoing reviews have created uncertainty and the “confidence of this industry has been zero since 1999”³³ with the deregulation and then the introduction of the temporary cap which has remained in place for 16 years. A representative from Darwin Radio Taxis advised the Committee that what the industry needs is:

some confidence that this industry is viable to be in, and will look after us and our children or whatever or whoever is involved in there over time and that is the best thing you can do, to make this service better. If we do not have the confidence, if we do not have a future looking it does not matter what you do you are not going to get that good, courteous service to the public unless you give us that future there.³⁴

1.68 Similar views on industry instability were also voiced by the NT Taxi Council who stated:

in this industry there has been over the last few years a lot of ambiguity and uncertainty, so many changes, so many [sic] stress ... on the people involved in this industry I believe including the Department.³⁵

1.69 The NT Taxi Council further noted that moves to legalise ridesharing in the Northern Territory have contributed additional uncertainty about the industry’s future:

That is already a big change. You ask the Minister, you ask the Department, every MLA. You ask the industry, you ask anyone. No-one knows what is going to happen. Are we going to remain viable even in a capped market we do not know. No-one knows. The new world is open to so many changes that no-one can predict. The private hire business – is it going to remain? All of that – Darwin is different to some other jurisdictions. We have got to wait and see, I guess.³⁶

³³ Darwin Radio Taxis, Committee Transcript, 24 July 2017, p. 30.

³⁴ Darwin Radio Taxis, Committee Transcript, 24 July 2017, p. 30.

³⁵ NT Taxi Council, Committee Transcript, 24 July 2017, p. 35.

³⁶ NT Taxi Council, Committee Transcript, 24 July 2017, p. 36.

2 Jurisdictional Comparison

- 2.1 A number of jurisdictions are undergoing regulatory reforms of the commercial passenger vehicle industry, responding in part to legislative amendments to legalise ridesharing services. Where possible in this section, the Committee has noted where regulatory reforms are in the process of implementation or further changes are anticipated. However, the Committee acknowledges that, while information relating to other jurisdictions was accurate at the time of drafting this report, due to the rapidly changing landscape of the CPV industry, the information may quickly become outdated.
- 2.2 Terminology used in the taxi industry varies across jurisdictions. While some jurisdictions refer to taxi plates, this report will use taxi licence. For consistency and to eliminate any confusion in this section of the report, the term 'transfer' will be used to describe where a licence holder sells their licence to another party and therefore relinquishes any hold over that licence. The term 'lease' will be used where a licence holder enters into a lease agreement with another party.
- 2.3 In this section of the report, the term 'sublease' refers to an arrangement where a lease exists between the licence holder and another party, and the other party enters into a sublease agreement with a third party. The Committee notes that in sections of the report related to the Northern Territory taxi industry, the term 'sublease' relates to a licence holder entering into a lease agreement with another party. The distinction is that in the Northern Territory, the licence holder has an annual licence lease with the Government, hence a subsequent lease is a sublease.
- 2.4 Although it varies across jurisdictions, most of the regulatory regimes described below apply to taxi licences in metropolitan areas and not country areas. A consolidated jurisdictional comparison table can be found at Appendix 1.

Western Australia

- 2.5 There are two types of taxi licences in Western Australia, perpetual taxi licences (which are no longer sold by the Government) and Government leased taxi licences. Government leased licences can be issued for a term of between one and ten years, however due to the ongoing on-demand transport industry reforms, licences are currently being issued for one year terms. The number of Government leased plates offered for lease cannot exceed the relevant percentage, currently 45%, of the total number of perpetual taxi licences. It is understood that further reforms are anticipated in the industry which may alter the regulatory regime outlined below.
- 2.6 There are a number of eligibility criteria that must be met by an individual, partnership or corporation to acquire a Government leased licence which include they:
- Will be the owner and principal driver of the vehicle operating as a taxi.
 - Have no interest in the ownership of a privately owned (perpetual) licence.

- Do not already hold a Government leased licence.
- 2.7 Government leased licences are advertised through an expression of interest and applications are assessed by the Director-General taking into consideration taxi driving experience, traffic infringements and convictions and the applicant's character. If the number of applicants exceeds the number of licences available, and the merit selection assessment does not separate the applicants, a ballot process is used to allocate the licences among those already assessed by the Director-General.
- 2.8 The Taxi Plate Operating Conditions for Government leased licences stipulate that leasing or subleasing these licences is prohibited. Although a lessee is required to be the principal driver and cannot sublease the licence, they can enter into shift lease agreements, known as bailment agreements in other jurisdictions, with taxi drivers. The maximum rate payable by a driver for a shift lease is regulated by the Government and varies dependent on whether the driver is leasing a vehicle and taxi licence, or just the taxi licence, as well as the particular shifts subject to the lease.
- 2.9 While the Government no longer issues perpetual licences, they can be transferred on the open market and there is no restriction on leasing and subleasing these licences. Prior to 2016, the number of perpetual licences that could be held by an individual, partnership or corporation was capped at five, however this restriction has been removed.
- 2.10 Prior to July 2016, there was a requirement that all taxis must be operational for at least 72 hours per week which included mandatory hours of 6.00 pm to 3.00 am on Friday and Saturday nights. In addition to this, Government leased licence holders were required to drive the taxi for 50% of the compulsory hours. These requirements are no longer contained within the taxi operating conditions.
- 2.11 The Western Australian Department of Transport has advised that allegations of subleasing of Government leased licences are investigated through analysis of job data provided by the dispatch service or, if the taxi is not affiliated with a dispatch service, through the records the licence holder is required to provide to the Department, which allows the Department to determine if the licence holder is meeting their principal driver requirements.
- 2.12 If a Government leased licence holder ceases to be the principal driver, or acquires an interest in a perpetual licence, they forfeit their right to hold a Government leased licence.

South Australia

- 2.13 Perpetual taxi licences are the only type of licence in operation in South Australian metropolitan areas. These licences are offered for sale by the Government through public tender which must be advertised more than one month prior to the tender closing date. If there are more tenderers than licences available, the highest tenderers are awarded the licences.

- 2.14 The Minister has the power to limit the number of licences issued each year and cannot issue more than 50 licences per year. Perpetual licences can be transferred or leased with the consent of the Minister, however a lessee cannot sublease the licence. Applications to commence or terminate a lease need to be endorsed by the Taxi Council of South Australia.
- 2.15 A licence holder or lessee must hold operator accreditation and the licence holder has the same obligations as the lessee, even if they do not operate the taxi. Bailment agreements or shift leases exist within the industry and are distinguished as different to a sublease agreement, as the operator cannot delegate operational responsibility to a driver. The rates payable by the driver to the lessee or licence holder are not regulated by the Government.
- 2.16 The 2016 *South Australian Taxi and Chauffeur Vehicle Industry Review* noted that:
- The Panel is in favour of reduced regulation of this industry, a reduction in annual fees where appropriate and new taxi licences to be limited to owners/drivers so that over a longer period of time the industry becomes small business driven with career pathways and long-time participants.³⁷
- 2.17 The review made a recommendation that the Minister:
- consider issuing on a fixed term basis of leasing a fixed number of low cost new owner/driver plates/licences, which are to be driven by the owner and not further leased. This is a new category of taxi plate [to] encourage small business participation, career based drivers and long term involvement in the industry.³⁸

Tasmania

- 2.18 There are four categories of taxi licences in Tasmania which include perpetual licences, owner-operator licences, wheelchair accessible licences and temporary taxi licences. Perpetual taxi licences are no longer issued by the Government, however can be transferred on the open market or leased. Perpetual licence holders do not require accreditation, but if the licence is leased, then the lessee must hold operator accreditation. As such, the owners of perpetual licences may simply be investors with no involvement in the operation of the taxi.
- 2.19 Owner-operated licences were introduced in 2008 and must be operated by the licence holder who is required to be a natural person as opposed to a corporate body. While leasing these licences is prohibited, licences can be transferred to an accredited operator with the approval of the Transport Commission.

³⁷ South Australian Government, *South Australian Taxi and Chauffeur Vehicle Industry Review*, February 2016, p. 4, viewed on 9 August 2017, https://dpti.sa.gov.au/data/assets/pdf_file/0005/256748/SA_Taxi_and_Chauffeur_Vehicle_Industry_Review_Feb2016.pdf

³⁸ South Australian Government, *South Australian Taxi and Chauffeur Vehicle Industry Review*, February 2016, p. 6, viewed on 9 August 2017, https://dpti.sa.gov.au/data/assets/pdf_file/0005/256748/SA_Taxi_and_Chauffeur_Vehicle_Industry_Review_Feb2016.pdf

- 2.20 Legislation stipulates that the number of owner-operated licences to be issued each year is 5% of the total number of owner-operator and perpetual licences for each of the 24 taxi areas, or one licence, whichever is greater. A legislative amendment made in 2016 permits the Minister to make a declaration that the requirement to issue new licences does not apply for a taxi area. In 2016, the Minister announced that the issuing of new licences would be suspended for three years due to the entry of ridesharing services into the market.
- 2.21 Licences are initially offered by public tender with a reserve price set by the Transport Commission. If licences made available by tender are not sold at the conclusion of the tender process, the Transport Commission may offer these for sale at the reserve price until the tender process the following year, at which point these licences are withdrawn.
- 2.22 Wheelchair accessible taxi licences are uncapped and issued by the Transport Commission upon application, provided a number of criteria are met and an administrative fee paid. These licences cannot be leased but can be transferred to another party, however the ability to transfer would appear somewhat redundant in an uncapped environment.
- 2.23 The final category of licence is a temporary licence, which has the effect of an owner-operator licence but is not transferable. These licences are issued at the discretion of the Transport Commission but very few have been issued.
- 2.24 Bailment agreements between licence holders and drivers are standard within the Tasmanian taxi industry and the Government does not regulate these arrangements.

Queensland

- 2.25 The Queensland taxi industry was undergoing significant reform at the time of writing this report.
- 2.26 Existing taxi licences in Queensland are perpetual licences that have been sold through public tender by the Government with a maximum term of five years but must be renewed for successive five year terms if the licence conditions are complied with.
- 2.27 The Government has announced, as part of the industry reforms, that no further perpetual licences will be issued but the existing licences can be transferred or leased. Provisions have been made for a new category of licence which can be issued for a term of up to five years and can only be renewed for successive terms if the total sum of the licence terms does not exceed five years. These licences will be able to be leased but will be non-transferable. The power to restrict entry to the market has been retained as part of the reforms.
- 2.28 Prior to June 2017, legislation mandated written bailment agreements between operators and drivers. Under this regulatory framework, a bailment agreement needed to contain important information about revenue and cost sharing including the percentage or fixed payment amount, as well as driver contributions to fuel costs and insurance premiums. Fixed price bailment agreements could only be

entered into by drivers who had held driver authorisation for at least 12 months in the previous five years.

- 2.29 Evidence provided to the Queensland Public Works and Utilities Committee's *Inquiry into the Transport and Other Legislation (Personalised Transport Reform) Amendment Act 2017* indicated that the majority of submitters and the Opposition were in favour of retaining bailment agreement regulations.³⁹ The rationale for removing bailment agreement regulations was that "agreements with drivers are considered a workplace relations matter for the industry to manage subject to any applicable requirements under other legislation."⁴⁰
- 2.30 Although bailment agreements are no longer mandatory, bailment agreements that existed before the change will continue to be in force. Furthermore, the Model Taxi Service Bailment Agreement will continue to be available to drivers and operators should they wish to utilise it.
- 2.31 In the later part of 2017, it is proposed that operator accreditation requirements will be removed and replaced with "a new chain of responsibility framework setting out the legal obligations of each participant in the personalised transport supply chain".⁴¹

Victoria

- 2.32 The Victorian taxi industry has arguably seen the most significant regulatory reforms of any jurisdiction over the past three years with entry to the industry deregulated and further changes anticipated in the remainder of 2017 and 2018.
- 2.33 Prior to the start of the industry reforms, perpetual taxi licences were sold by the Government with licence holders then having the ability to transfer these on the open market or lease them to accredited operators. On a number of occasions, the Government has issued fixed term licences with conditions regulating whether the licences can be leased or transferred. The transfer and lease prices of these licences were reported to the Government with the figures published online.
- 2.34 From July 2014, the Government lifted entry restrictions and made annual Government leased licences available upon application to the Taxi Services Commission. These licences must be operated by the licence holder and therefore cannot be leased. If a licence holder no longer wishes to operate a taxi they may transfer the licence.
- 2.35 There are legislative provisions which allow the Taxi Services Commission to temporarily suspend issuing new taxi licences for 12 months in metropolitan and urban areas (excessive entry test) and in regional and country areas (consumer interests test) if the granting of new licences would have negative impacts on

³⁹ Department of Transport and Main Roads, *Departmental Brief on the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017*, Queensland Government, p. 10.

⁴⁰ Explanatory Notes, *Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017*, (Qld) p. 11.

⁴¹ Department of Transport and Main Roads, *Queensland's Personalised Transport Horizon: Stage Two Implementation*, Queensland Government, 2017, p. 4.

existing and future consumers. To date, the Commission has not refused to grant new licences.

- 2.36 In 2017, legislative reforms were passed to enable the revocation of perpetual and fixed term licences once 'transition assistance' payments have been made to eligible licence holders. Perpetual and fixed term licence holders who are operating the taxi will be issued with an equivalent annual licence.
- 2.37 Owners of perpetual licences that are under a lease agreement will have the licence revoked, the lease agreement will cease, a new annual licence issued to the lessee of the perpetual licence and the original licence holder will no longer have a licence. If the original licence holder wishes to operate a taxi, they will need to apply for a new annual licence.
- 2.38 The 2017 reforms will also abolish annual licence fees with low cost annual licences to be available from October 2017 for an administrative fee. Accredited drivers who apply for these licences will not need to obtain operator accreditation.
- 2.39 From July 2014, the Government legislated for 'implied conditions' to be incorporated into driver agreements (known elsewhere as bailment agreements). The implied conditions require that drivers retain 55% of the gross fares earned each shift which has the effect of prohibiting fixed payment rates between drivers and operators. Included in the 'implied conditions' is the requirement for the operator to pay all operating and maintenance costs, including fuel and repairs. Furthermore, operators are required to hold appropriate insurance policies and the operator is responsible for any insurance excess amounts payable for any claim involving the vehicle.

Australian Capital Territory

- 2.40 The ACT has a number of different types of taxi licences with varied conditions based upon the licence type and when it was issued. Perpetual taxi licences were issued prior to 2006 and can be transferred or leased to a third party.
- 2.41 Transferable leased taxi licences were issued by the Government prior to August 2016, can be leased to another party and are limited to the term stated in the licence.
- 2.42 A standard taxi licence and wheelchair accessible licences leased from the Government are non-transferable and cannot be issued for a term of more than six years. The licence holder can apply for renewal at the expiry of the term.
- 2.43 Although there have been a number of regulatory reforms in the ACT over the past two years, the regulated cap of 358 taxi has remained in place and there are currently surrendered licences that have not been reallocated. In February 2017, the Government announced that ten surrendered licences would be made available each quarter subject to ongoing consideration of market conditions. In March 2017, ten additional licences were allocated, however in June 2017, the Government decided, based on stakeholder feedback, to delay the release of any further standard taxi licences and released five wheelchair access taxi licences.

2.44 The ACT previously issued taxi licences through a ballot allocation, however as part of the regulatory reforms it subsequently introduced a waitlist for licences. An applicant can apply for pre-approval for multiple standard or wheelchair licences, but only one licence will be issued at a time. If an applicant has applied for multiple licences and is issued a licence, their pre-approval for additional licences will move to the bottom of the waitlist. The pre-approval is valid for two years.

New South Wales

2.45 New South Wales has a number of licence categories with different restrictions on each licence type. Perpetual licences are no longer issued by the Government, but these licences can be transferred on the open market, leased and subleased.

2.46 Short term licences are issued for a period of up to six years. These licences can be leased and subleased but they cannot be transferred. Annual licences are issued for a term of one year and can be renewed up to nine times. These licences can also be leased or subleased but cannot be transferred.

2.47 Although the Government does not regulate leases and subleases, written notification of these arrangements must be provided to the regulator.

2.48 By 31 March each year, the Government is required to issue a determination stating how many annual licences will be made available during the following financial year. Annual licences are made available through public tender and issued to the highest tenderer.

2.49 The *Taxi Industry (Contract Drivers) Contract Determination 1984* sets the minimum terms of engagement that apply to a contract of bailment in the Metropolitan Transport District. Under the Determination, a driver that undertakes five shifts per week or at least 220 night shifts per year for the same licence holder is a permanent driver. Drivers who do not meet these requirements are defined as casual drivers.

2.50 Drivers entering into a contract of bailment can elect either to receive a commission (percentage) of chargeable fares or to retain fares received after making a fixed payment amount to the licence holder. A first year permanent driver is entitled to 45% of the chargeable fares, while a casual driver or second and subsequent year permanent driver, is entitled to 50% of fares received. The licence holder is required to pay for all fuel costs under this payment method.

2.51 The Government regulates the maximum fixed payment rate that can be paid to a licence holder and an agreement can be made for a lesser payment rate, provided that the agreement does not relieve the licence holder of any other obligations required under the Determination, such as leave entitlements for permanent drivers.

2.52 Permanent drivers who have driven for a licence holder for 12 months are entitled to paid annual leave at a regulated rate, based on the payment method elected in the contract of bailment. Permanent drivers who have driven for a licence holder for between 3-12 months are entitled to a pro-rata annual leave payment

upon termination of the contract. A licence holder must provide one week's notice to terminate a contract of bailment with a permanent driver.

- 2.53 Permanent drivers are also entitled to sick leave, with the payment amount regulated by the Government depending on the chosen payment method. The entitlement in the first year of bailment is five days which increases to eight days in subsequent years, with unused entitlements carried over to the next year.
- 2.54 Long service leave entitlements apply to permanent drivers who have driven continuously for one licence holder for at least five years in accordance with the *Long Service Leave Act 1955* (NSW).

3 Subleasing and Bailment

- 3.1 Reports of widespread 'black market' subleasing of taxi licences in the Northern Territory were one of the reasons the Legislative Assembly referred the inquiry to the Committee.
- 3.2 In considering subleasing, it is important to distinguish a sublease from a bailment agreement. Bailment is the name given to the agreement where the owner of a taxi allows a driver to use the taxi for one or more shifts without taking on operational responsibility for the taxi. In contrast, a sublease involves a transfer of operational responsibility. An understanding of the difference between the two, while not always clear, is important to understand how the industry operates.

Bailment Agreements and Network Management

Bailment Agreements

- 3.3 Bailment agreements are arrangements between a licence holder, the bailor, and a driver, the bailee, which outline what payments will be made by the driver to the licence holder for the use of the taxi for a shift, which is usually a 12 hour period. Bailment agreements may be written or verbal. Evidence received by the Committee suggests that the overwhelming majority of bailment agreements in the Northern Territory are verbal which has been attributed, in part, to the high turnover of drivers and the need to have taxis operational around the clock.⁴²
- 3.4 The most common type of bailment agreement across the industry is a split percentage of fare takings for each shift. Under this arrangement, the driver will pay the licence holder a percentage of fare takings, usually 50/50, and the driver may be required to contribute to fuel costs out of their share of the takings.
- 3.5 The alternative type of arrangement is a fixed price bailment agreement where the driver pays the licence holder a fixed amount per shift and retains all of the fare takings. While the fixed price may be based per shift, these arrangements may span over weeks, months or years and payments to the licence holder are generally made weekly or monthly.
- 3.6 The amount to be paid per shift in a fixed price bailment agreement is negotiated between the licence holder and the driver. In their submission to the Committee, the Department of Infrastructure, Planning and Logistics provided an example of a fixed price agreement based upon \$120 per shift, for six 12 hours shifts per week. Over a one year period, the payments from the driver to the licence holder would be almost \$40,000.⁴³
- 3.7 The Department acknowledged that fixed price bailment agreements that span over a number of years appear similar to a sublease agreement, however the

⁴² Darwin Radio Taxis, Committee Transcript, 24 July 2017, p. 28.

⁴³ DIPL, Submission No. 15, 2017, p. 21.

distinction between the two relates to whether the licence holder maintains operational responsibility for the taxi.

- 3.8 A licence holder will often have more than one bailment agreement in place to ensure that the taxi is operational 24 hours, seven days a week.
- 3.9 The Committee notes that in other jurisdictions the bailment agreement may be between a taxi operator who is not the licence holder and a driver. For example, in jurisdictions where leasing and subleasing of licences is permitted, a taxi operator who is leasing a licence may be the party that enters into a bailment agreement with a driver.
- 3.10 Based on evidence received by the Committee, there are also instances in the Northern Territory where a bailment agreement will be made between a dispatch network manager and a driver, with the network manager acting as a representative of the licence holder.
- 3.11 As discussed in Chapter 2, a number of jurisdictions regulate bailment agreements in an attempt to protect driver earnings. The Committee has heard arguments both for and against the regulation of bailment agreements. Opponents of regulating the financial split between drivers and licence holders believe that Government should not impose restrictions on financial decisions regarding how a taxi business is operated.⁴⁴
- 3.12 When questioned about whether written bailment agreements should be mandatory, the NT Taxi Council informed the Committee they would prefer that written agreements were encouraged but not mandatory, while acknowledging:

if it is written, it will protect a driver in front of maybe a bad operator, or an operator with a driver who is running away from his responsibilities. It is to protect both if it is there. If it is in writing, I can go and sue my driver who refuses to pay the excess fee for an accident that he caused, for example. So, the bailment addresses this issue.

But the issues within the bailment agreement are already there, based on the understanding between the operator and the driver—you will work those days; you will clean the car; I am giving you the car to clean; you are expected to keep it clean—of the responsibilities that must be made clear.⁴⁵

Network Management

- 3.13 In their submission to the Committee, the Department of Infrastructure, Planning and Logistics outlined the relationship between licence holders, dispatch network managers and drivers:

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.

⁴⁴ Darwin Radio Taxis, Committee Transcript, 24 July 2017, p. 30.

⁴⁵ NT Taxi Council, Committee Transcript, 24 July 2017, p. 33.

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.⁴⁶

- 3.14 Based on the evidence received by the Committee, the Department's distinction between transferring responsibility under a network management arrangement and transferring operational responsibility through a sublease is not widely understood in the industry.

Subleasing

- 3.15 The crucial difference between subleasing and bailment agreements is based upon whether a licence holder maintains operational responsibility for the taxi, or if this is transferred to a third party. In July 2017, the Department of Infrastructure, Planning and Logistics issued *Commercial Passenger Vehicles Information Bulletin – CPV38* which outlines the Department's distinction between a bailment agreement and a subleasing arrangement:

While a subleasing arrangement is seen to transfer operational responsibility from the licence holder to another person; a bailment agreement allows a driver to operate a taxi for a shift. Provided the driver has no interest in operating the taxi other than as a driver, this would not be considered subleasing i.e. the licence holder continues to undertake all activities associated with supporting the operation of the licenced taxi, including all vehicle and regulatory costs, such as; the purchase and maintenance of the vehicle, responsibility for registration, insurance and CVL fees. The licence holder is also responsible for managing drivers and bailment agreements.⁴⁷

- 3.16 Although the definition provided above states that the licence holder is responsible for bailment agreements, as previously stated, the Committee is aware that network managers also perform this role on behalf of licence holders.
- 3.17 The Department provided an example of a sublease agreement that was investigated:

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.⁴⁸

- 3.18 The Committee has received evidence from a number of sources that describe similar subleasing arrangements to the one outlined above. Due to the nature of this inquiry and concerns from submitters about the ramifications of information

⁴⁶ DIPL, Submission No. 15, 2017, p. 21.

⁴⁷ Department of Infrastructure, Planning and Logistics, *Commercial Passenger Vehicles Information Bulletin – CPV38*, July 2017, viewed on 31 August 2017, https://nt.gov.au/data/assets/pdf_file/0005/434822/ibcpv38-taxi-licences.pdf

⁴⁸ DIPL, Submission No. 15, 2017, p. 22.

provided to the Committee being made public, the Committee will not be including specific details of subleasing agreements that it has been made aware of.

- 3.19 Evidence provided to the Committee indicates that between 20% to 80% of taxi licences in Darwin and 15% to 70% in Alice Springs are being subleased. In their submission to the Committee, the Department noted:

Anecdotally, this trade has become widespread through 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.⁴⁹

- 3.20 In relation to subleasing, the Committee heard evidence that “the Government is fully aware it is happening, has worked with it and has chosen to basically turn a blind eye.”⁵⁰
- 3.21 The Committee found that it was not possible to accurately ascertain the prevalence of subleasing in the Northern Territory. A lack of understanding across the industry about the difference between a bailment agreement and a sublease has led to allegations of subleasing which, when examined more closely, are in fact bailment agreements.
- 3.22 Another challenge in identifying the prevalence of subleasing is the clandestine nature of sublease agreements, insufficient evidence of the agreement and a reluctance of parties to a sublease to cooperate with the Department.

Impacts of subleasing

- 3.23 The Committee is of the opinion that subleasing provides no public benefit and the primary beneficiaries of these arrangements are the licence holders. The Committee questioned the Department about their views on the impacts of such arrangements:

Subleasing the licence to a third party may result in a number of consequences, a non-accredited person having responsibility for the operation of a taxi, for example. It also has the effect of potentially creating a value in the plate. It also may result in the third party entering into further agreements with drivers to operate the taxi, resulting in the further dilution of profits. It may result in there being no record of the person operating the taxi as the operator for the purpose of regulatory enforcement. It may also result in the licence holder residing interstate or overseas, with minimal interest in the good operation of the vehicle.⁵¹

- 3.24 Licence holders benefit significantly through the practice of subleasing with the only negative consequence being the potential cancellation of their accreditation or licence. Subleasing provides an income stream for licence holders who profit due to the licence scarcity value in exchange for little or no work or investment. The licence holder is able to have a ready income stream for having obtained a licence during the deregulated period, or winning a licence through a taxi ballot.

⁴⁹ DIPL, Submission No. 15, 2017, p. 8.

⁵⁰ Alice Springs Taxis, Committee Transcript, 20 July 2017, p. 9.

⁵¹ DIPL, Committee Transcript, 24 July 2017, p. 40.

- 3.25 The Committee received evidence indicating that there are instances where licence holders are receiving exorbitant amounts through subleasing their licences. Furthermore, evidence provided illustrates that sublessees are then entering into further sublease agreements with drivers and profiting from the arrangements. In some instances, drivers have been making payments to both the original licence holder and the party that they have entered into a sublease agreement with.
- 3.26 It is evident to the Committee that significant sums of money are transferred through unregulated subleasing. Some sublease payments may not be declared to the Australian Tax Office and the clandestine nature of these agreements allows a cash economy to flourish in the taxi industry.
- 3.27 Paying sublease fees in addition to the operational costs such as annual licence fees, maintenance, network fees and insurance, increases the cost of operating a taxi. The Committee has been informed that this can have an impact on customers. Although taxi fares are regulated, it has been suggested that some sublessees are overcharging customers to make ends meet. The Committee has also been advised that high operational costs can create pressure for reduced vehicle maintenance which raises safety concerns and lowers standards.
- 3.28 The scarcity of taxi licences can lead to drivers entering into high risk and arguably expensive sublease agreements as the only means of operating their own taxi. The *Commercial Passenger (Road) Transport Act* requires that the vehicle endorsed on the taxi licence must be registered in the licence holder's name. The Committee has received examples of situations where sublessees have purchased a vehicle to be used as a taxi and registered it in the licence holder's name to comply with the Act. In the case of a wheelchair taxi, this can be an investment of \$80,000. This practice makes sublessees vulnerable in the event that their relationship with the licence holder breaks down and they may have difficulty demonstrating ownership of the vehicle if the licence holder decides to retain possession of it.
- 3.29 The fact that the Department purports publically that subleasing is illegal, also pushes them out of the regulatory environment. This has the consequence that the Department will not know who the true operator of a taxi may be. It also makes it more difficult for a sublessee to enforce the rights they may have under their sublease. The Committee has received evidence of written sublease agreements being terminated by the licence holder as a result of a higher bidder wishing to acquire a licence through a sublease.

Legality of subleasing

- 3.30 A key question for the Committee throughout the course of this inquiry pertains to the legality of subleasing. It is apparent that there are widespread misconceptions surrounding the legality of subleasing. The *Commercial Passenger (Road) Transport Act* was drafted in the early 1990s to regulate an industry where licences were capital assets purchased from the Government which could be leased or sold on the open market.

- 3.31 The Department of Infrastructure, Planning and Logistics acknowledges “the silence of the *Commercial Passenger (Road) Transport Act* ... in dealing with the practice of subleasing (primarily because the Act was conceived for an open market environment)”.⁵² The Committee also received evidence from the industry that the definition of subleasing is unclear as there is no reference to it in the Act.⁵³
- 3.32 There were a number of amendments made prior to the commencement of the Act, including the insertion of s. 3(4) which states:
- A reference in this Act to the holder of a licence includes a reference to a person permitted by the holder of the licence to operate a commercial passenger vehicle under the licence.⁵⁴
- 3.33 During the second reading speech for this amendment, the Minister stated that the purpose of this amendment was:
- to recognise that a licence holder may authorise another person to use his or her licence for commercial purposes. An example of this is where the taxi owner leases his plate to a lessee. In that case, the lessee must be accredited and is recognised as the ‘operator’ of the vehicle. However, the licence holder continues to be held responsible for the purposes of the licence granted by the Director under the Act.⁵⁵
- 3.34 Given the omission of any references to subleasing in the Act, the Committee requested copies of any legal advice provided to the Department in relation to the legality of subleasing. In 2004, legal advice was provided to the Department by the Solicitor for the Northern Territory about a specific written sublease agreement.
- 3.35 The Solicitor for the Northern Territory was of the view that the original purpose of s. 3(4) of the Act, which was inserted when licences were owned outright and could be leased to a third party operator, was to enable the holder of a licence to permit another person to operate a vehicle under that licence. The subsequent changes to the Act and Government policy did not change the meaning of this section so it continued to allow the transfer of operational responsibility.⁵⁶ Despite this 2004 advice, no amendments have been made to the Act to change this provision.
- 3.36 Throughout the inquiry, the Department has maintained that while the Act is silent on the issue of subleasing, it is against the intention of the Act:
- 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

⁵² DIPL, Submission No. 15, 2017, p. 26.

⁵³ Darwin Radio Taxis, Committee Transcript, 24 July 2017, pp. 28-29.

⁵⁴ Section 3(4) *Commercial Passenger (Road) Transport Act*.

⁵⁵ Hon Fred Finch MLA, Minister for Transport and Works, Northern Territory Legislative Assembly, *Debates*, 1 October 1992.

⁵⁶ Solicitor For the Northern Territory, *Commercial Passenger (Road) Transport Act – Commercial Leasing Agreements*, Department of Justice, 11 December 2004.

such an operator has acted against the intention of the licence provisions of the Act.⁵⁷

3.37 This view was also taken by the Minister for Infrastructure, Planning and Logistics who stated during the establishment of the inquiry that “subleasing is not the intention of the Act”.⁵⁸ The Committee notes that this position is contrary to the advice provided in 2004 by the Solicitor for the Northern Territory who could not find any such intention expressed within the Act.

3.38 The Department provided evidence to the Committee that:

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.⁵⁹

3.39 The Department appeared before the Committee at a private hearing where clarification was sought as to what condition contained within the licence prohibited the transfer of operational responsibility to another party. The Department advised that their interpretation of the ‘important note’ contained within the licence placed the obligations of operating the vehicle on the licence holder. The wording of this note is as follows:

The licence holder is responsible for any failure to comply with the obligations imposed upon the operator of the vehicle by the Act, the regulations made under the Act and any code of conduct and standards made from time to time under the Act that apply to taxis. Failure to comply with these laws is a contravention of this licence and may result in the cancellation or suspension of this licence or the licence holders operated accreditation pursuant to section 75 of the Act.⁶⁰

3.40 The 2004 advice stated that the taxi licence conditions in place at that time did not prohibit the licence holder from permitting another person to operate the taxi registered under the licence. The Solicitor for the Northern Territory further advised that legislative amendments were required if it was intended that the Act should prohibit the transfer of operational responsibility.

3.41 As the Committee has been unable to view the taxi licence conditions that were in place when the 2004 legal advice was provided, it is not possible to determine whether the conditions have been changed and therefore if the legal advice is still accurate. The Committee does note however, that a condition explicitly stipulating that subleasing is prohibited is not presently included as a standard licence condition.

3.42 In 2013, the Department received legal advice from the Solicitor for the Northern Territory which considered whether 2010 amendments introduced as part of the *Personal Property Securities (National Uniform Legislation) Implementation Act*

⁵⁷ DIPL, Submission No. 15, 2017, p. 26.

⁵⁸ Hon Nicole Manison, Minister for Infrastructure, Planning and Logistics, Northern Territory Legislative Assembly, *Debates*, 15 February 2017.

⁵⁹ DIPL, Submission No. 15, 2017, p. 25.

⁶⁰ Taxi Licence Conditions

2010 would change the ability of an accredited person to operate a taxi under the permission of a licence holder.

3.43 The Solicitor for the Northern Territory took the view that the lawfulness of a licence holder permitting another person to operate a taxi under their licence was unchanged. The licence holder would not be able to transfer the licence as personal property but could still permit another person to operate the licence under the provisions contained in s. 3(4), although he did note that this was open to interpretation.⁶¹

3.44 When questioned further at a subsequent public hearing about the legality of subleasing the Department stated

The Act is less than clear about it... Our view and the Director of Commercial Passenger Vehicles' view is that it is against the intent of the Act. I think it is fair to say that the legal advice you would get if you were to prosecute someone for subleasing would say that you know you may not have a good chance of winning but we will always hold the view, because of the poor consequences that result from subleasing that we do not support it and we will look to remove that arrangement where we can.⁶²

3.45 Based on the evidence provided, the Committee has formed the view that subleasing is in fact not illegal, irrespective of the negative impacts that this practice gives rise to.

3.46 It would appear that the Department has likely contributed to the industry's confusion regarding subleasing through inaccurate statements including the 2016 *Commercial Passenger Vehicle Industry Review Report* that stated "subleasing of taxi licences will remain illegal and offenders will be prosecuted."⁶³

3.47 It is clear that when the Act was initially drafted it was designed to regulate a taxi industry that was composed primarily of investors who would lease their licences to other parties to operate. While amendments have been made to reflect changes in the nature of the industry, it appears that these have only tinkered with particular provisions within the Act as opposed to a comprehensive review of the Act to assess its effectiveness in regulating the industry in its current form.

3.48 It is apparent to the Committee that the issue of subleasing has existed to some extent since the 'temporary' cap was established in 2001. The Committee questioned the Department during a private hearing about whether efforts had been made to instigate legislative reforms to address the 'grey' area of subleasing. The Department advised that they were not aware of proposals to amend the Act to deal with the matter of subleasing.

3.49 The Committee agrees with the Department's view that subleasing provides no public benefit and that efforts should be made to eradicate the practice. However, a practice being against good public policy does not make it against the law. In

⁶¹ Solicitor For the Northern Territory, *Commercial Passenger (Road) Transport Act – Taxi Subleasing*, Department of the Attorney-General and Justice, 15 February 2013, p. 2.

⁶² DIPL, Committee Transcript, 24 July 2017, p. 43.

⁶³ Department of Transport, *Commercial Passenger Vehicle Industry Review Report*, Northern Territory Government, February 2016, p. 27.

such circumstances the Department has a number of levers for implementing good policy, including advising the Minister of the need to change the Act or regulations, or using powers delegated under the law, such as the ability to set licence conditions. The Committee did not receive any evidence that any such approaches had been attempted.

- 3.50 The Committee considers that a Department should not purport that an Act makes something illegal without a sound legal basis and contrary to the best advice it has received. It is the Department's role to implement the law using the wide range of powers given to it and departmental policies should be consistent with legislation. To seek to implement policies inconsistent with legislation weakens the rule of law and results in a chaotic regulatory environment. It weakens the Department's position if it is aware it cannot enforce what it holds out to be the law through the courts. It also creates an environment where those with competent legal advice or a disregard of the Department's authority are free to breach the Department's rules.

Challenges in regulating subleasing

- 3.51 The Committee heard that even if legislation prohibited subleasing, regulating it would be challenging. A significant barrier to investigating allegations of subleasing is obtaining sufficient evidence. The Department informed the Committee:

Regulating the practice of subleasing has proven very difficult with the parties involved generally complicit in the arrangement, resulting in evidence being difficult, I daresay often impossible, to obtain. Allegations are often hearsay and some arrangements simply verbal.

Clear evidence of subleasing generally only comes to light as a result of a licence being cancelled for reasons such as non-residency, fit and proper concerns such as criminal convictions or cancellation of accreditation.⁶⁴

- 3.52 In part, this is due to the fact that many arrangements are verbal with no documentary evidence and "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."⁶⁵
- 3.53 The Department noted that "both parties are complicit in their subleasing arrangements and generally do not reveal details for fear of action by the Department"⁶⁶ and that prior to the licence allocation policy change in 2015, "no industry member has ever approached the Department willing to give evidence that they have been involved in subleasing."⁶⁷

⁶⁴ DIPL, Committee Transcript, 24 July 2017, pp. 40-41.

⁶⁵ DIPL, Submission No. 15, 2017, p. 26.

⁶⁶ DIPL, Submission No. 15, 2017, p. 8.

⁶⁷ DIPL, Submission No. 15, 2017, p. 26.

3.54 The licence allocation policy in 2015 encouraged a number of sublessees to provide evidence to the Department to have a cancelled licence reallocated to them. However, previously:

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.⁶⁸

3.55 As outlined in this report, there is also a lack of understanding in the industry about the distinction between a bailment agreement and a sublease. In their submission to the Committee, the Department stated it:

regularly receives information from industry of 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 of any supporting documentation or evidence.⁶⁹

3.56 The Committee questioned a number of witnesses about whether legislative amendments to make subleasing illegal would be able to be enforced by the Department. There was consensus across the different sectors of the industry and the Department that legislative amendments would be unlikely to curb the practice and that the clandestine dealings would continue.

Industry perspectives on subleasing

3.57 One of the most challenging aspects of evaluating evidence provided in relation to subleasing is the belief that subleasing is illegal, a misconception that has been perpetuated by the Department. Industry views on subleasing have been further complicated by widespread confusion about the difference between a sublease and a bailment agreement.

3.58 Furthermore, as previously noted, the distinction between subleasing and utilising a network manager is not clear to industry participants. The Committee received evidence that there are instances, such as illness or taking extended leave, where a licence holder may not be able to operate their licence for a period of time and that there should be an option to sublease the licence or engage a network manager to take on the operational responsibility for that licence.

3.59 The Committee found that some advocates for subleasing indicated they considered it fair that long term industry participants should be able to sublease their licences if they no longer wished to operate the taxi as they have earned that right from their length of service in the industry.⁷⁰ However, the Committee notes that every licence that is subleased when a licence holder no longer wishes to play an active role in the industry denies other industry participants, particularly taxi drivers, the opportunity to establish themselves as an operator.

⁶⁸ DIPL, Submission No. 15, 2017, p. 26.

⁶⁹ DIPL, Submission No. 15, 2017, p. 25.

⁷⁰ Alice Springs Taxis, Committee Transcript, 20 July 2017, pp. 10;15; Darwin Radio Taxis, Committee Transcript, 24 July 2017, p. 30.

3.60 The NT Taxi Council advised the Committee that they are supportive of subleasing if it occurs in a legal manner:

Transferability can be done as long as the initial licensee is still held responsible for his obligations and the sublessee he has still got to be an accredited operator, not a driver accredited operator, as well because he is going to take the responsibility of operations as well. Again, as a council we wanted to hold a neutral position on this but now that subleasing is being approached as okay, it could be legal, it could be illegal. Really the clarity and the focus should be on those cases where the operator is no longer accredited because he does not meet some of the requirements anymore.

3.61 The Committee heard proposals from representatives of the network dispatch companies that licence holders should be able to transfer their licences if they wish to exit the industry. It was suggested that licence holders should be able to transfer the licence for a cost higher than the annual licence fees so that long term participants are able to make some profit when retiring from the industry as they are unlikely to have superannuation since operators and drivers are self-employed.⁷¹

3.62 The Committee is of the opinion that Government leased licences should not be viewed as investments or likened to a pseudo superannuation fund. Although taxi drivers and operators are self-employed, there is no compelling reason why their obligation to take responsibility for their financial security, should they wish to exit the industry, should be any different to self-employed people in other industries.

3.63 The ability to transfer licences as an alternative to subleasing was suggested to the Committee in a number of submissions. The NT Taxi Council advised the Committee that a proposal to allow transferability had previously been put to the Department to enable “a one-month period to allow transferability. That gives a chance to those who want to get out of the industry to transfer it to some people who want to get into the industry.”⁷² The NT Taxi Council further stated:

transferability can be a way to actually get rid of some people who are already tired of it and want to get out. It is an exit choice, basically, at any point in time. We do not know what will happen in individual circumstances of people. Things can go wrong and people want to leave town. So, give them that choice.⁷³

3.64 A number of submissions received by the Committee proposed that subleasing should be allowed provided that the sublease agreements are legally binding and enforceable.

3.65 The Committee was also presented with a number of arguments opposing the practice of subleasing. A large number of submitters felt that subleasing should be stopped based on the misconception that it is illegal.

3.66 One of the primary reasons the Committee heard for opposing subleasing is that licence holders should surrender their licences to the Government if they no

⁷¹ Blue Taxi Company, Committee Transcript, 24 July 2017, p. 19; Darwin Radio Taxis, Committee Transcript, 24 July 2017, p. 27.

⁷² NT Taxi Council, Committee Transcript, 24 July 2017, p. 36.

⁷³ NT Taxi Council, Committee Transcript, 24 July 2017, p. 36.

longer wish to operate a taxi. The consequence of licence holders entering into subleases, instead of surrendering the licences, is that taxi drivers are denied the opportunity to become operators. The Committee found no compelling argument why a select group of people that acquired licences during the period of deregulation or through the luck of winning a ballot should be able to participate as operators while others are prevented from doing so.

- 3.67 Another commonly espoused view is that subleasing encourages unscrupulous and rent seeking behaviours by licence holders and leads to drivers paying an unnecessary premium to acquire a licence.

4 Licence Allocation

- 4.1 The allocation process for taxi licences is a central theme to this inquiry as the manner in which licences were allocated in 2015 was a key driver for the establishment of this inquiry. The licence allocation method is highly relevant when the number of licences available is limited, as the chosen method can affect who has the chance to try to obtain a licence.

Ballot

- 4.2 As previously discussed, in 2003, the Government made a Cabinet decision that a cap would be placed on the number of licences issued for Darwin and Alice Springs based on a ratio of one taxi per 900 head of population. In conjunction, the Government announced a policy decision that taxi licences for these two regions would only be issued through a ballot process.
- 4.3 There are no provisions within the Act dictating the process to be used for licence allocation. The discretion to allocate licences sits with the Director who is subject to Ministerial Directions. The issue of how licences are allocated exists because of the market entry restrictions, as in a deregulated industry licences are issued to any eligible applicant by the relevant authority.
- 4.4 The Department of Infrastructure, Planning and Logistics can set criteria that applicants must meet to be eligible for a ballot. In the Darwin 2016 ballot, the criteria were:
- Holds current operator accreditation.
 - Has been driving at least once per month for at least nine months of each of the past five years.
 - Has a satisfactory compliance history with regard to traffic infringements and complaints.
 - Is a current Northern Territory resident.
 - Does not already hold a taxi licence.
- 4.5 In the Darwin 2016 ballot, there were nine standard taxi licences and four multiple purpose (wheelchair) taxi licences available. A separate ballot was conducted for each licence type and applicants were restricted to applying for one licence type only. The Department received 67 applications for the standard licences of which 29 were deemed eligible, while 18 applications were received for the multiple purpose licence ballot of which five were deemed eligible.
- 4.6 Eligible applicants are drawn at random until all of licences for that ballot have been drawn. Licences are offered on a first drawn basis until all of the available taxi licences have been offered. The list of eligible but unsuccessful applicants is maintained for eight months and used to allocate any surrendered licences with the licences offered to unsuccessful ballot applicants in the order they were drawn.

4.7 As illustrated in the table below, prior to 2015, all taxi licences were allocated through the ballot process with the exception of two licences that were allocated to family members following the death of the licence holder.

Table 2: Licence Allocations 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

*The peak period licences originally had restricted operational hours, however in October 2012, the licences were converted to standard licences following successful lobbying from operators.

Policy 5.20

- 4.8 Between 2014 and 2016 the Government undertook an extensive review of the Northern Territory commercial passenger vehicle industry and the Minister for Transport determined that no taxi ballots would be conducted until the review was concluded in early 2016.⁷⁴ In 2015, the Department cancelled the accreditation of a number of licence holders which resulted in the cancellation of two licences in Darwin and four in Alice Springs.
- 4.9 These licences had been subleased to taxi drivers who were no longer able to operate the taxis following the cancellations. The two Darwin drivers approached the Department, Minister and Opposition claiming that they had invested considerable money as part of the subleasing, including the purchase of vehicles, and the cancellation had left them without an income. The Darwin drivers requested that the licences be reallocated to them as they were suffering financial hardship due to the cancellation. The drivers were initially informed that licences were strictly allocated through the ballot process and that no ballots would be held while the industry review was underway.
- 4.10 As there were to be no taxi ballots until the conclusion of the review, the Department sought options to ensure taxi numbers were maintained and to alleviate the financial losses of the drivers. In September 2015 *Policy 5.20 – Authority to Directly Allocate Taxi Licences under Certain Conditions (Policy 5.20)* was approved by the Minister, which enabled the Department to directly reallocate cancelled licences to an applicant that could demonstrate an interest in the vehicle or operation of the taxi.
- 4.11 *Policy 5.20* states that an ‘application for a taxi licence under special conditions’ to the Director should include, but is not limited to:
1. A written submission to the Director requesting the reallocation of an existing standard or MPT licence under this policy;
 2. The Applicant’s demonstrated interest in the ownership of the vehicle endorsed against the licence e.g. financial statement/invoice/ lease agreement in the name or joint name of the Applicant relating to the vehicle endorsed upon the licence;
 3. documentary evidence that the Applicant has actively maintained the vehicle’s operation, e.g. financial statements showing the Applicant has contributed the cost of vehicle maintenance and paid network fees;
 4. a signed statutory declaration from the Licence Holder that they support the application and declare no other parties have an interest in the operation of the licence or any claim for application under this Policy;
 5. written advice from the network under which the vehicle has been operated for the preceding 12 months regarding the performance of the Applicant and the vehicle, including details of any complaints received;

⁷⁴ DIPL, Submission No. 15, 2017, p. 16.

6. a copy of the written agreement, if any exist, certified by the Applicant and Licence Holder, specifying the responsibilities of the Licence Holder and Applicant in respects to the operation of the licence; and
7. Where a driver has been in the NT industry for a continuous period of 2 years and can demonstrate capacity to operate standard or MPT taxi licence including meeting fit and proper requirements.⁷⁵

4.12 The 'consideration of application by the Director' stipulated that the Director had absolute discretion as to whether to issue a licence under *Policy 5.20*, however must be satisfied that:

1. The Applicant holds accreditation as an operator in the Northern Territory (NT);
2. The Applicant currently meets the approved fit and proper guidelines for a taxi operator – this may require the Applicant to provide a fresh criminal history check and insolvency report;
3. The Applicant is a resident of the NT and has a place of business in the taxi area in which the original licence was issued;
4. The Applicant does not hold a taxi licence in the NT or another jurisdiction either as an individual or director of a company;
5. The Applicant has a demonstrated history of good compliance as a taxi operator or driver for the previous 2 years.
6. There is no apparent or potential interest in the existing operation of the licence by any party, other than those identified in the submissions made in accordance with Part 4 of this Policy; and
7. Any other matters deemed relevant by the Director have been considered.⁷⁶

4.13 In essence, *Policy 5.20* gave the Department the authority to reallocate cancelled licences to parties that could demonstrate that they had been subleasing the licence, provided that they did not already hold a licence and no other parties held an interest in the operation of the taxi.

4.14 It is evident to the Committee that *Policy 5.20* contradicts the Department's position that subleasing is not permitted and has created an expectation that sublessees would be rewarded if the original licence holder lost the licence. In their submission to the Committee, the Department noted:

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.⁷⁷

4.15 The Department's submission makes multiple references to financial hardship and the intent of *Policy 5.20* in relation to the decisions made by the Department to reallocate cancelled licences using the Policy. However, *Policy 5.20* makes no

⁷⁵ Department of Transport, *Policy 5.20 – Authority to Directly Allocate Taxi Licences under Certain Conditions*, Northern Territory Government, 2015, pp. 3-4.

⁷⁶ Department of Transport, *Policy 5.20 – Authority to Directly Allocate Taxi Licences under Certain Conditions*, Northern Territory Government, 2015, p. 4.

⁷⁷ DIPL, Submission No. 15, 2017, p. 16.

reference to financial hardship and the intent of the Policy is not stated in the document. The Committee questioned the Department about the intent of the Policy during a private hearing and was advised that there were probably a number of intents including:

- Dealing with the financial distress of the families that had lost their livelihoods after the licences they had been subleasing were cancelled.
- Maintaining the number of taxis on the road, particularly wheelchair accessible taxis, while the industry was subject to a long review that had suspended the issuing of licences through the ballot process.

4.16 The Committee was further advised that the Policy allowed the Director to take into account any other matters that were deemed to be relevant in assessing the reallocation of licences and that while the Policy may not have included an explicit reference to financial hardship, it was a primary concern in the application of the Policy.⁷⁸

Licences reallocated under Policy 5.20

4.17 The Committee has received comprehensive information regarding the reallocation of the six taxi licences. As it includes confidential information, the Committee is not going to outline the details in this report.

4.18 The Committee found no evidence or suggestion of corruption in the allocation of the licences. In all instances there were cases made for financial hardship and the Policy gave the Director discretion in the allocation of the licences.

4.19 The Committee is concerned, however, that not all the licence allocations were within the terms of the Policy. Circumstances in the licence allocation that appeared to be contrary to the terms of the Policy include:

- A number of instances where licences were allocated to people that did not hold an interest in the licence at the time it was cancelled (clause 2, application for a taxi licence under special conditions).
- A number of instances where another party held an interest in the existing operation of the licence at the time the licence was cancelled (clause 6, consideration of application by the Director).
- The allocation of a licence to a party that had never held an interest in that licence (clause 2, application for a taxi licence under special conditions).

4.20 The Committee is concerned that the allocation of licences on an undefined concept of financial hardship is an inappropriate and unfair means of allocating licences. It favoured those who were aware that a plea of financial hardship may get a sympathetic response, which appeared to be a select group of people. The failure to apply the terms of the Policy also meant that the allocations were made on the basis of subjective assessments.

⁷⁸ DIPL, Committee Transcript (private hearing), 30 May 2017, p. 15.

- 4.21 This put the Department in the contradictory position that, while it was asserting to the industry at large that subleasing was illegal, it was making subjective assessments on applications from the select few who were aware of the existence of *Policy 5.20* to allocate a licence to the sublessee of a cancelled licence, or some other person, on the basis of financial hardship.
- 4.22 While the Committee has no evidence that this was either corrupt or illegal, the Committee considers that it is not appropriate that a regulatory body make decisions in this way.

Ramifications of Policy 5.20

- 4.23 The industry review was completed in February 2016 and at this point *Policy 5.20* ceased to have effect, and the policy position on allocating taxi licences reverted to licences only being allocated through the ballot process.
- 4.24 Although *Policy 5.20* was short lived, the fallout from the Policy has continued well after it ceased to be in effect. Many of the submissions received by the Committee expressed outrage at the creation and application of the Policy, identified a lack of transparency regarding licences issued under the Policy, and raised allegations of corruption by the Department.
- 4.25 *Policy 5.20* was created due to lobbying of both the Government and the Opposition by two Darwin taxi drivers who had been financially disadvantaged when the licences they were subleasing were cancelled. Although the Department consulted the NT Taxi Council during the development of the Policy, this cannot be viewed as comprehensive consultation with a broad range of industry participants. Most importantly, the Taxi Council represents the interests of licence holders, not taxi drivers who are the ones directly affected by the Policy.⁷⁹
- 4.26 The Committee questioned the Department about how industry participants became aware of the Policy's existence, as it had not been published on the Department's website, and whether the Policy had been made publically available:
- Mr KIRKMAN:** The policy had not been made publicly available. The industry generally was quite aware of its existence, but it was only used for those specific examples where people came forward claiming to have suffered significant loss.
- Madam CHAIR:** In this public hearing, we have heard both here [and] in Alice Springs that people saw the policy for the first time through this inquiry process. That is of interest—that the Taxi Council was consulted.⁸⁰
- 4.27 The Committee questioned the Department about the confusion that resulted from creating a policy that rewarded sublessees through the allocation of cancelled licences when the Department's published position is that the practice of subleasing will not be tolerated. The Department acknowledged the confusion

⁷⁹ DIPL, Committee Transcript, 24 July 2017, p. 42.

⁸⁰ DIPL, Committee Transcript, 24 July 2017, p. 42.

that had been caused and informed the Committee that in addition to needing to ensure that there were sufficient taxis in operation to meet customers' needs:

contrary to I guess what we would consider the intent of the Act people had got themselves into arrangements whether they had understood when they got into those arrangements is a bit unclear but they got themselves into arrangements which yes were clearly subleasing, we would consider subleasing.

The arrangements were quite extreme. In a large number of cases they had actually gone out and bought the vehicle, so they got into debt, they had bought the vehicle, they had then obviously been operating that vehicle for a period of time. We completely understand the confusion that that policy caused. It was there for a period of time during the review to deal particularly with the reduction in taxi numbers but obviously also addressed the terrible financial situation these people had got themselves into and obviously did not have any access to income outside of having a taxi.⁸¹

- 4.28 The Committee raised concerns that the Policy created an expectation that obtaining a sublease was a path to being allocated a licence. When questioned about this, the Department advised the Committee that the application of the Policy had unintended consequences, particularly in Alice Springs. The Alice Taxi Drivers Association's reaction to the licence reallocation was that it unfairly prevented other drivers from having the opportunity to try to secure a licence through a ballot process.
- 4.29 The Department advised that the industry was well aware that the Policy was no longer in operation and while at times some would like the Policy re-enacted, most just want the opportunity to try to obtain a licence through a ballot.
- 4.30 The dissatisfaction with the use of *Policy 5.20* was further exacerbated by the fact there had been no ballots held in Alice Springs since the licence reallocation. The Department noted that the Darwin ballot in 2016 appeared to reduce concerns with the licence reallocations there.⁸²
- 4.31 The Committee notes that while the names of successful ballot applicants are published on the Department's website, the names of the individuals allocated licences under *Policy 5.20* were not. When questioned why the decision was made not to disclose this information, the Committee was advised:
- At the time, it would be fair to say, it was not considered. Perhaps with the benefit of hindsight, we should have followed the same process that we follow for ballots.⁸³
- 4.32 The former Department of Transport's *Annual Report 2015-16* contains details of a Darwin ballot that was scheduled to take place in July 2016, however there is no reference to the existence of the Policy or its application in allocating six taxi licences.
- 4.33 The Committee considers that the Department's limited consultation when creating the Policy and the omission to make the Policy and the outcomes of

⁸¹ DIPL, Committee Transcript, 24 July 2017, p. 43.

⁸² DIPL, Committee Transcript (private hearing), 30 May 2017, pp. 15-16.

⁸³ DIPL, Committee Transcript, 24 July 2017, p. 45.

licence reallocations publically available demonstrated a lack of transparency and accountability in the Department's decision making. This has directly contributed to confusion among the industry, a distrust of the Department, unsubstantiated allegations of corruption and the misinformed belief that the Department had broken the law in the reallocation of the licences.

- 4.34 The Committee received claims in submissions and at public and private hearings that taxi licences could only be allocated through the ballot process, therefore the Department had contravened the legislation. The Committee can understand why industry participants would be of this view, given that the Department has consistently publicised that ballots are the only allocation method. However, the *Commercial Passenger (Road) Transport Act* does not prescribe the manner in which licences should be allocated, as the discretion to allocate licences sits with the Director who is also subject to any Ministerial Directions.

Industry perspectives on licence allocation

- 4.35 The Committee sought input from across the industry on the most appropriate process for allocating licences in an industry with market entry restrictions.
- 4.36 The Committee found that if entry restrictions remain in place, the overwhelming majority of industry participants believe that a ballot process is the preferred and most appropriate method for allocating licences. Those that advocated this preference also proposed that there should be eligibility criteria to enter into a ballot. However, there was no consensus on what those criteria should be. While there was agreement that a ballot applicant should already be involved in the industry, the proposed duration of active involvement varied from one year to seven years, with a large proportion of industry participants agreeing that the five year requirement used in the 2016 Darwin ballot was an appropriate length of service.
- 4.37 Another point of contention was whether licences should only be allocated to individuals who did not already hold a licence. The Committee heard that where entry restrictions exist, it is unfair for incumbent licence holders to keep acquiring additional licences when there are people that have been waiting many years to obtain their first licence. However, it was also suggested that dispatch networks or companies should be able to hold a higher number of licences to ensure there are sufficient taxis available to work at any given time.⁸⁴
- 4.38 Unsurprisingly, many of those who advocated that existing licence holders should be excluded from ballots were those who did not already hold a licence, whereas existing licence holders believed that such a restriction should not be imposed.
- 4.39 Those who advocated for excluding existing licence holders from ballots argued that this would maximise opportunities for drivers to become licence holders and operate a taxi as a small business. The licence cap currently limits the opportunities for drivers to progress down a career path of driver to operator. As

⁸⁴ Darwin Radio Taxis, Committee Transcript, 24 July 2017, p. 25.

noted, the Department has previously restricted ballot eligibility criteria to non-licence holders in an attempt to allow drivers to become operators and prevent existing licence holders from increasing their dominance in the industry.

- 4.40 The Committee questioned the Department about the use of eligibility criteria in 2016 and whether it was anticipated that these would apply to future ballots:

We were very keen to see those taxi drivers who have been in the industry for a long time—had been unsuccessful in getting a ballot but had been excellent drivers with excellent records—have a real chance...

We gave a real opportunity to those drivers who wanted to have their own vehicle but had not been able to do that successfully in other ballots. I would not see any reason why we would move away from this policy in the next ballot.⁸⁵

- 4.41 An alternative licence allocation method using a waitlist was proposed to the Committee, but this method was not widely supported or frequently proposed. Given the overwhelming support for the use of ballots for future allocations if the licence cap remains in place, the Committee has not explored alternative allocation methods.

⁸⁵ DIPL, Committee Transcript, 24 July 2017, p. 43.

5 The Cap

5.1 Although the retention or removal of the cap is not specified in the terms of reference for this inquiry, the Committee recognised that subleasing is, at least in part, related to a restriction on taxi licence numbers, and the most appropriate method for allocating licences only requires consideration in a capped environment. If the cap is removed, the incentive for subleasing, and the consequential problems subleasing causes, will likely disappear. Consequently, it is necessary to examine the theoretical arguments and empirical evidence relating to instances of entry deregulation to give full consideration of the issues at hand.

History and current status of the cap

5.2 As previously discussed, prior to the 1999 entry deregulation, taxi licences were capital assets sold by the Government in limited numbers and could be traded on the open market. The restriction on the number of licences available resulted in licences accruing a high scarcity value as investors were able to lease their licences to operators for considerable sums. The Organisation for Economic Co-operation and Development (OECD) notes that “since licences have no intrinsic value, their exchange value wholly represents the capitalised value of the expected stream of monopoly rents that can be derived from their exploitation.”⁸⁶

5.3 When the Government decided to deregulate entry to the industry, it established a compulsory buyback of all taxi licences at a cost of \$27.3 million. Between January 1999 and November 2001, entry restrictions were removed and licences became available on application to the relevant authority. These licences were leased from the Government and renewed on an annual basis for a fee, at the time, of \$16,000 in Darwin and \$13,000 in Alice Springs. While the number of taxi licences in operation increased by 35% in this period, the total number of CPVs across all categories remained relatively stable due to the reduction in private hire cars and minibuses.

5.4 Following deregulation, sectors of the industry successfully lobbied for the licence cap to be reinstated. In November 2001, a temporary moratorium on issuing new licences was implemented. The moratorium was extended twice and in November 2002, the Minister for Transport and Infrastructure told the Assembly:

Predictably, the National Competition Council has kept a close eye on our considerations. I do not believe that the government has taken any action that can be seen to be anti-competitive. We have not capped or frozen numbers permanently. We have not placed limits on the population ratio. We recognise that having gone down that path would have incurred the wrath of

⁸⁶ Organisation for Economic Co-operation and Development (OECD), *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 32.

the NCC. Instead, we have chosen to put the industry on a sensible, organised footing.⁸⁷

5.5 Despite the statements made by the Minister, in August 2003 amendments to the *Commercial Passenger (Road) Transport Act* re-established the Minister's statutory authority to limit the number of licences issued. The effect of these amendments was that the 'temporary' cap has remained in place since November 2001, amounting to a reversal of the entry deregulation.

5.6 In 2003, a Cabinet decision was made that a ratio of one taxi per 900 head of population would be used to determine the number of licences in operation in Darwin and Alice Springs. In 2005, a Ministerial Direction was issued that the number of licences for Alice Springs would be based on 1:900 or 36 licences, whichever was greater.⁸⁸

5.7 The decision to remove entry restrictions was designed to create a free market and eliminate the scarcity value that perpetual licences had accrued. However:

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 for doing little more than holding the licence.⁸⁹

5.8 According to the OECD, annually leased licences allow the Government to capitalise monopoly rents, instead of licence holders:

if regulated supply restrictions are to create monopoly rents in the taxi industry, the government should seek to capture these rents itself, rather than allowing them to accrue as a windfall gains to incumbents...this can be achieved by selling annual rights to operate a taxi, rather than perpetual licences, with the price of these annual rights to be determined in accordance with calculations of the expected economic rent accruing from the efficient exploitation of an annual permit.⁹⁰

5.9 However, this has not been the case in the Northern Territory with the Department noting in their submission:

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.⁹¹

Impact of the cap

5.10 The primary impact of restricting entry to the taxi industry, by limiting the number of licences issued, is the scarcity value the licence accrues. Without these restrictions, a licence has no value above what the licence holder is required to

⁸⁷ Hon Kon Vatskalis MLA, Minister for Transport and Infrastructure, Northern Territory Legislative Assembly, *Debates*, 26 November 2002.

⁸⁸ DIPL, Submission No. 15, 2017, p. 12.

⁸⁹ DIPL, Submission No. 15, 2017, p. 8.

⁹⁰ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p 30.

⁹¹ DIPL, Submission No. 15, 2017, p. 7.

pay in annual fees to the Government. The scarcity value is artificial and reflects the “rent-seeking skills of incumbent licence holders.”⁹² In jurisdictions where perpetual licences are owned outright:

high licence values reflect the substantial and increasing monopoly rents that can be accrued from the exploitation of increasingly scarce taxi licences. Rising licence values represent continuing and increasing transfers from consumers to taxi licence owners as a result of the policy of supply restriction.⁹³

- 5.11 Entry restrictions unfairly protect the interests of incumbent licence holders while preventing new entrants from acquiring a licence to enter the industry as an operator. The Irish High Court decision to deregulate entry to the industry was premised upon the basis that the Minister had acted *ultra vires* (beyond their power) as the Parliament could not have contemplated that the Minister would put in place a scheme of restricting licences which “manifestly affects the right of citizens to work in an industry for which they may be qualified and the rights of potential customers to avail of such potential services.”⁹⁴
- 5.12 In the Northern Territory, those who did not take the opportunity to obtain a licence during the three years of deregulation and have not been lucky enough to win a ballot are left with two options: they can drive for a licence holder or they can try to secure exclusive use of an existing licence through a sublease. This provides the opportunity for licence holders to secure considerable returns for subleasing their licence to a driver who has been unable to attain their own licence.
- 5.13 The practice of subleasing in the Northern Territory is a direct result of entry restrictions. 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.”⁹⁵
- 5.14 Without the licence cap, the practice of subleasing would cease as there would be no reason for a person to pay the additional cost of a sublease when they can obtain their own licence from the Government at the cost of the licence fee only, provided they met the relevant ‘fit and proper’ criteria. Furthermore, the issue of the most fair and appropriate method for licence allocation would also disappear.

Debates on market entry regulation

Licence as an investment

- 5.15 It has long been argued that taxi licences are a capital investment and have been likened to a pseudo superannuation fund. Although the 1999 deregulation saw

⁹² S. Barrett, ‘The sustained impacts of taxi deregulation’, *Institute of Economic Affairs*, Vol. 30, Issue 1, March 2010, Blackwell Publishing, Oxford, p. 63.

⁹³ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, pp. 7-8.

⁹⁴ *Humphry v. Minister for Environment and Local Government* (2000) IEHC 149, viewed on 5 September 2017, <http://www.bailii.org/ie/cases/IEHC/2000/149.html>

⁹⁵ DIPL, Submission No. 15, 2017, p. 25.

the removal of perpetual taxi licences and duly compensated the licence holders, the arguments surrounding licences as an investment will be discussed as they form a critical part of debates regarding deregulation of the taxi industry in all jurisdictions.

5.16 There is always an inherent risk with investments. While it may be true that a perpetual licence is an investment, the value of that investment has been accrued solely as a result of Government policy restricting supply.

5.17 When entry restrictions were removed in Dublin as the result of a High Court decision, incumbent licence holders:

described themselves as having invested in the industry through the purchase of licences and claimed to have thus acquired property rights. Economists who supported deregulation contended that the taxi licence purchasers were more correctly categorised as gamblers who had taken a bet that governments would never deregulate the sector.⁹⁶

5.18 The argument that any investment involves risk is also supported by the OECD:

purchasers of an intangible asset that derives its value entirely from a particular government policy stance are presumably aware of the omnipresent risk that changes in the government policy position may significantly reduce the value of the asset. Similarly, policy changes (or, perhaps more correctly, policy stasis) may substantially increase the value of the asset: in fact, licence holders have generally achieved high rates of return and these high rates ... should, arguably, be seen as reflecting the inherently high level of risk associated with the investment. Symmetry would seem to argue that, just as licence holders have been able to reap windfall gains from past government policy choices, without these being confiscated, so they must expect to bear windfall losses due to other policy choices, without compensation.⁹⁷

5.19 This report will not examine the arguments surrounding whether compensation should be paid to incumbent licence holders if entry restrictions are removed, primarily because the point is moot given that compensation was paid in 1999 through the compulsory buyback. The Committee notes that “the case for compensating incumbents for the loss of their ability to extract monopoly rents is weak”⁹⁸ and there is legal consensus that there is no obligation on Governments to compensate licence holders for a loss in their value.

5.20 The Committee acknowledges that discussions regarding compensation have featured heavily in the reform agenda in other Australian jurisdictions where perpetual licences still exist. The value of these licences has fallen significantly, particularly with the legalisation of ridesharing, and compensation amounts being provided to licence holders are well below the values ascribed to the licences prior to the arrival of ridesharing services and the liberalisation of entry restrictions.

⁹⁶ S. Barrett, *Regulatory capture, property rights and taxi deregulation: A case study*, Institute of Economic Affairs, Vol. 23, Issue 4, December 2003, Blackwell Publishing, p. 35.

⁹⁷ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 38.

⁹⁸ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 18.

- 5.21 The Committee recognises that there is a level of investment required to operate a taxi in the Northern Territory, however this cost is centred more on the purchase and maintenance of the vehicle, with wheelchair taxis costing in the vicinity of \$80,000. However, the removal of entry restrictions would not render this investment worthless. If a taxi operator wishes to leave the industry, the vehicle can be sold to another party wishing to operate a taxi.
- 5.22 Based on the fact that perpetual licence holders were previously compensated to the tune of \$27.3 million in 1999, and the fact that licences have accrued a value directly as a result of Government policy, the Committee does not view the 'licence as an investment' argument as a compelling reason to retain the licence cap.

Optimum taxi levels

- 5.23 Proponents of the licence cap argue that removing entry restrictions will lead to excessive entry and market oversaturation which, in turn, will result in reduced earnings for drivers and operators. In order to assess this claim, it is necessary to first consider what would constitute the optimum number of taxis for a region and the most appropriate methodology for determining this number.
- 5.24 It is unclear what, if any, analysis was undertaken prior to the 2003 Cabinet decision that the optimum number of licences issued in Darwin and Alice Springs would be based on a population ratio of 1:900. A review of taxi licence numbers undertaken by Ernst & Young in 1996 considered two options for determining the number of taxi licences, a population ratio based model and a performance standards model.
- 5.25 At the time of the review, there was one taxi to every 1,100 people in Darwin, while in Alice Springs there was one taxi per 784 people.⁹⁹ The report noted the population of Darwin is not static and that both cities receive a considerable influx of interstate and overseas tourists particularly during the Dry Season. The Committee notes that in addition to population variances resulting from tourism, population numbers can also be affected by other industries including defence personnel and major projects such as the INPEX gas project.
- 5.26 The review found that a population based model was unfavourable because:
- the selection of the stipulated number of taxis per head of population is arbitrary; and
 - it would need to be adapted to take account of the effects of tourism on the population, the propensity of tourists to use taxis, and the population characteristics (such as the differing demand patterns between Aboriginal and Non-Aboriginal hirers).¹⁰⁰

The review recommended the establishment of a performance standards model with a primary focus on customer wait times, which would be more objective in

⁹⁹ Ernst & Young, *Taxi number assessment in Darwin and Alice Springs*, May 1996, pp. 14-15.

¹⁰⁰ Ernst & Young, *Taxi number assessment in Darwin and Alice Springs*, May 1996, p. 3.

determining whether supply was meeting demand. However, Government policy has not reflected this recommendation.

5.27 In reviewing the methodologies used by jurisdictions across the world to determine the optimum number of taxis in industries with restricted entry, the OECD found:

objective decision rules are rarely used by regulators in reaching decisions on the quantity of taxis that will be allowed to operate. Where no explicit decision rule is used, there is no reason to believe that the regulated number of taxis will coincide with the optimum level of supply other than by accident. However, the broader question is whether models exist that are capable of accurately estimating optimum levels of supply.¹⁰¹

5.28 The demographics of each taxi region play a considerable role in the demand for taxi services. The availability of efficient public transport, rates of private vehicle ownership and the proportion of elderly and mobility challenged people in a region are all factors that impact on demand.

5.29 Furthermore, consideration must be given to what differentiates other categories of CPVs such as minibuses and private hire cars from taxis. The primary distinction is that while all three vehicle classes can be pre-booked, only taxis can be hailed on the street and taxis have exclusive use of taxi ranks, apart from a limited number of minibus specific ranks. Taxis are primarily hailed by customers in Central Business Districts (CBD) areas and taxi ranks are commonly found in the CBD, at airports and shopping centres.

5.30 The customer demand for rank and hail taxis should be analysed in comparison to pre-booked services where taxis, minibuses and private hire cars can all compete to assess what impact lifting entry restrictions may have on different sectors of the market.

5.31 An inevitability in the taxi industry is that there will be cyclic peak periods of demand. Evidence received by the Committee illustrates that demand is regularly not met on Thursday, Friday and Saturday nights, nor are there sufficient taxis available at airports when multiple flights land within a short time span. The Committee heard evidence from one taxi company that there was a need to have additional taxis available during these regular peak periods.¹⁰²

5.32 In an attempt to remedy the taxi shortage during peak periods, in 2010 the Government issued ten peak period licences which had restricted operational hours. However, the industry successfully lobbied the Government and in 2012 these licences were converted to full standard licences.¹⁰³

5.33 The Committee recognises that there is a broad range of factors that feed into the level of demand for taxi services in any region. Darwin and Alice Springs are by no way comparable to cities like Melbourne and Sydney, and it would appear impracticable to use a population based ratio alone to determine optimum taxi

¹⁰¹ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 26.

¹⁰² Blue Taxi Company, Committee Transcript, 24 July 2017, p. 21.

¹⁰³ DIPL, Submission No. 15, 2017, p. 15.

numbers, as this methodology cannot take into account demographics and fluctuations in demand.

Excessive entry

5.34 Industry sectors that advocate for the retention of the licence cap argue that entry deregulation will result in a significant influx of taxis which has been evidenced in a number of jurisdictions. In his review of the Victorian taxi industry, Professor Fels found that in all jurisdictions where entry restrictions had been removed, there was an increase in taxi numbers, some of which were higher than anticipated by the Government and industry.¹⁰⁴ Similar conclusions were reached by the OECD which found:

Where taxi supply has previously been heavily restricted and these restrictions were removed, very large increases in taxi supply have been experienced...In general the extent of entry to the industry has outstripped the levels predicted prior to deregulation where attempt[s] to forecast actual demand were made. Moreover, these higher taxi numbers have generally been sustained in the medium term.¹⁰⁵

5.35 The OECD further noted:

A fundamental observation is that the experience of deregulation of entry controls will be highly dependent upon the initial, pre-deregulation position. Where the management of regulation restricting supply has been relatively competent, keeping regulated supply relatively close to free entry equilibrium levels and licence values at low levels, significant new entry is unlikely. However, where entry regulation has severely restricted supply, immediate deregulation of entry is likely to lead to increases in taxi numbers of 200% or more, as occurred in both Ireland and New Zealand, for example. In the latter circumstance, a possibility of equilibrium supply levels being overshot in the short-term clearly exists. On the other hand, what may appear in the short-term to be an unsustainable increase in taxi numbers has, in many cases, proved to be the new free-market equilibrium number of taxis.¹⁰⁶

5.36 In addition to unmet demand prior to deregulation, Professor Fels found that another factor could be that new market entrants may be overly optimistic about earnings potential in a deregulated environment where initial start-up costs are minimal and this may lead to an initial period of excessive entry. Fels observed that Governments can play a role in educating potential new entrants on the likely earnings and operating costs in a newly deregulated environment.¹⁰⁷ The Victorian Taxi Services Commission provides a range of information and links to other resources on their website for people considering entering the CPV industry.

¹⁰⁴ Taxi Industry Inquiry, *Customers First: Service, Safety, Choice – Draft Report*, May 2012, p. 170.

¹⁰⁵ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 8.

¹⁰⁶ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, pp. 36-37.

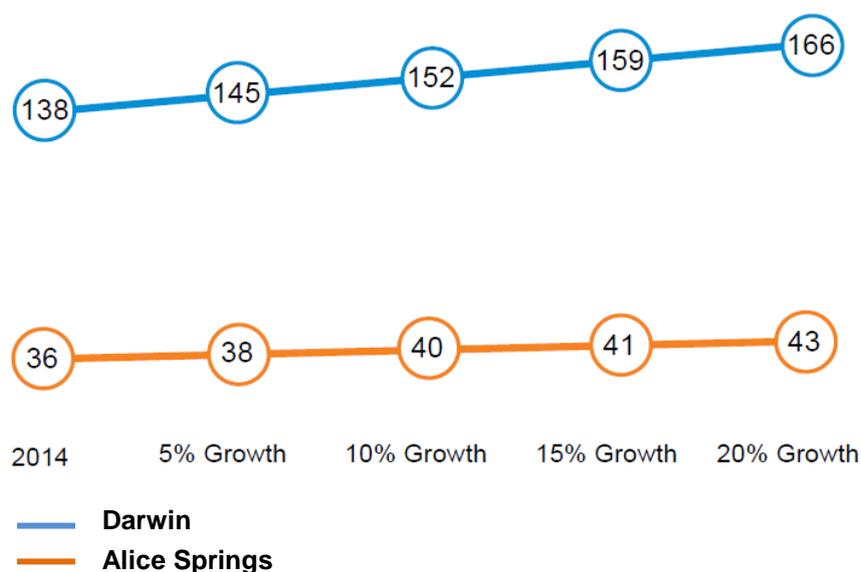
¹⁰⁷ Taxi Industry Inquiry, *Customers First: Service, Safety, Choice – Draft Report*, May 2012, p. 171.

5.37 There is a risk that an unrestricted market would see some business failings, either of new entrants or incumbent licence holders. New entrants that make an unrealistic assessment of the operating costs and profits are most at risk with:

substantial new entry to the industry by inexperienced operators, together with the development of substantially increased competitive pressures, lower earnings and high rates of business failure are likely to result in the short term.¹⁰⁸

5.38 It is unclear whether any analysis was undertaken to forecast the increase in the number of taxi licences as a result of the 1999 deregulation. The 2014 *NT Commercial Passenger Vehicle Industry Review Position Paper*, which recommended removing the licence cap, stated that the NT Taxi Council estimated a 5-20% increase in the number of taxis if the cap was removed.¹⁰⁹ The below graph shows modelling of how this estimate would equate in actual taxi numbers for Darwin and Alice Springs based on the number of licences in place in 2014.

Figure 2: 2014 estimated increase in taxi numbers post deregulation¹¹⁰



5.39 The Committee has received a range of evidence regarding the level of influx into the industry if the licence cap was removed. The Committee is unaware of any analytical modelling that has been undertaken to forecast new entrants to the market if the cap was removed, and is unable to form a conclusion as to the number of taxis in operation if entry was again deregulated.

5.40 Although the Committee cannot speculate as to the increase in the number of taxis if entry restrictions are removed, any overall increase is likely to produce

¹⁰⁸ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 37.

¹⁰⁹ Department of Transport, *NT Commercial Passenger Vehicle Industry Position Paper*, Northern Territory Government, November 2014, p. 26.

¹¹⁰ Department of Transport, *NT Commercial Passenger Vehicle Industry Position Paper*, Northern Territory Government, November 2014, p. 26.

more job opportunities for the Northern Territory as every taxi would require a minimum of two drivers to be operational 24 hours a day.

Driver earnings

5.41 When industry lobbyists advocated for the reintroduction of entry restrictions in the Northern Territory, a fall in driver earnings was cited as a primary reason to reverse the deregulation. A number of submissions received by the Committee claim that the 2016 allocation of licences in Darwin has reduced drivers' earnings and that any further increases in taxis would be detrimental to the industry. However, the OECD found:

there is no evidence to suggest that taxi driver incomes are higher in markets with restrictive entry conditions. Rather, monopoly rents that accrue due to these restrictions appear to be appropriated solely by licence owners... Thus, entry restrictions appear to be an ineffective means of safeguarding driver incomes. More importantly, competition policy does not generally accept the proposition that entry to an industry should be constrained in order to protect the income position of incumbents, while there is no obvious basis for arguing that the taxi industry constitutes a special case in this regard.¹¹¹

5.42 An increase in the number of taxis without a corresponding increase in the demand for taxis/number of trips may result in lower utilisation and more idle time per taxi, which would lead to lower driver earnings:

A major concern commonly cited by opponents of free entry is that the average productivity of resources devoted to provision of taxi services is said to fall as taxi numbers rise. This argument rests on the obvious fact that the average number of paid kilometres travelled per taxi will tend to fall as taxi numbers rise, while the ratio of paid to unpaid (cruising) kilometres will generally also fall.¹¹²

5.43 However, economist Professor Abelson argues excess capacity will reduce passenger waiting time which may in turn increase demand for taxis as customer satisfaction with services will rise. If licence fees are significantly reduced or abolished and fares fall as a result, then the demand for taxis is likely to increase with no cost to the taxi driver.¹¹³ Professor Abelson further contends there is an:

inter-relationship between demand and supply. Demand is a function of fares and customer waiting time (and therefore supply of taxis). The supply of taxi services depends in turn on taxi fares and costs and on driver waiting time (and therefore on the demand for taxis).¹¹⁴

5.44 It has been claimed that an increase in demand did not eventuate following the 1999 deregulation in the Northern Territory. Although customer wait times improved significantly, there were claims that driver earnings decreased which

¹¹¹ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 8.

¹¹² OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 22.

¹¹³ P. Abelson, *Governance and Economics of the Taxi Industry with Special Reference to Sydney*, 2010, p. 8.

¹¹⁴ P. Abelson, *Governance and Economics of the Taxi Industry with Special Reference to Sydney*, 2010, p. 9.

the industry attributed to the increase in taxi numbers. Professor Nicholls' analysis of media reports and parliamentary debates led him to conclude:

The NT experience has been a classic example of the collision of economic theory and empirical reality. By deregulating entry to the commercial passenger vehicle market economic theory indicates that supply and demand will move to an equilibrium. Unfortunately, as the NT experience has shown, this has not happened.¹¹⁵

5.45 The issue of reduced driver earnings was debated a number of times in the Legislative Assembly following the removal of entry restrictions. However, the Committee notes that the reliability of evidence used to argue both for and against the reimposition of the licence cap is questionable as evidence was presented to the Assembly of both high and low driver earnings. The 2003 review by Professor Nicholls is the only evaluation of the impacts of the Northern Territory on changes in customer demand and driver earnings the Committee has identified, and that evaluation did not include an analysis of any data on passenger numbers, or driver income.

5.46 It was reported that the 1999 deregulation led to driver shortages. It is unclear why this would have occurred given that, although the number of taxis increased, the number of private hire cars and minibuses decreased, with the total number of CPVs remaining stable. However, the Committee has deduced that a driver shortage could be attributable to drivers attaining their own licence and no longer working for licence holders with multiple licences.

5.47 According to Professor Abelson "taxi driver income is driven by the demand and supply of drivers" and he notes:

Many long-time Sydney taxi drivers have experienced real falls in income in recent years because the supply of drivers has increased with foreign students. Wages have fallen to a new low equilibrium as drivers compete for work by bidding up pay-in [bailment] shift rates. However an increase in taxis will *increase* the demand for taxi drivers, reduce the pay-in shift rates and marginally increase take-home earnings.¹¹⁶

5.48 While there are a number of taxi drivers who would obtain a licence if available, there would be drivers who do not have the desire or financial resources to become an operator and wish to participate in the industry simply as a driver. The NT Taxi Council, who oppose entry deregulation, noted that even if licences were available to all drivers:

there will be some people who do not want it, but they will still drive. So, they will still be a driver. We will still have students who come to Darwin to study because there are some work opportunities as well here. We know in Darwin the majority—or a significant number—of the drivers are students as well. There will be a lot who will not be able to get a taxi on their own, even if they could have the right to do that, in an uncapped market. However, they will still remain a driver.¹¹⁷

¹¹⁵ D. Nicholls, *The Impact of Deregulation on the Northern Territory Commercial Passenger Vehicle Industry*, p. 4.

¹¹⁶ P. Abelson, *Governance and Economics of the Taxi Industry with Special Reference to Sydney*, 2010, p. 20.

¹¹⁷ NT Taxi Council, Committee Transcript, 24 July 2017, p. 33.

5.49 The Committee understands that if a large number of drivers elected to acquire and operate their own licences, then individuals and companies that hold a large number of licences may experience a driver shortage. The Committee is not in a position to ascertain whether, and to what extent, a driver shortage would result from deregulation. However, the Committee can conceive that a driver shortage may lead to holders of multiple licences surrendering some of those licences if they are unable to secure sufficient drivers, which would result in a natural attrition of licences.

Safety and service standards

5.50 A purported failure attributed to deregulation was a decrease in driver standards and vehicle safety.¹¹⁸ The Committee has heard evidence that high operational costs, increased competition and low driver earnings can lead to cost cutting in areas such as vehicle maintenance. It is important to note that removing entry restrictions does not require a lessening of qualitative regulatory controls. As noted by the OECD:

Some proponents of open entry to the taxi market seek to argue that entry restrictions are essential if service quality standards are met. However, there is little theoretical or empirical support for this proposition.¹¹⁹

5.51 It has been argued that open entry can give rise to inexperienced taxi drivers who lack geographical knowledge, do not possess the required linguistic skills and may be of poor character. This proposition is premised on the view that:

the consumer benefits from the existence of a taxi industry that is characterised by a predominance of long-term players who, if allowed to maintain "adequate" rate of return will provide a more efficient and higher quality service. By contrast, frequent entry by those with a short-term perspective will supposedly undermine the ability of longer-term players to provide a higher quality service.¹²⁰

5.52 This argument fails to take into account that customers will, at least in part, base their assessment of the quality of service on the performance of the driver. However, there is no evidence to suggest that the service provided by a driver is directly linked to whether they are a licence holder or their length of time and experience in the industry.

5.53 It is evident to the Committee that continued qualitative regulation of the industry is not only desirable, it is essential, as the safety of both passengers and drivers is paramount. As the industry regulator, the Department is responsible for setting industry standards and monitoring compliance with vehicle safety and driver standards. However, the Committee notes that regulatory monitoring of issues

¹¹⁸ D. Nicholls, *The Impact of Deregulation on the Northern Territory Commercial Passenger Vehicle Industry*, p. 3.

¹¹⁹ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 10.

¹²⁰ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 25.

such as driver training and customer service complaints is the responsibility of the network dispatch company, not the Department.

Consumers

5.54 In addition to the quality of service provided by a taxi driver, consumers also base their assessment of taxi services on taxi wait times. Increasing supply has shown to reduce wait times both during peak and off peak periods. Increased consumer satisfaction due to reduced wait times may have the effect of further increasing demand for taxis, as was evidenced in the case of the deregulation of the Dublin taxi industry.

5.55 Economic regulation of the industry pertains both to restricting entry to the market and setting taxi fares. Some jurisdictions that have deregulated entry have maintained regulatory control of fares, while others have allowed the market to determine competitive pricing. Although fare pricing is not a central component of this inquiry, the Committee notes that decisions relating to deregulating entry to the market and reducing annual licensing fees may impact positively on the fare pricing, which would have a flow on effect to consumers.

5.56 In a number of jurisdictions that have lessened or removed entry restrictions, the cost of acquiring a licence has reduced which results in a decrease in operational costs for the licence holder. While there are a number of methodologies for determining fare pricing, the average operational costs are usually factored into the fare structure. If operational costs are reduced and this is not reflected in a comparative reduction in fares, then the licence holders and drivers are likely to increase their profits. However, if fares are reduced, then this benefit is passed on to consumers.

5.57 If it is accepted that high operational costs due to entry restrictions result in higher fares for consumers, it is important to recognise that certain demographics have an increased reliance on taxi service and that:

restricting entry to the taxi industry causes significant equity problems: low income groups are disproportionately users of taxi services. The impacts of entry restrictions in increasing price and reducing availability is therefore highly regressive in its consumer impact – poor consumers are hurt more by entry restrictions than wealthy ones.¹²¹

5.58 The OECD further noted:

From an equity viewpoint, higher prices due to supply restrictions lead to substantial transfers from consumers to producers. This is of particular concern given the widespread observation that lower income consumers spend a higher proportion of their total income on taxi services.¹²²

5.59 The Committee notes that, in anticipation of the legalisation and arrival of ridesharing services in the Northern Territory, the Government has announced

¹²¹ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 8.

¹²² OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 33.

reductions in annual licensing fees for taxis and the introduction of a \$1 levy to be paid by consumers for all categories of CPV to compensate the revenue shortfall that will result from reduced licence fees.

- 5.60 The Department of Infrastructure, Planning and Logistics is undertaking a review of taxi fares, but it is unclear whether this review will account for a reduction in operational costs when annual licence fees are reduced.

Political challenges

- 5.61 A review of jurisdictions where entry deregulation has been attempted or implemented illustrates that Governments have encountered significant lobbying from incumbent licence holders which can prove challenging to overcome. Understandably licence holders seek to protect their profits and:

Where strong supply restrictions have led to large monopoly rents accumulating, there will inevitably be strong opposition to reform proposals from incumbent licence-holders... Adding to the political difficulty of reform is the size of the windfall losses that incumbent licence owners would bear in the event of an immediate move to an open-entry regulatory system.¹²³

- 5.62 This has been evidenced in the Northern Territory with the Minister for Infrastructure, Planning and Logistics advising the Assembly:

I cannot stress enough how many taxi plate operators have knocked on the door in the last few weeks, talking about their concerns and saying if the cap were removed it would end the issue of subleasing, but what would it mean for those who have invested a lot of time, effort, money and support for the Territory into the taxi industry? Some people say it will eliminate the issue of subleasing, but I am concerned about the impact it will have on those who have done the right thing in the taxi industry for a very long time. I have received clear feedback from the plate owners that the last release of licences in the Darwin area—the extra 13 plates—hurt them. They thought that went too far and that the removal of the cap would not be the way to go. I have heard that very loud and clear; we are considering that.¹²⁴

- 5.63 While some jurisdictions such as Ireland and New Zealand undertook an immediate removal of entry restrictions, other jurisdictions have opted for a gradual staged approach of lessening restrictions with the end goal of complete removal. The OECD concluded:

In highly restricted taxi markets, immediate implementation of an open entry policy is likely to be politically challenging. However, adopting staged approaches delays the achievement of reform benefits and poses major practical risks that reform will be stalled or reversed.¹²⁵

¹²³ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 9.

¹²⁴ Hon Nicole Manison, Minister for Infrastructure, Planning and Logistics, Northern Territory Legislative Assembly, *Debates*, 15 February 2017.

¹²⁵ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 9.

5.64 The effectiveness of a gradual reform process in reaching the end goal of entry deregulation has been questioned due to the likelihood of ongoing pressure on policy makers from lobbyists that will be detrimentally affected by policy changes:

While staged reform is seen as a means of making reform more politically feasible, there is much doubt as to the effectiveness of this approach: producers [licence holders] are likely to lobby equally strongly against staged reform, while continued lobbying is likely to lead to the halting or reversal of staged reform programs before their completion. Means of minimising this risk include announcing the details of the long-term reform program".¹²⁶

5.65 However, the Victorian experience demonstrates that it is possible to set in motion a gradual reform process that is completed with the removal of entry restrictions:

the gradual adjustment policy announced in 2002 had the stated intention of achieving a phased transition towards a more lightly regulated industry, with a gradual decline in licence values over time and a breaking of the nexus between the provision of taxi services and the taxi licence as an asset.¹²⁷

5.66 The Victorian transition towards an open market continued over 15 years culminating with the abolition of perpetual licences in 2017, and these licences are being replaced by annually leased licences. Although successive Victorian Governments have succeeded in deregulating entry to the taxi industry, this was not without consistent lobbying by incumbent licence holders to protect their assets and prevent deregulation.

5.67 In the case of the Northern Territory, despite immediate and complete entry deregulation, the National Competition Council noted in 2003:

The difficulties faced by governments is exemplified by the experience of the Northern Territory which in the late 1990s bought back all taxi licences in tandem with opening the market to new participants. Notwithstanding that taxi users continue to pay for this licence buyback, the government subsequently reintroduced entry restrictions, thereby creating the conditions for a future adjustment problem. From the community's perspective, it is not clear what benefit was gained from funding the compensation package.¹²⁸

5.68 The OECD has recommended that to counter the influence of strong lobbying to reverse or halt liberalisation of entry restrictions, "mechanisms to ensure both that adequate steps are taken and that they are 'locked in' in ways that safeguard against future policy reversals are both essential factors in generating a reasonable prospect of success."¹²⁹

5.69 A review of literature regarding taxi industry entry deregulation and an examination of the regulatory regimes across a number of jurisdictions indicates:

¹²⁶ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, pp. 9-10.

¹²⁷ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 41.

¹²⁸ National Competition Council, *Assessment of governments' progress in implementing the National Competition Policy and related reforms: Volume one – Overview of the National Competition Policy and related reforms*, AusInfo, Canberra, 2003, pp. 20-21.

¹²⁹ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 41.

heavy regulation persists despite both a preponderance of opinion in favour of deregulated entry to the industry in economic literature and substantial evidence of major benefits accruing to consumers in which [de]regulation has been undertaken. The persistence of strong controls on entry reflects the effectiveness of lobbying by incumbent interest, a factor which has significant implications for the development and implementation of reform strategies.¹³⁰

Industry perspectives on the cap

- 5.70 The evidence presented to the Committee throughout the course of this inquiry highlights that industry participants have polarised views on whether entry restrictions should be maintained, or if they should be liberalised to provide the opportunity for drivers to become operators.
- 5.71 The majority of incumbent licence holders have primarily argued against the removal of the cap based on the belief that entry deregulation would result in an oversupply of taxis and a subsequent decrease in driver and operator earnings. This perspective appears to be based upon the anecdotal experiences of the 1999 deregulation.
- 5.72 The Committee heard views that rejected the reduction in driver earnings proposition and argued that the overall number of taxis will not increase significantly through deregulation. It has been suggested to the Committee that driver earnings will remain steady, however the distribution of profits will be altered as opportunities to become operators are taken up.
- 5.73 As previously noted, reduced driver earnings were discussed in the Assembly in the early 2000s when consideration was given to placing a temporary restriction on issuing of new licences, however there was no consensus as to the extent of the reduction of earnings. The Committee has not viewed any empirical evidence relating to driver earnings pre and post deregulation, nor has it seen any economic modelling to ascertain what change in driver earnings would result from lifting entry restrictions.
- 5.74 Evidence provided to the Committee by the Blue Taxi Company indicates that while there is a need to address the shortage of taxis during peak periods such as Thursday, Friday and Saturday nights, the company stated that if the cap was removed, “the industry will collapse”.¹³¹
- 5.75 The Committee received evidence that due to the nature of the industry, there will always be increased customer wait times during peak periods irrespective of the number of taxis in operation:

You will have your busy times where you are not going to keep up and people are going to wait and then you come back two hours later and there are taxis everywhere. That is the same as anything. You go down Kentucky meal time and you are queueing up.. It does not matter how many cars you have out

¹³⁰ OECD, *Policy Roundtables: Taxi Services Competition and Regulation*, 2007, viewed on 5 September 2017, <http://www.oecd.org/regreform/sectors/41472612.pdf>, p. 17.

¹³¹ Blue Taxi Company, Committee Transcript, 24 July 2017, p. 21.

there, if it is a peak busy time there is going to be a wait time. That is taxis, or whatever it is you have peak times for different businesses. It does not matter how many you have it is just a fact, the nature of the game.¹³²

- 5.76 The predominant argument from industry participants requesting the removal of the cap is focussed on providing opportunities for any accredited person to obtain a licence and operate their own business, if they wish to do so. Many drivers have expressed the view that it is unfair to place restrictions on who may hold a licence, given that the ballot allocation process is primarily one of luck.
- 5.77 Advocates of entry liberalisation argue that restricting market entry has generated a licence scarcity value which in turn has created a 'black market' for subleasing licences. The Committee has received evidence from a number of industry participants indicating that they have entered into sublease agreements as this is the only way to establish a business if they have not been successful in acquiring a licence through a ballot. Evidence has also been received illustrating the lack of protections for drivers when a licence holder decides to terminate the arrangement.

¹³² Alice Springs Taxis, Committee Transcript, 20 July 2017, p. 7.

6 Ancillary Issues Raised in the Inquiry

- 6.1 While the terms of reference for this inquiry focus directly on licence allocation and subleasing, the Committee has been informed of a number of issues related to regulation of the taxi industry and opportunities to improve service standards. Although the Committee has not inquired into these issues in detail, it is important that they are noted in this report to alert the Government and public to these issues.

Strengthening taxis' tourist services

- 6.2 Taxis play a vital role in the tourism industry with interstate and overseas tourists often reliant on taxis when they visit the Northern Territory. The first experience many visitors will have is during a taxi ride from the airport to a hotel. The Committee considers that taxi drivers are well positioned to enhance visitor experiences by providing a high level of customer service and promoting major attractions, landmarks and events to tourists.
- 6.3 Ensuring drivers have knowledge of the local area is also a way taxis can maintain a competitive advantage over ridesharing services; providing opportunities for economic growth, both within the taxi industry through increased demand and more broadly across the Northern Territory by increasing visitor numbers at tourist attractions.
- 6.4 Opportunities for increasing drivers' knowledge of the local area should be explored, such as partnership between the industry, Department of Infrastructure, Planning and Logistics and Department of Tourism and Culture to develop and deliver driver training modules to specific to Northern Territory tourism.

Service and safety standards

- 6.5 During the course of this inquiry, the Committee has received evidence illustrating that there is some dissatisfaction with the quality of service provided to consumers and safety standards within the Northern Territory taxi industry.
- 6.6 Taxi drivers and operators are subject to a Code of Conduct (the Code) which stipulates minimum service standards that consumers can expect from the industry. Contravention of the Code when carrying passengers is an offence under the Act and carries a maximum penalty of 15 penalty units which currently equates to \$2,310.
- 6.7 The Code sets the minimum allowable standard of dress for drivers which includes covered shoes, neat and tidy clothing that is free from stains and excessive wrinkles, and is not frayed or torn. Drivers who are affiliated with a network must wear the network uniform which has been approved by the regulator.

6.8 Taxi vehicles must be maintained to the standard approved by the Registrar of Motor Vehicles. The Registrar and their delegates can conduct vehicle inspections at any time:

If a vehicle is found to be unroadworthy, unsafe, cosmetically poor or dirty in appearance remedial action may be taken against the driver and or the operator. In some cases the operation of that vehicle may be restricted until the situation is satisfactorily rectified.

A driver operating a vehicle with mechanical defects may be issued with a Defect Notice and/or a summons may be issued. A vehicle under such a notice will not be able to operate for hire or reward until the identified mechanical faults are repaired and the Defect Notice removed by MVR Transport Inspectors or Northern Territory Police (in some remote areas only).

A driver operating a vehicle that does not achieve the approved minimum cosmetic standard may be issued a traffic infringement notice or, a summons may be issued. Vehicles that do not meet the minimum standards will not be able to operate for hire or reward until the condition of that vehicle is such that it meets the required standards.¹³³

6.9 The Committee understands that in June 2017, a joint team of traffic inspectors and police undertook a blitz at Darwin Airport, inspecting more than 50 vehicles and issuing defect notices for vehicle safety issues and infringement notices for vehicles which did not meet the minimum cosmetic standards.¹³⁴

6.10 With the anticipated regulatory reforms to legalise ridesharing services in the Northern Territory, in September 2017 the Department of Infrastructure, Planning and Logistics sought industry feedback on a number of reforms, including a new Code of Conduct to apply to all drivers and operators of commercial passenger vehicles. The closing date for comments on the proposed reforms has passed, however at the time of drafting this report, the Department had not released the finalised reform proposals.

6.11 The former Department of Transport undertook significant consultation in respect to service quality and safety standards as evidenced in the position paper and final report of the *Come Along for the Ride* review of the commercial passenger vehicle industry which took place between 2014 and 2016. The final report contains data on a survey conducted by the Department which indicates that, of the public surveyed, 35% believed that customer service was below average while around one quarter rated driver presentation and vehicle condition as below average.¹³⁵

6.12 The final report shows that survey participants overwhelmingly support requirements for drivers to pass an English assessment and complete the

¹³³ Department of Transport, *Northern Territory taxi drivers and operators code of conduct*, 11 March 2010, viewed on 17 October 2017, <https://nt.gov.au/driving/industry/operating-or-owning-a-taxi-and-CPV/complaints-and-codes-of-conduct>

¹³⁴ K Banks, 'Taxis' Friday night strike threat Darwin', *NT News*, 23 June 2017, viewed on 18 October 2017, <http://www.ntnews.com.au/lifestyle/taxis-friday-night-strike-threat/news-story/ddc366c241f4d9de83447e7c2d61cb94>

¹³⁵ Department of Transport, *Commercial Passenger Vehicle Industry Review Report*, Northern Territory Government, February 2016, p. 12.

national training program, and suggestions were made that additional Northern Territory specific training modules should be added. According to the Department's website, all drivers are required to undertake CPV driver training and all new taxi drivers in Darwin must pass an English assessment at Charles Darwin University. It is unclear why the English assessment requirement has not been extended to other taxi areas.

Inadequacy of taxi services for wheelchair users

- 6.13 The Committee received a submission regarding the lack of availability of multiple purpose taxis for consumers with wheelchairs. People living with a disability are often reliant on taxis for general travel and to attend medical appointments. According to the submission, multiple purpose taxi drivers are not meeting their obligation to prioritise service to consumers with wheelchairs that require specialised taxis, with taxi drivers preferring to pick up other consumers or wait at the Airport taxi rank.

Regulation of bailment agreements

- 6.14 A range of evidence received highlighted the vulnerable position drivers can be put in due to the lack of clear and agreed terms of their bailment agreement. This allows the setting of payment rates at what in effect may be lower than the minimum wage, and can also allow the licence holder to impose on the driver risks that should be the responsibility of the owner, such as the vehicle insurance and costs of an accident. In particular, the Committee notes that the lack of clarity can allow the imposition of such costs after the event, so the driver is charged for the cost of an accident even though they did not agree to taking on that risk.
- 6.15 There have been a variety of responses to this issue around Australia. Victoria regulates the split percentage payment rates, which must be at least 55% for the driver and requires the licence holder to pay all operating costs. Western Australia sets a maximum amount a driver can pay for the use of a car per shift. Until this year, Queensland prescribed what needed to be included in a bailment agreement and for the agreement to be in writing, but have now removed these requirements.
- 6.16 The Committee considers that there is a case for regulating bailment agreements, particularly if the cap on licence numbers continues as this limits the opportunities for drivers to find alternative taxis. At the same time, the Committee acknowledges the benefits of a very flexible system with low administrative costs, given that bailment agreements in many instances are quite short term.

Fraudulent use of BasicsCard

- 6.17 The Committee heard from a number of witnesses that some drivers are engaging in fraudulent activities with vulnerable consumers using the Centrelink BasicsCard. The BasicsCard is a form of EFTPOS card which can be used to purchase a broad range of items from approved businesses, however cannot be

used to purchase items such as tobacco and alcohol. The fraudulent activity involves the driver using the EFTPOS machine as a mobile ATM, the payment is processed on the BasicsCard and the driver provides cash to the consumer. The amount of cash provided to the consumer is less than the EFTPOS transaction. Both parties are complicit in these activities.

- 6.18 The Committee is aware that one of the taxi companies in Darwin had their BasicsCard merchant approval revoked in 2016 after Centrelink conducted an investigation which identified serious breaches of the BasicsCard Merchant Terms and Conditions.

Illegal purchase of alcohol for passengers

- 6.19 A number of reports have been received by the Committee that taxi drivers are illegally purchasing alcohol for passengers which is prohibited under the *Taxi Regulations*. The Committee notes that not only is this behaviour against the law, it shows blatant disregard for successive Governments' attempts to reduce the social harms caused by alcohol.

7 Conclusion

- 7.1 The Assembly referred taxi licensing and subleasing to the Committee as a result of allegations of corrupt practices in the allocation of licences and widespread illegal subleasing. The Committee did not find either of those allegations to be substantiated but it did find a fractured regulatory system with confused communication and inconsistent policies and practices that worked against the public interest.
- 7.2 The root of these problems has been 16 years of the continuation of the 'temporary' cap on taxi licence numbers. This commenced three years after the Government spent \$27.3 million to compensate licence holders as part of the industry reform in 1999 that included the removal of the restriction on licence numbers.
- 7.3 At the time, removing the licence cap was breaking new ground for an Australian jurisdiction. Analysis of the cap had convinced policy makers from the National Competition Policy Review to the Northern Territory Government of the time that while the cap was in the interest of licence holders, it was not in the interest of the public or the economy as a whole. Since then, the cap has been removed in Victoria and steps towards liberalising entry restrictions are occurring in a number of other jurisdictions.
- 7.4 Successive Governments have maintained the temporary cap, however none have decided that making the cap permanent was in the public interest. In addition, none of the various reviews conducted concluded that a permanent cap was in the public interest.
- 7.5 This perpetuation of the temporary cap has had a number of unintended adverse consequences. The temporary nature of the policy settings has been a disincentive for the Department to seek appropriate legislative change. As a consequence, the legislation has not adequately supported the current regulatory regime. This has not only made the law difficult to understand and implement, but has resulted in the Department interpreting the legislation according to what it considered should be its intent, even when that was contrary to the legal advice it had received. The consequences of this approach have included:
- Departmental statements that subleasing is illegal conflicting with Government policies supporting subleasing, resulting in a commonly stated belief that the Department was corrupt and not operating according to the law.
 - Industry participants following the Department's directions not having the same options as those willing (perhaps on the basis of alternative legal advice) to ignore the Department's position.
 - Industry practices outside the Government's policy continuing in an unregulated manner.
 - The Department appearing incapable of enforcing the legislation.

- The Department appearing to apply legislation differently to different people, further reinforcing a perception of corruption.
- 7.6 This history, detailed earlier in this report, explains the perception of industry corruption, despite the Committee not finding any direct evidence of corruption. The question remains of how licence allocation and subleasing should be managed in the future, and how can good policy and the law be brought into alignment.

Future regulation

- 7.7 The first question to address when considering how to manage licence allocation and subleasing is whether the cap on licence numbers should be maintained.
- 7.8 Removing the cap on licence numbers would likely eliminate problems associated with licence allocation and subleasing. If any person can obtain a licence, subject to appropriate eligibility requirements, then there would be no need for a system to allocate (e.g. ballot) licences. Similarly, if any person can apply for a licence from the Government, there is no incentive for a person (apart from someone ineligible for getting a licence) to pay a licence holder a premium through a sublease agreement to get access to a licence.
- 7.9 However, the fact that removing the cap would likely eliminate the problems associated with licence allocation and subleasing, does not in itself mean the cap should be removed. It does, however lead the Committee to the conclusion that the cap should not be maintained, unless it is demonstrably in the public interest to do so.
- 7.10 Determining whether the cap should be maintained requires an assessment of the costs and benefits of the cap.
- 7.11 As outlined in Chapter 5, the costs of the cap include:
- Creating a scarcity of taxis compared with the number that can be sustained by the market, meaning it will take longer to catch a taxi during peak periods, and reducing a key element of customer service.
 - Enabling licence holders to make a profit from the scarcity of licences in addition to the value they provide to the economy by providing a service. This adds to the cost of the provision of taxis without a commensurate increase in public benefit.
 - Preventing drivers from having the opportunity to develop a business in operating taxis regardless of skill, work or investment.
 - Creating incentives for unscrupulous and illegal behaviour in order to gain benefits from holding a licence.
- 7.12 The benefits of maintaining the cap include:
- Providing stability to the taxi industry by limiting change in an already changing environment.

- Protecting the additional profits that licence holders receive due to the regulated scarcity of licences.
- 7.13 The Committee finds the benefits of removing the cap to be significant. Improving the accessibility of taxis, reducing the overall cost of taxis, providing opportunities for drivers to develop their own businesses and removing unscrupulous practices around subleasing are all tangible benefits to the community.
- 7.14 In terms of the benefits of maintaining the cap, the Committee finds limiting the pace of change the most significant. The potential for ridesharing has brought new uncertainty to the taxi industry which may result in a range of changes in the near future, and the industry may require assistance to manage the pace of this change. As already noted, taxi service providers make a vital contribution to the Northern Territory, and it is important that Government's policies support businesses to be sustainable and profitable during times of change. The challenge is to develop policies that promote sustainable businesses, increase opportunity and innovation, are cost effective, and promote better services.
- 7.15 In terms of the benefits from protecting the additional profits of incumbent licence holders that result from licence scarcity, the Committee notes that while this promotes the sustainability of taxi operators, it comes at a cost to other industry participants and the community as a whole, and that such protection does not promote the innovation required for taxis to remain competitive.
- 7.16 The Committee therefore concluded that the greatest public benefit would be achieved by removing the cap on licence numbers. The Committee also noted that none of the reviews conducted since 2002 have recommended keeping the cap, and more of the Ridesharing Steering Committee members voted to remove the cap than those that voted to retain it.¹³⁶
- 7.17 The Committee is mindful, however that removing the cap introduces further change to the industry. A sudden removal of the cap on licence numbers runs the risk of an unsustainable increase in the number of taxis before a market-driven level is established, and could create transitional problems for those who have made decisions, such as entering a sublease, on the hope the cap will remain.
- 7.18 The Committee therefore considers that the cap should be removed through a staged process that is rapid enough to enable the benefits to be obtained, while minimising any disruption caused by the transition. For example, a transition could be made by allocating an additional ten percent of the total number of licences by ballot every year, until such time as there were insufficient applications for licences to warrant a ballot, at which time the licence restriction would be removed.
- 7.19 The Committee notes that a transitional process must be effective in the short term to significantly reduce the incentives for licence holders to sublease their licences. As noted in this report, the current regulation of subleasing is not

¹³⁶ Department of Infrastructure, Planning and Logistics, *Ridesharing Steering Committee Position Paper*, Northern Territory Government, February 2017, p. 59.

working. If the proposed transition to an unrestricted environment is too slow, then significant work will also need to be undertaken to address the problem of subleasing. At the same time, too rapid a transition may create market instability.

- 7.20 As noted above, taxi operations play an important role in providing transport services to Territorians and in supporting the economy. It is important that any change causes minimum disruption to the provision of those services, and the businesses that provide them. All sectors of the industry should be consulted on how the removal of licence number restrictions can best be achieved.

Recommendation 1

The Committee recommends that the cap on taxi licence numbers in Darwin and Alice Springs be removed through a staged reform process. The staged reform process should be established in consultation with industry with a view to maximising the quality of taxi services while minimising any potentially adverse consequences of change.

If the cap is removed

Eligibility requirements for licences

- 7.21 While removing the cap eliminates problems relating to the most appropriate method of allocating licences, a question remains around what the eligibility requirements should be for a person to apply for a licence.
- 7.22 Eligibility requirements can be used to address a range of issues. The first is community safety and wellbeing. Requiring licence holders to meet standards relating to a fit and proper person helps protect the community from unsafe or undesirable practices.
- 7.23 The second issue eligibility requirements can address is service standards. Setting minimum standards regarding experience in the industry can help ensure operators have an understanding of delivering taxi services. The Department is responsible for setting industry standards and must regulate compliance with these standards.
- 7.24 A recent trend in a number of Australian jurisdictions is to only issue Government leased licences to people that do not already hold a licence and will be the principal driver of the taxi. Such requirements facilitate the development of taxi operations as an owner-operator business. This is a shift away from previous practice, where many operators held a number of licences and managed those licences rather than drove the taxis. Residency requirements are another means of promoting an industry with active licence holders.
- 7.25 Eligibility can also regulate the industry by restricting access. In the absence of the cap on the number of licences, entry can be limited by onerous requirements, such as an extended number of years driving before a person can apply. While some restriction on entry can have the benefit of protecting the market from rapid

change, it can also create similar costs to a licence number cap by creating scarcity.

- 7.26 If the cap is removed, the Committee considers that the entry requirements for obtaining a licence should be reviewed to ensure they adequately promote safety and service standards. However, such requirements should not be used as an alternative means of restricting entry into the industry. Consequently, the review should also remove any restrictions that are no longer required.
- 7.27 In this regard, the Committee questions whether residency requirements are appropriate if the cap is removed or whether there should no longer be an impediment to a licence holder moving interstate.

Recommendation 2

The Committee recommends that the requirements to hold a licence should be reviewed and revised to ensure that they adequately promote community safety and service standards without unfairly restricting entry to licence holding.

Maintaining service standards

- 7.28 While removing the cap would improve taxi availability, there are other elements of quality taxi services that will continue to require regulation. As individuals, taxi drivers have limited opportunity to compete for clients on service standards. In addition, the existence of only two taxi networks in Darwin does not provide a strong incentive to compete on standards. The Committee notes the conflicting anecdotal evidence on the effect of the 1999 removal of the cap on service standards. The Department will need to be vigilant and innovative to ensure there are incentives for improved standards and enforcement of compliance with the compulsory service standard requirements.
- 7.29 Removing the regulatory problems that have arisen as a consequence of the cap on licence numbers will simplify the regulatory requirements, and thereby ease the administrative burden on the Department and should make communicating legal requirements easier. This should also allow greater emphasis on the maintenance of service standards.
- 7.30 Effective enforcement of standards needs clarity of requirements, and consistency of approach. The Committee therefore considers that the removal of licence restrictions should be accompanied by the implementation of a clear strategy for ensuring that compulsory standards are complied with.

Recommendation 3

The Committee recommends the Department develop and implement a strategy for improving service standards and safety requirements.

If the cap is maintained

7.31 As previously discussed, subleasing is a direct consequence of restricting market entry and these restrictions require the Government to determine the most appropriate method for allocating the limited licences that are available. If the licence cap is maintained, appropriate measures will need to be put in place to ensure that industry regulation is effective.

Subleasing in a restricted market

7.32 The Committee agrees with the Department's view that subleasing in a restricted entry market is against the public interest but does not agree that it is currently prohibited by law. If the cap is maintained, there will continue to be strong incentives for subleasing. The Department would therefore need a comprehensive strategy to prevent subleasing. This would require legislative change, or at least a change to licence conditions, to prohibit subleasing, and the development of effective means of enforcement. Consideration would need to be given as to whether enforcement would require any additional investigative powers, or whether existing powers could be used more effectively.

7.33 A challenge in making subleasing illegal is the consequences for parties that have entered into long term agreements. It would appear that outlawing subleasing would have an effect on sublease contracts as, while the contracts may have been legally binding when entered into, they may become illegal contracts if the terms of the contract involve conduct that is breaking the law. Consequently, the contract may become void or unenforceable. It is unclear what the repercussions would be for sublessees that have made payments in advance to licence holders and whether they would have any recourse to recoup a portion of this payment. Consideration will need to be given to providing adequate transitional arrangements and support to affected parties.

7.34 It has been suggested to the Committee that there are instances where subleasing should be permitted, such as if a licence holder has an illness that prevents them from operating the taxi, or requires them to travel interstate for treatment. While it is important that licence holders can continue to receive an income in these circumstances through their taxi being operational, it appears that this could be and has been achieved through a management arrangement with the network dispatch company to which the licence holder is affiliated. That is, the licence holder could continue to have their taxi operational by contracting or employing somebody to perform operational work on their behalf rather than transferring responsibility for operation through a sublease.

7.35 A significant challenge in prohibiting subleasing will be making enforcement effective with limited costs. All enforcement involves administrative costs. In addressing subleasing, where both the Department and industry participants have indicated that obtaining evidence for enforcement is difficult, keeping enforcement costs to a minimum will require innovation. Avoiding such cost by removing the incentive for subleasing is a significant advantage of removing the licence cap.

Recommendation 4

The Committee recommends that, if the cap is maintained, the Department develop and implement a comprehensive strategy to prevent subleasing, including any necessary changes to legislation, regulations or licence conditions, and the development of effective means of enforcement. In developing this strategy, the Department should have regard to any need for transitional arrangements for existing sublease agreements.

- 7.36 The Committee notes that enforcement of residency requirements would at least prevent licence holders outside the Northern Territory from subleasing their licence. The Committee considers that obtaining evidence of residency, or imposing administrative requirements to demonstrate residency, would be easier to achieve than gaining evidence of private subleasing arrangements. Further, the enforcement of such requirements does not require any legislative change.
- 7.37 The Committee acknowledges that the Department has already commenced more rigorous investigations into allegations of licence holders not meeting residency requirements. The Committee considers it would be prudent for the Department to continue to undertake more proactive and comprehensive investigations to ensure residency requirements are complied with.

Recommendation 5

The Committee recommends that, if the cap is maintained, the Department undertake proactive and comprehensive investigations to determine if licence holders are complying with current residency requirements.

Allocation of licences in a restricted market

- 7.38 If the number of taxi licences continues to be restricted, then the Department will need to have an appropriate method of allocating licences as they become available.
- 7.39 Evidence provided to the Committee indicated the majority of industry participants believed that the ballot process is the preferred and most appropriate method for allocating licences if entry restrictions remain in place.
- 7.40 The Committee found that while there was consensus that ballots should be restricted to existing industry participants, there were differing views on how long a person needed to be in the industry to be eligible for the ballot. Many witnesses agreed that the five year length of service requirement used in the 2016 Darwin ballot was appropriate.
- 7.41 There was no consensus on whether existing licence holders should be able to acquire additional licences through the ballot. Licence holders advocated that they should be able to obtain additional licences whereas non-licence holders felt that the opportunity to become an operator should be restricted to existing drivers who did not already hold a licence.
- 7.42 The Committee notes that recent practice in the Northern Territory and around Australia is to set eligibility requirements in a restricted market to promote owner-

operators as the preferred licence model. Such an approach increases opportunities for taxi drivers to progress to operators and thereby provide more of a career structure within the industry.

7.43 The Committee found little evidence that there are significant opportunities for increased efficiency through aggregation of the operation of taxis. Consequently, the Committee considers that licence eligibility requirements should promote taxi licence holders being owner-operators.

7.44 While the Committee does not favour restrictive eligibility requirements in an open market, if the cap on licence numbers is continued then eligibility requirements may play a role in fairly rationing the limited licences available. In particular, it becomes appropriate to restrict eligibility to those who have been working within the industry for an extended period. Consequently, the Committee considers that the requirement used in previous ballots for five years' experience as a driver is appropriate.

Recommendation 6

The Committee recommends that, if the cap is maintained, taxi licences should be allocated through the ballot process between existing drivers who do not already hold a licence and have worked as a driver in the Northern Territory for at least five years.

Communication and the need for analysis

7.45 The evidence presented to the Committee throughout the course of this inquiry demonstrated communication failings between industry participants and the Department of Infrastructure, Planning and Logistics which the Committee has attributed to a number of factors including:

- Inconsistent messaging regarding the legality of subleasing which was exacerbated by the creation and application of *Policy 5.20*.
- A lack of transparency surrounding licences allocated under *Policy 5.20* which generated suspicion of the Department, and resulted in unsubstantiated allegations of corruption.
- Inadequate education of industry participants on acceptable industry practices and regulation.
- An increasing number of industry participants being migrants from a non-English speaking background.

7.46 As previously noted, in 2015 the Minister was advised that the creation and use of *Policy 5.20* could be seen as tacit approval of subleasing and rewarding sublessees through licence allocation could also be seen as unfair and biased. While these may have been regarded as unintended consequences, they were not unforeseen.

7.47 The decision making regarding licence allocation, along with the Department not holistically addressing subleasing, or proposing amendments to the existing

legislative framework to better regulate the industry, potentially suggests that the Department may have been subject to regulatory capture, and is unable to objectively regulate the industry.

- 7.48 The Committee found that irrespective of any regulatory changes that may occur, it is imperative that the Department rebuild trust within the industry through open, transparent and accountable decision making.

Recommendation 7

The Committee recommends the Department take action to restore trust through open, transparent and accountable decision making.

Recommendation 8

The Committee recommends the Department develop and implement an extensive education program to improve the industry's understanding of the regulatory framework, compliance with regulatory requirements and industry and consumer expectations.

Recommendation 9

The Committee recommends that the Department and the Department of Tourism and Culture work collaboratively with the industry to enhance the role of taxis in providing tourist services.

- 7.49 The Committee observed that while a considerable number of industry reviews have been conducted, these reviews have focussed primarily on consultation and have lacked critical analysis of the impacts of potential regulatory reforms. While consultation with industry participants is both important and necessary, it must be done in conjunction with an objective and comprehensive analysis of the implications of reforms for the public as a whole.
- 7.50 It is evident that changes to the taxi industry will have significant impacts on industry participants and while some sectors advocate to maintain the status quo, others support an overhaul of the current regulatory regime. The inherent risk of basing reviews purely on consultation is that the decisions can be determined by what sectors are better placed to be organised and lobby effectively, rather than an understanding of what is in the public interest.
- 7.51 The Committee concludes that any future industry reviews require an appropriate balance between industry consultation and objective analysis to identify options for regulatory reform. Any review would also require a comprehensive assessment of the impacts of reforms on existing industry participants, new entrants to the industry, consumers and the overall public benefits of any proposed regulatory regime.

Recommendation 10

The Committee recommends that all future industry reviews incorporate both industry consultation and comprehensive and objective analysis of the options for regulatory reform and their implications.

Regulatory Stability

- 7.52 The Committee also considers that the industry has been subject to an excessive number of reviews that have not led to clear decisions. This has promoted uncertainty for the industry and resulted in a regulating Act that is opaque in its meaning, and has convoluted paths to achieving its ends.
- 7.53 The Committee therefore considers that the industry needs clear decisions from Government regarding its future directions, and a comprehensive review of the applicable legislation so that it is easily understandable and consistent with those policy settings.
- 7.54 The Committee acknowledges that ridesharing and other developing technologies mean that the industry will continue to change over the coming years. While this makes the future less predictable, it also increases the need for a clearer, more stable and simpler regulatory regime.

Recommendation 11

The Committee recommends that the Government, as far as possible within the current changing environment, avoid any further reviews of the taxi industry, and make clear decisions about the appropriate policy settings, and amend the applicable legislation to provide clear laws consistent with policy choices.

Appendix 1: Jurisdictional Comparison Table

State/ Territory	Licence Types, Conditions and Bailment Regulation	Licence Allocation	Entry restrictions
ACT	Perpetual licences (no longer issued) can be sold or leased. Transferable leased licences (no longer issued) can be leased. Standard and wheelchair licences cannot be leased or sold.	Issued using a waitlist with pre-approval for the list valid for two years.	Licences capped at 358. Surrendered licences can be reissued quarterly subject to analysis of market conditions.
NSW	Perpetual licences (no longer issued) can be sold, leased or subleased. Short term licences issued for up to six years can be leased and subleased but not sold. Annual licences can be leased and subleased but not sold. Regulator must be informed of lease and sublease agreements. Driver bailment agreements are regulated with specifications for both percentage of earnings and fixed pay in rates. Permanent drivers are entitled to paid annual leave, sick leave and long service leave.	Annual licences offered through public tender.	Ministerial Determination issued annually stating how many licences will be issued in the following financial year. In 2015 a four year moratorium on issuing new licences in Sydney.
Qld.	Perpetual licences (no longer issued) can be sold, leased or subleased. Government leased licences are set to be introduced and will be able to be leased but not sold. Prior to June 2017 written bailment agreements were mandated and first year drivers could only enter into split percentage agreements. These regulations have been removed.	Perpetual licences were issued through public tender. Allocation process for Government leased licences has not yet been stipulated.	Legislation provides for entry restrictions. No new licences will be issued until 2018.
SA	Perpetual licences can be sold and leased however cannot be subleased. Applications to commence or terminate a lease are endorsed by the Taxi Council.	Offered through public tender.	Maximum of 50 new licences per year can be issued.
Tas.	Perpetual licences (no longer issued) can be sold or leased. Owner-operated licences (OOL) can be sold but not leased. Wheelchair licences can be sold but not leased. Temporary licences exist but are rarely issued.	OOL offered through public tender with a reserve price. Wheelchair licences available upon application.	The number of OOL to be issued each year is capped at 5% of the total licences in each taxi area or one licence per taxi area, whichever is greater. Issuing of new licences suspended by Minister in 2016 due to introduction of ridesharing. No cap on wheelchair licences.
Vic.	From July 2014 annual Government leased licences were issued which could not be leased and must be operated by the licence holder. Perpetual licences are being revoked in 2017 and replaced with annual Government leased licences that can be sold but not leased. From July 2014 legislated 'implied conditions' require drivers to receive 55% of gross fare takings, which prohibits fixed pay in amounts, and licence holders must pay for fuel.	Issued on application to the Taxi Services Commission.	Taxi Services Commission can suspend issuing new licences for 12 months if it would have a detrimental effect of consumers. To date this has not occurred.
WA	Perpetual licences (no longer issued) can be sold, leased and subleased. Government leased licences cannot be subleased and the licence holder must be the principal driver and cannot hold another licence. Maximum fixed rate payable by a driver to an operator for a shift is regulated.	Expressions of interest and a merit selection process. A ballot is used after merit selection process if there are more applicants than available licences.	The number of Government leased licences cannot exceed 45% of the total number of perpetual licences.

Appendix 2: Public Hearings

Alice Springs – 20 July 2017

1. Combined Cabs Pty Ltd (trading as Alice Springs Taxis)
2. Alice Taxi Drivers Association
3. Taxi Drivers

Darwin – 24 July 2017

1. Taxi Drivers
2. Blue Taxi Company Pty Ltd
3. B&A Dispatch Services Pty Ltd (trading as Darwin Radio Taxis)
4. NT Taxi Council
5. Department of Infrastructure, Planning and Logistics

Note: Copies of public hearing transcripts are available at:

<https://parliament.nt.gov.au/committees/PAC/northern-territory-taxi-industry>

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