

REVIEW OF NSW PASSENGER TRANSPORT LEGISLATION

Discussion Paper
September 2012



Transport
for NSW

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EXECUTIVE SUMMARY

The NSW Government has a new vision for passenger transport that reflects the need for a seamless, robust and better-integrated public transport system for the community. The Government initiated the Review of NSW Passenger Transport Legislation to ensure the legislative framework for providing passenger transport services supports this vision. Transport for NSW (TfNSW) has identified a range of issues and options for consideration regarding the existing legislation and seeks feedback from members of the public and industry via this Discussion Paper.

Background and project overview

Arrangements for passenger transport in NSW are primarily set out in the *Passenger Transport Act 1990* (PT Act).

NSW passenger transport law includes a variety of legal requirements and service arrangements. These focus on individual transport modes rather than achieving outcomes for customers. Some services, such as light rail, are not covered at all.

The NSW Government initiated this Review to ensure the legislative framework for providing passenger transport services supports its vision for customer-focused, integrated, safe and efficient transport services.

The Review is considering three areas:

- 1. Service Delivery:** Regulatory framework and administrative arrangements for the contracting and licensing of passenger transport services, operation of taxi networks and community transport, and powers to set and review the process for passenger fares and transport concessions.
- 2. Safety:** Safety regulation of passenger transport services, with a focus on changes that will be made to NSW legislation in 2013 as a result of the national reforms for heavy vehicles (which includes buses), rail and commercial vessels (which includes ferries).
- 3. Ticketing, revenue protection and passenger conduct regulations:** Transport regulations that cover ticketing, revenue protection and passenger conduct. This area is being implemented separately to allow for the introduction of the Opal electronic ticketing system in late 2012.

This Discussion Paper invites comment on the outcomes of the Review. The NSW Government will consider all feedback, prepare revised legislation and release a Regulatory Impact Statement that provides further opportunity for comment.

Objectives (“objects”) and scope of passenger transport legislation

The objectives of passenger transport legislation, as described in the “objects” of the PT Act, describe what the Government seeks to achieve by regulating passenger transport.

The current “objects” are narrowly-focused and specific to particular modes of transport. The Review proposes a new set of objectives that match the new vision for transport in NSW by emphasising outcomes for customers rather than the vehicles providing the service.

The Review also proposes to cover all passenger transport services with a single revised passenger transport act and regulation.

Both proposals will increase the ability of Government to deliver flexible and innovative transport solutions.



Delivery of passenger transport services

Passenger transport legislation helps to deliver passenger transport services in different ways. Bus, train, light rail and ferry services are purchased by Government using contracts. The current contract provisions in the PT Act are detailed, overly complex and mode-specific. There is little coherence or integration in the way passenger transport services are purchased as contract conditions and performance standards vary widely between transport modes.

The Review proposes a new set of definitions and changes to specific sections that currently limit how services can be delivered to the community. The new mode-neutral definitions promote integration and flexibility. In particular, they give Government greater flexibility when dealing with the requirements placed on operators and drivers.

Regarding the detailed arrangements for contracting services, the Review proposes that the new passenger transport legislation allow Government to choose the modes and types of services it purchases, the types of operators it purchases services from, and how it regulates them. To support this, some sections may be removed from the legislation but will still be included in contracts. These include mode-specific performance standards and service levels, contract terms and exclusive rights to a route or region.

The review is being undertaken as a separate process from work to contract the operation of Sydney Ferries and the NSW Bus Reform program which is looking at introducing new contracts for metropolitan bus services. The Review will not impact on these reforms or any existing contracts between transport providers and the NSW Government.

Licensing and accreditation of passenger transport services

Intrastate air services

Intrastate air services operate outside the passenger transport legislation and are regulated under the *Air Transport Act 1964*. The Review proposes the inclusion of these services in the revised passenger transport legislation. Several minor changes are proposed as part of this process, including removing references to the State Aviation Working Group (SAWG) and changes to reporting requirements.

Taxis

Taxis are an important component of the Sydney and NSW integrated transport networks. They provide fast, flexible and personalised transport at all hours. TfNSW is considering a number of options for improving the operation of taxi networks in the areas of booking services, network coverage, performance reporting and compliance with performance standards. These areas have a significant impact on taxi customers' experiences.

Community transport

Recognising the growing ageing population and the anticipated increase in demand, TfNSW is considering whether community transport services should be regulated in the same way as contracted bus services i.e. drivers are authorised and operators are accredited. Under the changes being considered, the new passenger transport legislation would include a definition of "community transport" and provisions that would allow TfNSW to decide if operator accreditation or driver authorisation is needed for particular community transport contracts. These requirements would be limited to organisations receiving TfNSW funding over a specified level.

Fares and concessions

Maximum fares for passenger transport services are currently set through three different Acts: the PT Act, the *Transport Administration Act 1988* (TA Act) and the *Independent Pricing and Regulatory Tribunal Act 1992* (IPART Act). The Review proposes that existing arrangements governing these functions should be streamlined and consolidated into the revised passenger transport legislation. IPART and TfNSW would continue to have roles in setting and reviewing maximum fares. A similar approach is proposed for determining eligibility for concessions and free travel.

Safety of passenger transport

In addition to seeking feedback on a range of options, this Discussion Paper provides information about national reforms that will provide a new framework for regulating rail, buses (as part of the heavy vehicle fleet) and ferries (as part of the commercial vessel fleet). The Paper notes the current status of these reforms and the impact they are expected to have on passenger transport legislation.

Passenger transport regulations

This Discussion Paper describes amendments to the *Passenger Transport Regulation 2007* and the *Rail Safety (Offences) Regulation 2008*. These amendments are being implemented separately to allow for the introduction of the Opal electronic ticketing system later in 2012. The changes will bring the provisions in the two existing Regulations into a revised passenger transport Regulation; provide consistent rules for ticketing and passenger behaviour offences; and clarify the roles of authorised officers and NSW Police Officers. They make minor changes to some offences and introduce several new offences.

Providing feedback

This paper proposes some significant changes that will improve passenger transport in NSW. We look forward to receiving your feedback.

In some sections, specific proposed approaches are described and TfNSW seeks comment on these proposals. In other sections, TfNSW seeks feedback on several different options.

You are welcome to comment on as many or as few as you like.

Please submit your comments by 23 October 2012

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GLOSSARY

AFM	Advanced Fatigue Management
AMSA	Australian Maritime Safety Authority
ATSB	Australian Transport Safety Bureau
BFM	Basic Fatigue Management
CASA	Civil Aviation Safety Authority
CTP	Community Transport Program
DIRN	Defined Interstate Rail Network
HACC	Home and Community Care
IPART	Independent Pricing and Regulatory Tribunal
IPART Act	Independent Pricing and Regulatory Tribunal Act 1992
ITSR	Independent Transport Safety Regulator
KPIs	Key Performance Indicators
MBSC	Metropolitan Bus Service Contract
MSA	Marine Safety Act 1998
MTS	Metro Transport Sydney
HVNL	Heavy Vehicle National Law
NHVR	National Heavy Vehicle Regulator
OMBSC	Outer Metropolitan Bus Service Contract
OTSI	Office of Transport Safety Investigations
PT Act	Passenger Transport Act 1990
PT Regulation	Passenger Transport Regulation 2007
RMS	Roads and Maritime Services
RSNL	Rail Safety National Law
SAWG	State Aviation Working Group
SMS	Safety management systems
TA Act	Transport Administration Act 1988
TfNSW	Transport for NSW

1 INTRODUCTION

1.1 NSW Government's transport vision

The NSW Government's new vision for passenger transport reflects the seamless, robust and better-integrated system that the community needs.

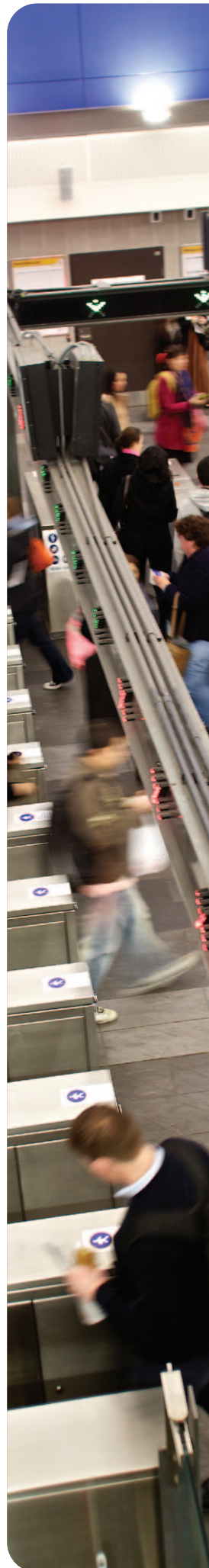
The Government's powers for managing transport in NSW are set out in the *Transport Administration Act 1988 (TA Act)*. The TA Act has been amended to reflect the Government's vision and now provides a clear set of principles for developing transport policy.

- 1. Customer focus:** To put the customer first and design the transport system around the needs and expectations of the customer.
- 2. Economic development:** To enable the transport system to support the economic development of the State.
- 3. Planning and investment:** To ensure that good planning informs investment strategies.
- 4. Coherence and integration:** To promote coherence and integration across all transport modes and all stages of decision making.
- 5. Performance and delivery:** To focus on performance and service delivery, based on a strong purchaser-operator model with clear accountabilities for outcomes.
- 6. Efficiency:** To achieve greater efficiency.
- 7. Environmental sustainability:** To promote the delivery of transport services in an environmentally sustainable manner.
- 8. Social benefits:** To contribute to the delivery of social benefits for customers, including greater inclusiveness, accessibility and quality of life.
- 9. Safety:** To provide safe transport services in accordance with a safety regulatory framework.

To support this new transport vision, earlier in 2012 the Government issued a Discussion Paper on the *NSW Long Term Transport Master Plan*¹. Stakeholders and the public were invited to provide feedback on how NSW's transport system could be more integrated and customer-driven. A draft Plan has now been released.

Once it is finalised, the *Master Plan* will shape decision-making for NSW transport and will outline a process for determining the future of all transport modes.

¹ The Discussion Paper on the Long Term Transport Master Plan can be found at <http://haveyoursay.nsw.gov.au/transportmasterplan>



1.2 Why does the Government regulate passenger transport?

Regulation is an important tool available to government and helps deliver the community's economic, social and environmental goals. However, regulation can also impose administrative and compliance burdens on business, consumers, government and the wider community. These impacts must be weighed against the benefits that regulation provides.

The NSW Better Regulation Office's *Guide to Better Regulation* outlines the seven principles which characterise good regulation:

1. the need for government action should be established;
2. the objective of government action should be clear;
3. the impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options;
4. government action should be effective and proportional;
5. consultation with business and the community should inform regulatory development;
6. the simplification, repeal, reform or consolidation of existing regulation should be considered; and
7. regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

In relation to passenger transport, the Government regulates, or intervenes, for a number of reasons including to meet the transport needs of the community, ensure the safety of customers and workers, protect the environment and infrastructure, and ensure that services balance the needs of customers with those of commercial operators (e.g. by providing exclusive access to a route where a service would not otherwise be viable).

1.3 How is Government involved in passenger transport?

Several Acts determine how Government is involved in passenger transport in NSW. The primary legislation is the *Passenger Transport Act 1990* (PT Act).

Overview

Through the passenger transport legislation framework the Government:

- Purchases and operates some passenger transport services on behalf of the community using contracts.
- Establishes targeted rules to ensure transport services are delivered safely and effectively, including accreditation and authorisation requirements for passenger transport operators and drivers
- Licenses some service operators (e.g. intrastate air services and taxis) to ensure there are enough services and the industry sectors are viable and sustainable
- Sets charges for access to transport networks and services, including maximum fares for using passenger transport services.

Responsibilities for NSW passenger transport are primarily described in the *Passenger Transport Act 1990* (PT Act).

The PT Act regulates the operation of buses, trains, ferries, taxis and hire cars, including:

- Contracting for the delivery of passenger transport services.
- Accrediting passenger transport services operators.
- Authorising passenger transport vehicle drivers.
- Regulating taxis and hire cars.
- Setting fares.

Other NSW laws set out requirements and arrangements for specific transport modes. These include the *Roads Act 1993*, the *Road Transport (General) Act 2005*, the *Rail Safety Act 2008*, the *Marine Safety Act 1998* and the *Air Transport Act 1964*. Transport operators must also comply with the *Work Health and Safety Act 2011* to ensure the safety of people working in the sector.

Each of these Acts is supported by specific regulations setting out operational information and details that may change more often than information contained in legislation. An example is the rules about ticketing and fines for transport offences.

Active transport

Walking and cycling form an important part of an integrated transport system in NSW.

As active transport is not a service and has no passengers, it is not regulated under the PT Act. The legal requirements for cyclists and pedestrians are set out in the *Road Rules 2008*.

Under these Rules:

- a bicycle is considered a vehicle and is subject to the same road rules as other vehicles and there are some additional rules that apply to bicycles e.g. riders must wear helmet.
- pedestrians must obey signs and traffic lights.

The Government is looking at ways to promote active transport. This includes developing infrastructure (e.g. bike paths) and facilities that support bike-and-ride and walk-and-ride options (e.g. places to store bikes at transport interchanges). There is an opportunity within revised passenger legislation to support active travel by ensuring that laws support the delivery of customer focused transport services which are integrated with other modes.

Transport interchanges

Transport interchanges are key components of an integrated passenger transport system. Well designed and managed interchanges allow customers to seamlessly change from one service or mode to another by providing:

- Easy access to other transport modes (e.g. taxis, connecting buses)
- Clear signposts and transfer facilities (e.g. drop-off zones, parking)
- Safe and comfortable waiting areas that are weather-protected, well-lit, clean and provide passenger information
- Friendly and helpful staff
- Access to retail and other facilities.

While they are not regulated within passenger transport legislation they are strongly supported by the Government and the management of interchanges could potentially be brought within the scope of revised passenger transport legislation. This could enable services at transport interchanges to be purchased using the same principles that are applied to other transport modes.

1.4 The rationale for change

The legislation governing passenger transport in NSW covers essential areas of service delivery. If the people of NSW are to benefit from the NSW Government's vision for a customer-focused passenger transport system, aspects of the legislation that do not support this vision must be modified.

NSW's current passenger transport arrangements include trains, light rail, buses, ferries, taxis and community transport services. The services are operated by both Government and private providers and the modes are largely independent of each other.

Route planning, timetabling, ticketing and building infrastructure are all important for supporting the Government's vision of an integrated, customer-focused passenger transport system. However, it is legislation that underpins the provision of transport services. Among other things, it covers how contracting, safety, fares, ticketing and concessions operate across transport modes.

Currently, different passenger transport modes have different legal requirements and service arrangements set out in different pieces of legislation, most of which are mode-focused rather than passenger-focused.

This means that the way passenger transport services operate and are managed in NSW is inconsistent.

- Some services require Government licensing or accreditation, others do not
- Some operators require a contract, some do not
- Some safety legislation applies to some modes but not to others
- Fares, ticketing and concessions vary widely.

These inconsistencies can make it difficult for the Government to purchase or allow new and innovative service types to operate. It can also lead to situations where the Government is forced to regulate services where there appears to be no public benefit in doing so.

To be effective, any Review into passenger transport must examine the objectives of passenger transport legislation and the framework for delivering passenger transport services, and must consider how this framework can be modified to meet the Government's objectives.

The aim of this Review is to have legislation that:

- Aligns with the *Transport Administration Act 1988* amendments made in 2011 which included establishing Transport for NSW and setting new integrated transport objectives.
- Is based on principles common to all modes, including active travel.
- Supports the delivery of flexible and innovative transport solutions.

The Review takes into account national law reforms that will provide a new framework for regulating rail, buses (as part of the heavy vehicle fleet) and ferries (as part of the commercial vessel fleet). These new laws will lead to some legislation being repealed and other legislation changing.

The review is being undertaken as a separate process from work to contract the operation of Sydney Ferries and the NSW Bus Reform program which is looking at introducing new contracts for metropolitan bus services. The Review will not impact on these reforms or any existing contracts between transport providers and the NSW Government.

The NSW Government will continue working with transport service providers to understand their needs and ensure that measures are in place which support sustainable delivery of services and allow reasonable commercial returns to be received from transport contracts. The current and proposed future arrangements for passenger transport legislation are illustrated in Figure 1.

The current and proposed future arrangements for passenger transport legislation are illustrated in Figure 1.

Figure 1 - Current and proposed future arrangements for passenger transport legislation

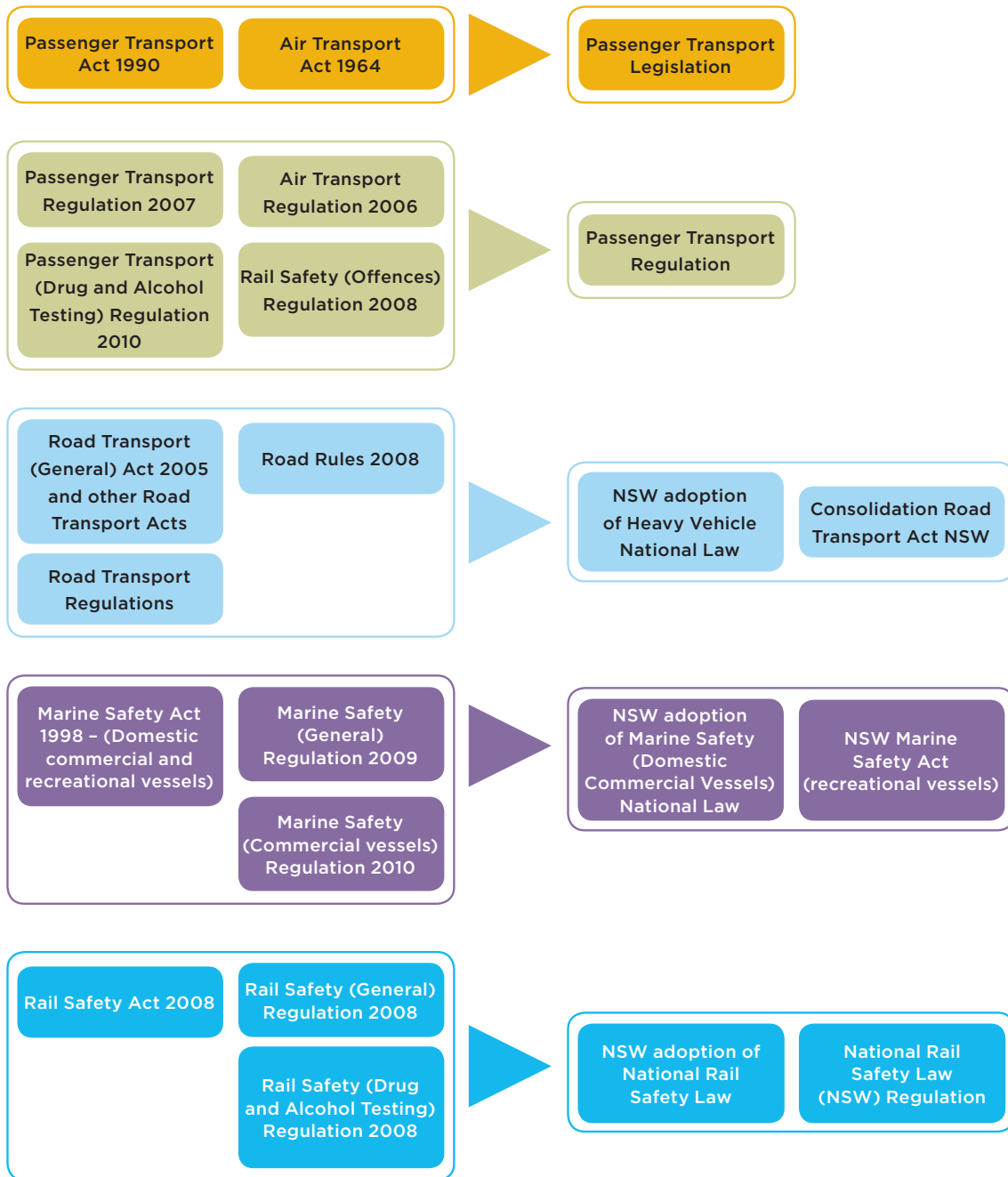
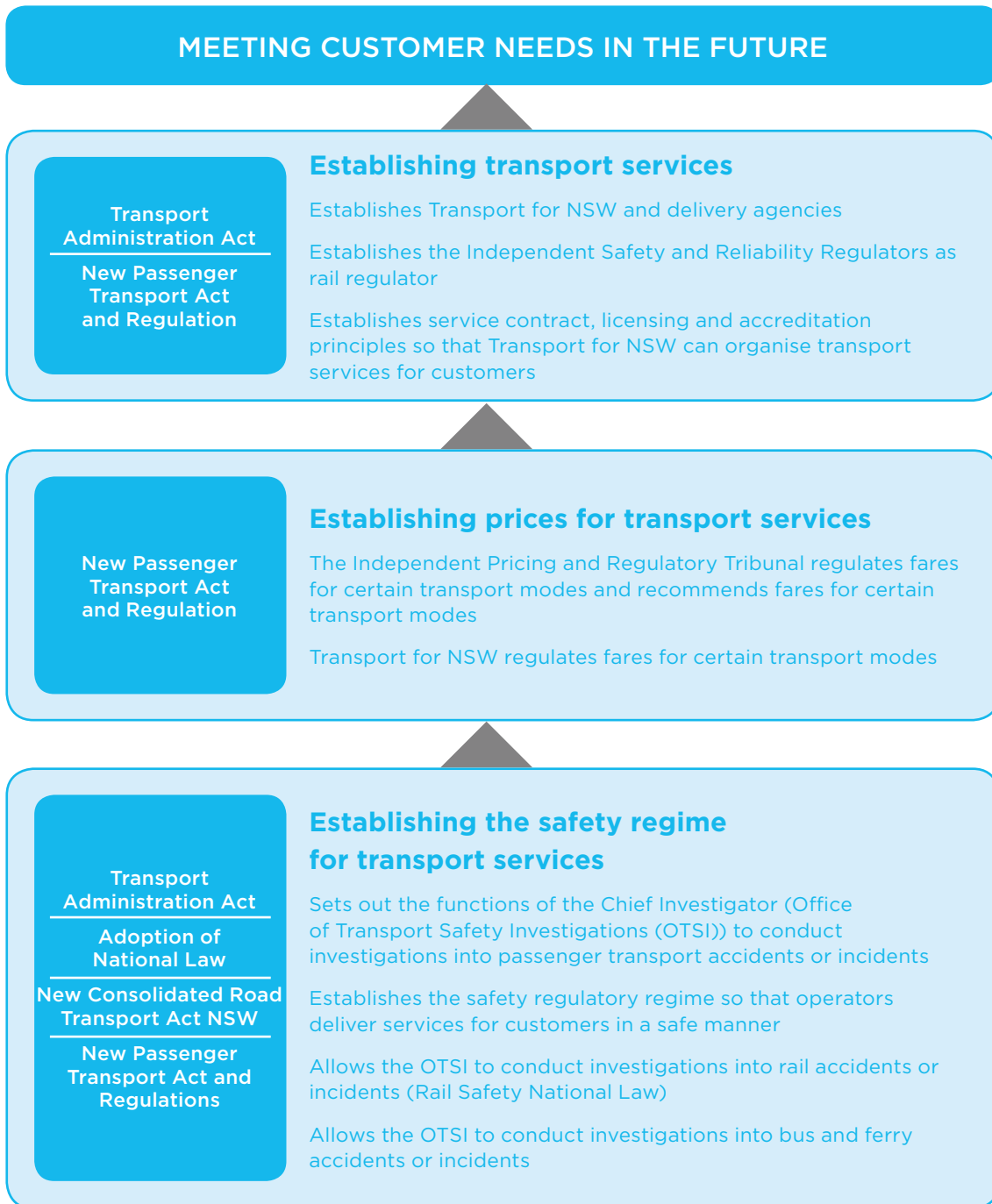


Figure 2 - New framework for meeting customer needs



1.5 Purpose of the Review of NSW passenger transport legislation

The overall objective of the Review is to support the NSW Government's vision for passenger transport with appropriate legislation. This involves reviewing the current laws from several points of view: objectives, service delivery, safety, ticketing, revenue protection and passenger conduct.

The Review's primary purpose is to ensure the legislative framework for providing passenger transport services supports the Government's objectives for the delivery of customer-focused, integrated, safe and efficient transport services.

The other objectives of the Review are to establish:

- Coherence between passenger transport legislation and the amended Transport Administration Act 1988
- Legislation that provides a clear rationale for Government intervention in the provision of passenger transport services
- Legislation that enables a flexible and consistent approach to the regulation or deregulation of passenger transport services
- A coherent approach to the regulation of safety across modes
- Consistent regulations covering ticketing, passenger offences and the powers of authorised officers for all modes.

After this introductory section, the Discussion Paper is divided into four sections.

Section 2: Objectives. The objectives of the current legislation and how well they support the concept of customer-focused passenger transport.

Section 3: Service delivery. The regulatory framework and administrative arrangements for the contracting and licensing of passenger transport services, the operation of taxi networks and community transport, and the powers to set and review passenger fares and transport concessions.

Section 4: Safety. The safety regulations for passenger transport services, focusing on changes that will be made to NSW legislation in 2013 as a result of the national reforms for heavy vehicles (which includes buses), rail, and commercial vessels (which includes ferries).

Section 5: Ticketing, revenue protection and passenger conduct regulations. This part of the Review is being implemented separately to allow for the introduction of the Opal electronic ticketing system. It is also affected by the planned repeal of the *Rail Safety Act 2008* and associated regulations, which is necessary to help establish the new national Rail Safety Regulator.

1.6 Review timeframes

- **25 September 2012** – Discussion Paper available for public comment.
- **23 October 2012** – Public consultation closes.
- **Early 2013** – New laws introduced to parliament.

1.7 How to submit comments

This Discussion Paper provides an opportunity to comment on the proposed changes and options.

In some sections, specific proposed approaches are described and TfNSW seeks comment on these proposals.

In other sections, TfNSW seeks feedback on several different options.

You may comment on as many proposals and options as you wish.

Please submit your comments by 23 October 2012.



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2 OBJECTIVES (“OBJECTS”) OF PASSENGER TRANSPORT LEGISLATION

While the PT Act is the primary law in NSW influencing the delivery of passenger transport services, its objectives do not reflect an integrated, customer-focused approach.

2.1 Issues with the current approach

The objectives of passenger transport legislation, as described in the “objects” of the PT Act, are narrowly-focused and mode-specific.

The objects of this Act are:

- a) to require the accreditation or authorisation, by TfNSW, of the operators of and drivers involved in public passenger services (other than ferry services), and
- b) to dispense with the licensing of ferries and buses used to provide a public passenger service, providing instead for:
 - i. ferry and bus services to be operated under fixed-term contracts entered into between TfNSW and operators, and
 - ii. deregulation of long-distance and tourist services, and
 - iii. regulation of government and non-government buses and ferries on a more equal basis, and
- c) to encourage the provision of school bus services on a more commercial basis, without disregarding the reasonable expectations of traditional service operators, and
- d) to provide for rail services contracts between RailCorp and TfNSW, and
- e) to encourage public passenger services that meet the reasonable expectations of the community for safe, reliable and efficient passenger transport services, and
- f) to encourage co-ordination of public transport services.

Clauses (a), (e) and (f) of the PT Act are valid today but others are out of date and the overall mode-specific focus is not appropriate for an integrated transport system. In particular:

- Removal of licensing for buses and ferries occurred almost two decades ago
- Long-distance and tourist services are now deregulated.
- Referring to the “expectations” of “traditional service operators” in clause (c) and naming RailCorp as a sole contractor in clause (d) does not support the idea of a flexible transport system based on a strong purchaser-operator model and the needs of the customer
- Modes such as light rail are now part of the broader network but are not covered in the current “objects”
- The Government may wish to expand the provision of services without bringing them within a contractor/licensee model.

Table 1 compares the objectives of comparable passenger transport legislation in other States and countries. Most jurisdictions have adopted provisions based on modern transport objectives similar to those in the NSW *Transport Administration Act 1998*. Some international legislation is even more succinct. For example, the *Greater London Authority Act 1999* places an obligation on the Mayor of London to “develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London”.

Table 1 – Comparison of selected objectives in comparable transport legislation

<i>Transport Administration Act 1988 (NSW)</i>	<i>Passenger Transport Act 1990 (NSW)</i>	<i>Transport Integration Act 2010 (Victoria)</i>
<p>(a) Customer focus: To put the customer first and design the transport system around the needs and expectations of the customer.</p> <p>(b) Economic development: To enable the transport system to support the economic development of the State (with a focus on freight transport systems).</p> <p>(c) Planning and investment: To ensure that good planning informs investment strategies.</p> <p>(d) Coherence and integration: To promote coherence and integration across all transport modes and all stages of decision-making.</p> <p>(e) Performance and delivery: To focus on performance and service delivery, based on a strong purchaser-operator model with clear accountabilities for outcomes.</p> <p>(f) Efficiency: To achieve greater efficiency:</p> <ul style="list-style-type: none"> (i) in the delivery of transport infrastructure projects, and (ii) through improved coordination of freight, maritime and ports operations, and their integration into the transport system, and (iii) by eliminating duplication of functions and resources, and (iv) by outsourcing the delivery of non-core services. <p>(g) Environmental sustainability: To promote the delivery of transport services in an environmentally sustainable manner.</p> <p>(h) Social benefits: To contribute to the delivery of social benefits for customers, including greater inclusiveness, accessibility and quality of life.</p> <p>(i) Safety: To provide safe transport services in accordance with a safety regulatory framework.</p>	<p>(a) to require the accreditation or authorisation of operators of and drivers (other than ferry services), and</p> <p>(b) to dispense with the licensing of ferries and buses used to provide a public passenger service, providing instead for:</p> <ul style="list-style-type: none"> (i) ferry and bus services to be operated under fixed-term contracts entered into between TfNSW and operators, and (ii) deregulation of long-distance and tourist services, and (iii) regulation of government and non-government buses and ferries on a more equal basis, and <p>(c) to encourage the provision of school bus services on a more commercial basis, without disregarding the reasonable expectations of traditional service operators, and</p> <p>(d) to provide for rail services contracts between RailCorp and TfNSW, and</p> <p>(e) to encourage public passenger services that meet the reasonable expectations of the community for safe, reliable and efficient passenger transport services, and</p> <p>(f) to encourage co-ordination of public transport services</p>	<p>(a) Social and economic inclusion.</p> <p>(b) Economic prosperity.</p> <p>(c) Environmental sustainability.</p> <p>(d) Integration of transport and land use.</p> <p>(e) Efficiency, coordination and reliability.</p> <p>(f) Safety, health and wellbeing.</p>

<i>Transport Operations (Passenger Transport) Act 1994 (Queensland)</i>	<i>Public Transport Authority Act 2003 (WA)</i>	<i>Public Transport Regulation Act 2009 (Ireland)</i>	<i>Greater London Authority Act 1999</i>
<p>(a) Enable the effective planning and efficient management of public passenger transport in the State.</p> <p>(b) Provide a system of public passenger transport in the State that:</p> <p>(i) is responsive to community needs; and</p> <p>(ii) offers an attractive alternative to private transport in a way that reduces the overall environmental, economic and social costs of passenger transport; and</p> <p>(iii) addresses the challenges of future growth; and</p> <p>iv) provides a high level of accountability; and</p> <p>(v) provides public passenger services at a reasonable cost to the community and government; and</p> <p>(d) Promote the personal safety of persons using public passenger transport; and</p> <p>(e) Provide a reasonable level of community access and mobility in support of the Government's social justice objectives.</p>	<p>(a) To provide for the coordination of the resources used for the provision of transport services for the people of this State and for the development of this State.</p> <p>(b) To ensure that the people of this State are provided, as far as is practicable, with reliable, efficient and economic transport services.</p> <p>(c) To provide for the rationalisation and control of transport services by means of licensing and other measures wherever such measures contribute to the provision of reliable, efficient and economic transport services.</p> <p>(d) To provide for the reduction or elimination of controls imposed under this Act wherever practicable to ensure that transport services provided are reliable, efficient and economic for the people of this State.</p> <p>(e) To facilitate the formulation of policies relating to the provision of transport services.</p>	<p>(a) The development of an integrated transport system which contributes to environmental sustainability and social cohesion and promotes economic progress.</p> <p>(b) The provision of a well-functioning, attractive, integrated and safe public transport system of services and networks for all users.</p> <p>(c) Improved access to the transport system and, in particular, to public passenger transport services by persons with disabilities.</p> <p>(d) Increased use of the public transport system.</p> <p>(e) Regulated competition in the provision of licensed public bus passenger services in the public interest.</p> <p>(f) The provision and maintenance of quality taxi services</p> <p>Increased recourse to cycling and walking as means of transport</p> <p>(g) Value for money.</p>	<p>Transport functions of the Authority</p> <p>The general transport duty:</p> <p>1)The Mayor shall develop and implement policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within Greater London.</p> <p>(3)The transport facilities and services mentioned in subsection (1) above include facilities and services for pedestrians and are:</p> <p>(a) those required to meet the needs of persons living or working in, or visiting, Greater London, and</p> <p>(b) those required for the transportation of freight.</p>

2.2 New objectives for passenger transport legislation

The challenge for NSW is to design a set of objectives that are not mode-specific and include functions currently administered under the Act (e.g. contracting, accreditation), while reflecting the new focus for transport articulated in the *Transport Administration Act 1988*.

Objectives could include:

- 1) To ensure the coordination of modes of transport to provide an **integrated** and **efficient** public transport system.
- 2) To encourage service delivery that meets the reasonable expectations of the customer for safe, reliable and efficient public transport, including, where necessary, by accrediting operators and authorising drivers.
- 3) To facilitate the **effective planning** and **management** of public transport in NSW including, where necessary, the contracting or licensing of operators;
- 4) to provide a system of public transport for the State that:
 - a. is responsive to **customer needs**;
 - b. delivers **seamless, resilient** and **flexible** transport systems;
 - c. offers an **attractive alternative to private transport** to provide environmental, economic and social benefits to the community;
 - d. supports **innovative service delivery**;
 - e. addresses the **challenges of future growth**;
 - f. provides a high level of **accountability**;
 - g. promotes **efficient delivery** of services; and
 - h. provides passenger services at a **reasonable cost** to the community.

Proposed approach

Amend the objects (objectives) in the revised passenger transport legislation to be mode-neutral and to support greater levels of integration and flexibility in how Government delivers passenger transport for each mode.

What do you think?

3 SERVICE DELIVERY

The way passenger transport is regulated is inconsistent across and within modes. This section of the Discussion Paper explores how to achieve greater consistency and integration.

Section 3.1 discusses how selected services such as buses, trains, light rail and ferries are purchased by Government using contracts

Section 3.2 looks at how licenses enable intrastate air services ensure equity for customers and fairness for operators

Section 3.3 discusses licensing arrangements for the taxi industry

Section 3.4 discusses community transport services funded by the Government

Section 3.5 examines how fares are set and reviewed

Section 3.6 discusses powers to determine eligibility for transport concessions.

3.1 Contracting for the delivery of passenger transport services

Contracts with passenger transport operators help to ensure that customers have access to services and consistent service standards by spelling out performance and safety requirements.

In the absence of a competitive market or where there are small numbers of passengers, service contracts ensure value for money for Government, appropriate service levels for passengers, and viable and sustainable businesses for operators.

One of the objectives of the Government's new framework for passenger transport in NSW is to create a strong purchaser-operator model for service delivery. Under this model, the Government's primary role (as the purchaser) would be to plan and "buy" services from the public or private operator/s best able to meet the particular transport need.

There are some types of service that the Government is always likely to contract. These include services in isolated areas where travel demand is low but services are essential, metropolitan bus services in low density urban areas, and dedicated school services.

However, not every passenger transport service in NSW needs to be contracted, especially when services are self-funding and alternative forms of transport are available (e.g. the high-speed Manly ferry, see Section 3.1.2).

Under the current PT Act, bus, ferry and train services in NSW must be conducted under a service contract between TfNSW and the transport operator. These arrangements have evolved over time and now the way in which they work varies significantly.

Early legislation provided for detailed contract provisions embracing concepts such as exclusive rights, automatic renewal and an operator-designed delivery framework. Since then, the legislation has evolved to provide the Government with more power to define contract regions, performance standards and service levels.

As a result, most contract detail has been removed from the legislation and included in the contracts themselves. However, as much of the detail in the current legislation is mode-specific and dated, Government's ability to generate competition between operators and ensure value for money is restricted.

Whether a service is contracted or not, all operators must comply with relevant safety requirements.



3.1.1 The need for reform

The aim of the Review is to bring service delivery provisions in line with the new objectives and priorities set by the Government:

- Putting the customer at the centre of passenger transport policy
- Developing an integrated, coherent transport system across all modes that considers the passenger's entire journey wherever possible
- Establishing a strong purchaser-operator model for service delivery.

The current PT Act does not meet these objectives.

- Contract provisions are detailed, overly complex and mode-specific
- There is little coherence or integration in the way passenger transport services are purchased – contract conditions and performance standards vary widely between transport modes
- Government entities are retained as service monopolies in some modes, compete with private operators in others and are absent from the legislation in other modes The legislation focuses on the transport operator rather than the customer.

The current arrangements for each mode are summarised in **Appendix A**.

The role of passenger transport legislation should be to outline the broad principles of transport contracting rather than detailing specifics. These should be left to Government guidelines or the contracts themselves. TfNSW is not advocating such items should be absent from contracts but that the legislation should be flexible enough to allow Government to design contracts to suit particular transport needs and to choose whether a contract is needed for a particular service.

Summary of the proposed changes to passenger transport legislation

- Provide a set of **definitions** for passenger transport that embraces all modes of transport
- Outline new regulatory **objects (objectives)** that are common to all modes and are consistent with the aims of the Transport Administration Act
- Include a **discretionary power** in the legislation to allow the Government to choose which transport modes and services types the Government purchases, and the types of operators it purchases services from
- Remove references to **specific service operators**
- Remove mandatory **contract terms**
- Remove the prohibition against **subcontracting**
- Remove references to **regions**
- Remove mode-specific **performance standards and service levels**, allowing more consistency across modes and putting them either in contracts or related instruments (e.g. gazetted standards)
- Remove references to **industrial instruments**
- Remove references to automatic rights to **contract renewal**
- Remove issues dealt with in contracts such as requirements relating to **contract variation, suspension and cancellation**.

This section of the Discussion Paper examines options for modernising passenger transport legislation to ensure it provides an appropriate framework to deliver Government objectives.

The proposed changes aim to remove regulatory distinctions between transport modes and increase Government's flexibility to deliver services that respond to customer demand.

3.1.2 Definitions

The current definitions in the PT Act relating to service delivery are complex and confusing. Some examples:

- Buses and coaches are "public passenger vehicles" requiring accreditation
- Ferries are "public passenger vehicles" but do not require operator accreditation or driver authorisation.
- Taxis and hire cars are "public passenger services" but have their own requirement for accreditation and authorisation
- "Regular passenger services" are defined as "public passenger services" conducted according to "regular routes and timetables". The Act includes ferries and buses but excludes taxis, hire cars and long-distance coaches
- Trains would ordinarily be included but since "regular passenger services" are a category of "public passenger service", and rail is not a "public passenger service", a new term, "rail passenger service" is created to capture rail as a transport type requiring a contract.

The definitions are highly prescriptive and inherently inflexible. This can make it difficult for the Government to purchase or allow new and innovative service types to operate. It can also lead to

Some examples of definitions in the PT Act

"public passenger service means the carriage of passengers for a fare or other consideration"

"public passenger vehicle means:

- a) a bus used to provide a public passenger service, or
- b) a ferry used to provide a regular passenger service, or
- c) a taxi-cab or private hire vehicle, or
- d) a vehicle declared by a regulation under section 6 to be a public passenger vehicle."

"rail passenger service means the carriage of passengers for a fare or other consideration by rail, but does not include any rail passenger service of a class prescribed for the purposes of this definition."

"rail services contract means a contract entered into under section 28K.

"regular bus service means any regular passenger service conducted by bus (including any transitway service)."

"regular ferry service means any regular passenger service conducted by ferry, but does not include any service of a class prescribed for the purposes of this definition."

"regular passenger service means a public passenger service conducted according to regular routes and timetables, but does not include a tourist service or a long-distance service."

situations where the Government is forced to regulate services where there appears to be no public benefit in doing so. For example, following the closure of the Government's JetCat service between Manly and Circular Quay in 2008, a number of private operators offered to provide a high speed ferry service without assistance from Government. To avoid having to issue a service contract and still allow them to operate a **'regular'** service, the Government was required to make an amendment to the PT Regulation to specifically exclude "a high speed ferry service between Manly and Circular Quay" from the definition of "regular ferry services" in the PT Act.

Consolidating definitions across modes would reduce the current overlap, duplication and complexity, giving Government the flexibility to determine which passenger services:

- require operator accreditation and the types of accreditation
- require driver authorisation and the types of authorisation
- are to be purchased by Government (i.e. require a contract)
- are to be delivered according to regular routes and timetables
- can charge a fare for their services, and
- are to be regulated by Government (e.g. through licensing).

Proposed approach

Review the definitions in the PT Act based on service delivery and outcomes for customers rather than the mode that provides the service.

What do you think?

3.1.3 Contract arrangements

The provisions in the PT Act for contracting arrangements vary widely across and within modes.

One of the objectives of the Government's new framework for passenger transport in NSW is to create a strong purchaser-operator model for service delivery. Under this model, the Government's primary role (as the purchaser) would be to plan and "buy" services from the public or private operator/s best able to meet the particular transport need.

The recommended approaches to contracting are designed to achieve these objectives.

Need to purchase services via contract

The PT Act provides that "the terms and conditions on which any regular passenger service is to be carried on within NSW are to be set forth in a contract". Anyone carrying on a "regular passenger service" without a contract "is guilty of an offence".

The problems associated with these blanket provisions were highlighted in 2008 when the Government terminated JetCat services between Manly and Circular Quay. A number of private sector companies stepped in to meet customer need for a high-speed ferry service. As these services are run on a cost-neutral basis without Government funding, the Government determined that contracting was unnecessary. To "deregulate" these ferries and still allow them to operate what would normally be a "regular passenger service", TfNSW amended the PT Regulation to remove such services from the meaning of a "regular ferry service" under the Act.

There are some types of service that the Government is always likely to contract. These include services in isolated areas where travel demand is low but services are essential and dedicated school services in regional areas.

However, not every public transport service in NSW needs to be contracted, especially when services are self-funding and alternative forms of transport are available (e.g. the high-speed Manly ferry).

Using discretionary language in the revised passenger legislation would provide the flexibility to achieve modern service objectives. For example, “the terms and conditions for regular passenger services *may* be set forth in a contract.” Alternatively, TfNSW could be given discretion to decide if a contract is needed for a particular service.

Defining who can provide passenger transport services

The current PT Act varies widely in defining who can provide passenger transport services. It

names RailCorp as the sole train operator; bus provisions mention that the Government operator, State Transit, may be a party to a contract, while ferry provisions do not mention an operator.

Naming operators is out of step with a “purchaser-operator model” that provides flexibility for Government and encourages competition between operators.

Proposed approach

Remove references to particular operators in the revised passenger transport legislation.

What do you think?

Contract term

The length of contracts TfNSW can hold with operators of different modes varies under the PT Act.

- Ferry and bus services operate “under fixed-term contracts” but there is no fixed term for rail.
- A maximum contract term of eight years is prescribed for bus and rail. In practice, bus terms are for seven years, with an optional one-year extension. However, the recent contract for trains was for five years.
- The maximum term for ferry contracts varies. For post-2008 contracts, it is eight years; for “older style” commercial contracts, it is five years; and there is no recommended term for non-commercial contracts.

Setting a maximum term in legislation rather than in a contract limits the Government’s options for providing a flexible and innovative transport system. There is a strong argument that the terms for particular contracts should not be fixed by regulation but should be a policy decision based on the nature of the service being purchased, the composition and number of operators in the market and prevailing customer needs.

Proposed approach

Remove provisions that refer to maximum terms for contracts in the revised passenger transport legislation.

What do you think?

“Assignment of Benefit” (sub-contracting)

The PT Act contains different arrangements for sub-contracting.

- **Buses:** Sub-contracting is permitted providing the sub-contractor is an accredited operator and the contract between TfNSW and the principal contractor allows sub-contracting.
- **Trains:** There are no provisions for sub-contracting.
- **Ferries:** Older-style contracts are against sub-contracting unless TfNSW provides for it “by instrument in writing”.

Proposed approach

Remove prohibition against sub-contracting from the legislation.

What do you think?

The nature of sub-contracting varies according to factors such as the type of service delivered and the composition and depth of the operator market. For example, if only two transport operators are performing a particular service, a blanket prohibition against sub-contracting may be unwarranted, particularly if safeguards are built into the contract.

Regions and routes

“Regions” and “routes” are the framework on which most current service contracts are based, yet there is variety and inconsistency between the modes.

The PT Act states that older-style commercial ferry contracts state that contracts must specify a region or route; for buses and new ferry contracts the language is discretionary; and there are no provisions for train contracts.

In the future, it is intended that service contracts between the NSW Government and transport service providers will be able to accommodate innovative services, so that the number and standard of services will improve. For this reason, there is an argument for removing references to regions in the legislation. This, in conjunction with other legislative changes proposed in this Discussion Paper, will support the provision of more innovative and flexible forms of passenger transport focusing on the needs of customers.

Proposed approach

Remove references to regions in the legislation.

What do you think?

Service Levels

The PT Act takes different approaches when it comes to prescribing operator service levels. For ferry contracts, it prescribes that a “scale of minimum service levels” should be included based on “the needs of the community” and “average service levels...prevailing in the industry with respect to communities which have similar population densities.” However, it does not mention service levels for other transport modes. Instead, Government expectations are set through the Service Planning Guidelines that are issued with contracts.

Rather than including a fixed service level model in the legislation, any future service delivery model requires flexibility. This is necessary to accommodate strategic service changes arising from evolving customer needs, such as increased or decreased patronage. In addition, service levels may change as routes and regions are incorporated into a broader transport network that integrates modes.

Proposed approach

Remove references to service levels in the revised passenger transport legislation.

What do you think?

Performance Standards

Performance standards vary between transport modes under the Act. Clauses relating to performance standards are detailed for some modes and very brief for others. Some examples:

- Some modes, such as rail, include a simple statement that the contract is to include performance standards.
- Other modes, such as buses, require mandatory consultation with industry representatives before developing standards.
- Some performance standards are mandated, for example greenhouse emissions for buses.
- Others are discretionary, for example service levels, fares, ticketing and service quality for ferry services.

Performance standards for all modes should adhere to common principles based on customer expectations. These could include safety, reliability, customer service, value for money, levels of integration and similar customer-focused measures. However, performance standards for transport can change over time and embedding specific standards in the legislation would hinder Government’s ability to change them.

More recent contracts negotiated by Government set and monitor performance via Key Performance Indicators (KPIs) linked to the contract rather than the legislation.

Proposed approach

Remove specific performance standards for contract holders in the revised passenger transport legislation.

What do you think?

Industrial instruments

The service delivery requirement for buses under the Act highlights an inter-modal anomaly. It provides that compliance with “any industrial instrument applicable to the [contract] holder” is an implied term of the bus operator’s contract. A provision of this nature would be equally applicable to other transport modes, yet the term is unique to bus contracts.

Proposed approach

Remove references to industrial instruments in the revised passenger transport legislation.

What do you think?

While State Transit remains bound to a state industrial instrument, the majority of bus operators and employees, like those in other transport modes, have come under Commonwealth Industrial law since 2009. In view of this and of the discrepancy with other transport modes, the relevance of including an industrial instrument as a contract term is questionable. Removing this provision will not take away the need for operators to comply with relevant industrial instruments and employment laws.

Renewal of contract

Under current legislation, most older-style ferry contracts included an automatic right of renewal provided the contractor fulfilled contractual conditions.

Enshrining a right of renewal in legislation limits the Government’s ability to determine if it is receiving the best value for money and the best standard of services. The proposed “purchaser-operator model” of transport service delivery foresees Government encouraging greater competition between operators to improve the service delivery and cost of transport for the consumer. The recent franchising of Sydney Ferries and the opening of Metropolitan Bus Service Contract (MBSC) regions to tender would suggest that automatic right of renewal should not be mandated in the legislation.

Removing references to automatic rights of renewal in the legislation would not impact on existing contracts between transport service providers and the NSW Government.

Proposed approach

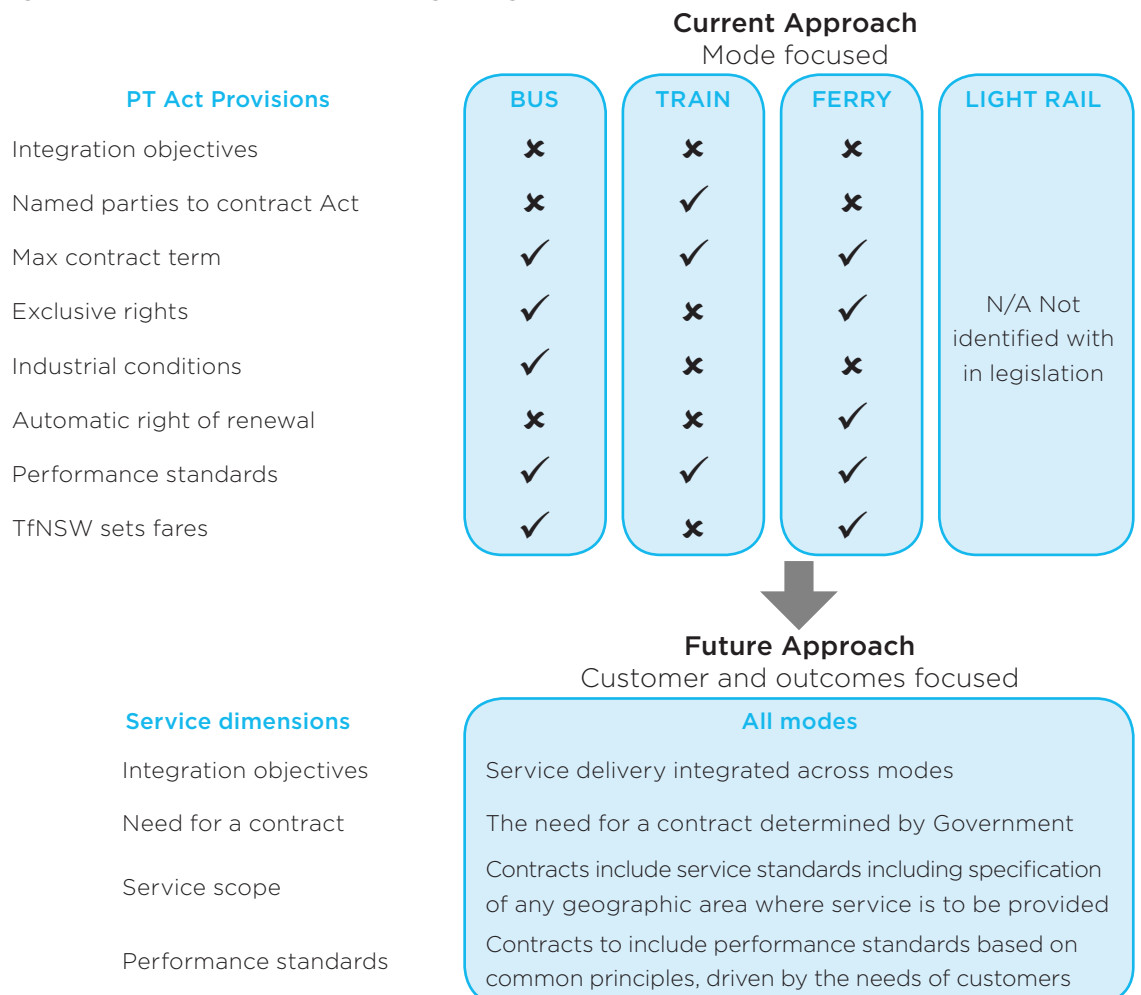
Remove the right to automatic renewal of contracts in the revised passenger transport legislation.

What do you think?

3.1.4 Summary of proposed contracting reforms

Figure 3 summarises the current contracting arrangements and the proposed future approach, excluding licensing arrangements for taxis and intrastate air services.

Figure 3 - Current and future contracting arrangements



3.2 Licensing for intrastate air service delivery

3.2.1 Current regulatory framework

Australia's aviation safety framework is administered by the Commonwealth through a network of agencies with diverse statutory responsibilities. They include the Civil Aviation Safety Authority (CASA) and the Australian Transport Safety Bureau (ATSB).

Under the Commonwealth framework, States and Territories have the power to regulate business arrangements for their intrastate air services. This includes passenger services, which are regulated in NSW via the *Air Transport Act 1964* and the *Air Transport Regulation 2006*.

The Government licenses low volume routes on a one-route one-licence basis. This provides greater stability and route viability, and encourages route development.

Higher volume routes of more than 50,000 passengers a year are deregulated (unlicensed) to allow open competition. These arrangements recognise that higher volume routes can operate competitively while low volume routes may not be so robust.

At present, there are 12 deregulated routes and 14 licensed routes. They are listed in **Appendix B**. Operators of both regulated and deregulated routes are subject to the same safety requirements.

The five-year licences for regulated routes expire in March 2013. In July TfNSW called for Expressions of Interest for licences to be granted in 2013. TfNSW will soon advise the industry and stakeholders of future arrangements so the market can prepare for any changes. However, the review will not impact licences that are granted in 2013.

3.2.2 Reform options

Incorporating air transport legislation into the passenger transport framework

Including intrastate air services in the revised passenger transport legislation so all passenger transport services are covered by a single piece of legislation would help Government to ensure greater consistency across modes. It is consistent with the Review's recommendations covering buses, trains, light rail and ferries.

Proposed approach

To cover all passenger transport services with a single piece of legislation, include provisions for intrastate air services in the revised passenger transport legislation.

What do you think?

Scope of the regulatory framework for intrastate air transport

The *Air Transport Act 1964* operates under the presumption that all intrastate air services will be subject to regulation by the Government unless they are deregulated by the Minister for Transport.

As part of the process of amalgamating the *Air Transport Act 1964* into the revised passenger transport legislation, Government proposes to simplify the regulatory scope of the air transport framework. The legislation would be amended to indicate that intrastate services are to be deregulated unless the Minister for Transport declares them to be regulated. This approach is consistent with the regulatory approach adopted for other modes.

Proposed approach

Reform the regulatory scope of the air transport framework by amending the legislation to indicate that intrastate services are to be deregulated unless declared to be regulated by the Minister for Transport.

What do you think?

The NSW Government will continue to regulate intrastate air services under 50,000 passengers per annum. This includes routes supporting a number of important locations such as Bathurst, Broken Hill and Lord Howe Island.

The licensing process will continue to operate as it does now. However, the Minister will be empowered to declare specified routes or classes of routes to be regulated by publishing an order in the NSW Gazette.

Criteria for granting or refusing an air transport licence

This Review provides an opportunity to examine the criteria for granting or refusing an air transport licence. Currently, the criteria are:

- The needs of the public of NSW as a whole and of any area or district to be served by the route specified in the licence application
- To foster more than one airline providing adequate and reasonable public air transport services and to discourage the development of monopolies
- The character, suitability and fitness of the applicant to hold the licence
- The maintenance and orderly development of adequate and reasonable public air transport services within NSW
- The economic development of, or the environment in, the route or routes specified in the application
- The insurance coverage for the applicant and the applicant's aircraft, pilots and passengers
- The ownership of, or the applicant's rights to operate, the aircraft.

TfNSW considers that the current criteria provide an effective structure for assessing and allocating route licences and for encouraging operator stability and route development within the intrastate market. They are also consistent with the recommendations relating to contracting outlined in **Section 3.1**.

TfNSW recommends that all these criteria are transferred into the revised passenger transport legislation.

Proposed approach

All the criteria for licence assessments under the current Air Transport Act are carried over to the revised passenger transport legislation.

What do you think?

Repeal of the State Aviation Working Group

The State Aviation Working Group (SAWG) was established in 2006 under amendments to the Air Transport Act 1964 to advise the Director General of the then NSW Ministry of Transport on the regulation of air services.

The SAWG was made up of representatives from Transport for NSW, the Department of Planning and Infrastructure, Destination NSW, the Department of Trade and Investment, Regional Infrastructure and Services (NSW Trade and Investment), the Local Government and Shires Associations of NSW, the Regional Aviation Association of Australia and the Australian Airports Association.

In 2007, in consultation with industry, the public and airport owners/operators, the SAWG provided advice and recommendations to the Director General that established the current framework for regulating NSW intrastate air services. However, the Group has not met since October 2008.

As part of this Review, TfNSW considers that, having established an appropriate regulatory framework for intrastate air transport, there is no longer a need for the SAWG. As part of the process of amalgamating the *Air Transport Act 1964* into the revised passenger transport legislation, it is proposed to repeal the sections of the Act that established the SAWG.

TfNSW will continue to seek public comment when formulating its policy on air transport regulation. By advising TfNSW during these processes, industry bodies represented on the SAWG will continue to maintain a strong Government advisory role and to support a balanced consideration of issues during the policy development process.

Collection of statistics

Currently, only operators that provide intrastate services linked to Sydney's Kingsford Smith Airport must submit passenger numbers for publication on the TfNSW website.

For operators on deregulated routes whose services are not linked to Sydney Airport, the number of passengers is aggregated across multiple operators. It is therefore not possible to identify the numbers of passengers travelling with individual airlines.

Proposed approach

Include a requirement in the revised passenger transport regulation to provide statistics broken down by airline for all NSW intrastate routes.

What do you think?

Proposed approach

Disband the State Aviation Working Group (SAWG) and repeal the section of the Air Transport Act 1964 that established the SAWG when the regulation of intrastate air transport is transferred to the revised passenger transport legislation.

What do you think?

To allow air transport operators, local councils (as airport owners), and tourism-related bodies to better plan service delivery throughout NSW, TfNSW proposes to expand reporting requirements to include all NSW intrastate routes.

All operators would be required to provide information for all NSW intrastate services, not just Sydney Airport-linked routes. This information would be published on the TfNSW website.

3.3 Taxi networks

Taxi and hire car services are an important component of integrated transport networks in NSW. They provide fast, flexible and personalised transport at all hours. Taxis also provide transport to people who may otherwise be isolated, such as people with a disability, without cars or in areas without access to other passenger transport.

Over the past few years, concerns about the operation of taxi networks have been raised from a range of sources. These include the 2010 *Inquiry into the NSW Taxi Industry*² held by the NSW Parliament Select Committee on the NSW Taxi Industry (the Select Committee); recent customer surveys; and during consultation for the Long Term Transport Master Plan.

The concerns include:

- Customer uncertainty and dissatisfaction with network booking reliability and lack of feedback about the status of bookings
- Driver and operator dissatisfaction with booking information provided by networks
- Accommodating mobile phone applications (apps) as an alternative method for booking taxis. Taxi networks have raised concerns about customer safety and the lack of accountability for some app developers
- The content and accuracy of network performance reports.

TfNSW is addressing these concerns in this Review.

Table 2 – The regulatory framework for taxis

Area of regulation	Role of Transport for NSW
Authorising taxi networks	Taxi networks are primarily responsible for providing a system of communication between customers and drivers. This includes dispatching taxis and managing safety via in-taxi cameras and alarms. Networks also manage complaints and lost property. TfNSW determines service standards that authorised networks must meet. The current authorisation standards for taxis in metropolitan areas include: levels of service for standard and wheelchair accessible taxis (including times to answer calls, pick up times and service reliability); providing a booking service; supervision and compliance with network rules; driver training; and driver safety.
Accrediting taxi operators	Accredited taxi operators are primarily responsible for ensuring their taxis operate safely i.e. they must comply with requirements including vehicle age, safety equipment and communication receivers. Accredited taxi operators must be affiliated with an authorised taxi network where one is available.
Licensing taxis	Since 2009, TfNSW has issued a number of new Sydney taxi licences each year to meet the needs of a growing population and demand for new licences in the industry. The Director General of TfNSW determines the number of Sydney licences to be issued using criteria set out in the PT Act. In making this decision each year, TfNSW attempts to balance customer demand and service levels with the need to maintain a sustainable industry. In Sydney, licences are purchased through an annual tender or auction process. Outside Sydney and for wheelchair-accessible taxi licences, applications are taken at any time.
Authorising taxi drivers	In addition to holding an unrestricted driver's licence, individuals wanting authorisation as taxi drivers must show they are of good character and are competent to drive a taxi. Drivers must undergo additional training and assessment in order to drive a wheelchair-accessible taxi.

² 2010 Select Committee Inquiry into the NSW Taxi Industry at: <http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/EA4E5B85CBE5CF0CCA25766B00114E9A>

3.3.1 Current regulatory framework

The PT Act sets out accreditation, authorisation and licensing conditions for taxi services and includes requirements for operators, licence holders, drivers, and networks. The *Passenger Transport Regulation 2007* (PT Regulation) provides more prescriptive requirements for industry participants, such as those covering taxi meters, duress alarms and security cameras. It also outlines the obligations of people using taxi services.

3.3.2 Future directions

TfNSW is considering several options for improving the operation of taxi networks' booking facilities, network coverage, performance reporting and compliance with required performance standards.

Regarding licences, TfNSW will ask the Independent Pricing and Regulatory Tribunal (IPART) to conduct the annual review and advise TfNSW on the number of taxi licences that can be issued each year in Sydney. TfNSW is considering whether to make this a permanent arrangement and whether to ask IPART to decide the number of licences as well as reviewing and recommending a number.

TfNSW is seeking feedback from taxi customers and industry groups on all these options.

Network coverage

All metropolitan networks must provide communications across the area of their taxi licence at all times of day. This includes providing access to passenger booking services (the network's own, or via another booking service) and managing driver security systems that allow the driver to alert the network of a safety concern.

In 2010, the Select Committee recommended that the Minister for Transport remove the requirement to service the entire licensed area at all times of the day, provided taxi networks had a mechanism to refer out-of-area bookings to other networks.

The Committee also recommended a thorough review of the regulations governing taxi networks, with a view to removing barriers that might stop new networks entering the industry. The Committee noted that these measures could promote the establishment of smaller, more customer-oriented networks that could provide services in specific geographic locations, facilitating greater competition between networks and delivering improvements to customers, taxi drivers and operators.

Options for the future

One option is to remove the current requirement that metropolitan networks provide communication services across the entire licensed area at all times of day. This could be achieved by allowing small organisations to operate niche service networks under a more limited set of requirements. This could increase competition and provide more choice for customers.

However, if network coverage is restricted to a certain geographic area or times of the day, drivers and passengers may be left without network support for driver security systems at other times and locations.

Questions

TfNSW is considering removing the requirement that metropolitan networks provide communication services (a) across the entire licensed area and/or (b) at all times of day.

What do you think of this option?

Is universal coverage of the licensed area important to you?

What problems might this cause?

How could they be addressed?

Performance reporting

Under the PT Act, authorised networks in Sydney, Newcastle, Wollongong and the Central Coast must provide monthly reports to TfNSW on their performance against a set of Key Performance Indicators (KPIs). These include standards for call answering, response times and reliability for both standard and wheelchair-accessible taxi services.

The reports for each network are published on the TfNSW website each quarter – see <http://www.transport.nsw.gov.au/content/taxi-network-performance>.

This information shows that not all authorised networks are meeting all the standards, particularly for wheelchair-accessible taxi services.

In 2010, the Select Committee noted “performance standards are a critical method of assessing the performance of any industry. It is essential that the key performance standards for the NSW taxi industry accurately capture information that enables improvements in service delivery”. The Committee’s recommendations included:

- Publishing disaggregated performance data on the basis of network, geographic area and time of day
- Finalising and implementing KPIs for regional and rural taxi networks
- Requiring six -monthly reports on standard and wheelchair-accessible taxi services.

To gain a broader picture of service performance apart from bookings made through networks, the Committee also recommended:

- Conducting an annual, independent and random survey of customer satisfaction and publishing the results on their website
- Examining ways to measure the performance of rank and hail taxis as part of its assessment of the performance of the entire NSW taxi industry.

The Committee noted participants were concerned the regulatory framework did not provide sufficient oversight of the performance of networks and sought more effective enforcement of regulations.

Questions

TfNSW is reviewing performance and reporting requirements for taxi customer service delivery. The aim is to provide customers with better information so they can choose the best taxi service and to assist Government with decisions about setting fares and licence numbers and other policy decisions. This would be balanced against increased effort and compliance costs for industry.

Would you like more information about taxi service performance? What are your suggestions?

Do you think taxi network performance reporting needs to change?

- **What are your main concerns?**
- **What are your suggestions for improvements?**

Mandatory network membership

Taxi operators must be members of an authorised network and pay an annual membership fee that gives them access to network services. In urban areas, network fees are a relatively small proportion of total operating costs but in country areas, they can be the second-largest operating cost. This raises questions about whether operators and drivers are getting value for money.

As network bookings only represent around 30% of taxi hires in metropolitan areas, the question of mandatory membership needs to be considered. Mandatory membership may make it harder for new networks to reach a viable fleet size by attracting operators away from another network, particularly as the number of new licences is restricted.

TfNSW is considering whether mandatory network membership should be continued and whether it should be for all network services or for just some, such as safety, lost property and complaints.

Questions

TfNSW is considering whether mandatory network membership for taxis should be continued and whether it should be for all network services or for just some, such as safety, lost property and complaints.

Do you think taxis should continue to be members of authorised networks or would optional membership be better?

If membership was only required for certain services, which services?

What are your suggestions for making network membership more competitive and cost-effective for operators and drivers (e.g. published fees and data on booking demand)?

New booking facilities

While many customers book taxis via networks or directly with drivers, Smartphone applications (apps) are emerging as popular booking method. Using GPS-enabled phones, taxi booking apps allow customers to give their booking directly to multiple drivers across any network. Apps also allow customers to view the location of available taxis on a map and to see previous customers' ratings of drivers before deciding which driver to select.

Questions

TfNSW will examine whether and how best to regulate the use of mobile phone apps, either as a booking service or as a method of hiring taxis directly.

What services do you want from networks and other booking services?

- **Do they provide the services you want?**
- **What are your suggestions?**

Do you (or would you) access taxis via a smart phone app?

- **Do they provide the services you want?**
- **Should they be accountable for meeting certain service levels? Which services?**
- **What are your suggestions?**

Apps have entered the market both as part of authorised networks and independently. Networks' apps tend to operate as another method for customers to access their existing booking via dispatch services while independent apps offer a decentralised operation automated by the app's technology.

Independent apps also operate on a different business model, earning revenue by charging customers a transaction fee per trip. Their commercial operation is dependent on the number of bookings and on customer satisfaction. Networks charge taxi operators an annual membership fee for their app, irrespective of the number of bookings it provides.

The PT Act does not regulate the use of mobile phone apps, either as a booking service or as a method of hiring taxis directly.

As part of the current Review, TfNSW is considering whether there is a need to regulate mobile phone apps and how this could best meet the needs of customers, including safety issues.

TfNSW is considering the following options:

- Allow apps to continue to operate as they are now
- Allow apps to operate with some regulation around passenger customer service and safety. This could allow these services to emerge and evolve in response to market needs, increasing competition and options
- Allow apps only when they are operated by an authorised network complying with network standards. This would limit competition and service innovation. It is also unlikely to be technically achievable for independent apps without traditional dispatch system technology.

Setting the number of taxi licences

The availability of taxi services for customers depends on the number of taxi licences applied for by operators and issued by Government.

Until 2009, there were no statutory restrictions on the number of licences that could be issued in Sydney under the PT Act. However, the cost of new licences was high and the uptake of licences did not keep up with passenger demand. In October 2009, the NSW Government proposed reforms to the taxi industry. Sections of the industry voiced concerns about the potential impact on the value of taxi licences and the industry's long term viability. The Government changed the proposal to provide for regular annual fleet growth with a cap on the number of licences that could be issued each year in Sydney.

After 2009 and until recently, TfNSW conducted annual reviews to determine the cap, assisted by a consultant and with input from customer and industry groups. Based on the review results, the Director General of TfNSW determines the number of Sydney licences to be released, excluding wheelchair-accessible taxi licences. The deciding factors include demand for taxi services, performance of the existing fleet, demand for new licences and industry sustainability.

For 2013 licences, the Independent Pricing and Regulatory Tribunal (IPART) will be asked to conduct the annual review instead of TfNSW and to recommend the number of licences. TfNSW will still determine the final number of licences to be issued. IPART already reviews and recommends taxi fares and is familiar with the industry and its data sources.

To further improve independence and transparency, TfNSW is considering asking IPART to play a permanent role in the process for ensuring there are adequate taxis in Sydney. IPART would either:

Questions

TfNSW is considering amending relevant laws so IPART has an ongoing role in either:

- Reviewing and recommending the number and classes of taxi licences that would be made available each year in Sydney, with TfNSW setting the number OR
- Setting the number and classes of taxi licences that would be made available each year in Sydney.

Do you think it would be beneficial for IPART to review and recommend the number of taxi licences to be issued in Sydney each year?

Do you think IPART should also decide the number and classes of licences to be issued?

- Conduct the annual review and *recommend* the number and classes of taxi licences to be made available every year in Sydney, leaving TfNSW to determine the final number OR
- Conduct the annual review and *determine* the number and classes of taxi licences to be made available in Sydney each year instead of TfNSW.

Along with the changes proposed in **Section 3.5** for setting fares, this change would result in greater consistency across modes and a more streamlined approach to regulation. Clearly-defined roles and responsibilities would be captured in a single piece of legislation.

The change is also in line with the recommendations of the 2010 Inquiry for a more independent approach.

3.4 Community transport

Community transport provides vital access to recreation, shopping, medical care, social services and social contact for transport-disadvantaged members of our community. This includes isolated or socially disadvantaged people, the frail-aged, people with disabilities and their carers.

This Review is considering the arrangements for services funded by TfNSW through Home and Community Care (HACC) and the Community Transport Program (CTP). These programs are delivered by a variety of operators with a large volunteer base. This includes more than 120 organisations providing services across NSW. **Appendix C** contains further explanation of these programs.

Transport for community members is also provided by hundreds of other community organisations. These include sporting and service clubs, neighbourhood centres, schools, local councils, senior citizens' associations, retirement villages and nursing homes and other large operators such as the NSW Cancer Council. These services do not fall within the scope of this Review.

Community transport services funded by TfNSW represent a very small proportion of all journeys. Each year, they provide approximately two million trips to eligible clients. This compares with almost 300 million passenger journeys on rail, 227 million on timetabled bus services and 55 million in taxis. However, without community transport, some people in NSW would not be able to access vital services. The demand is likely to grow; the proportion of the population aged 65 and over is projected to increase from 13.5% in 2006 to 20.6% in 2031 and 22.8% by 2051.

This shift in demographics means the community transport sector needs to be supported so it can respond to future increased demand.

Some people believe TfNSW-funded community transport services should be regulated in the same way as contracted bus services operating on regular routes i.e. drivers are authorised and operators are accredited.

3.4.1 Current regulatory framework

Community transport falls outside the requirements of the PT Act. This is because community transport does not fall within the current definition of "public passenger service" (see **Section 3.1.2**).

A general provision under the TA Act allows TfNSW to "allocate funding for and administer or arrange for the administration of any scheme approved by the Minister for the provision of community transport schemes and services." But there are no specific requirements for contracts for TfNSW-funded community transport operators. They are not accredited within passenger transport legislation.

However, TfNSW does have contracts with TfNSW-funded community transport operators. For HACC services, these are based on Commonwealth standards.

The contracts set out the Government’s requirements for operators. These mostly relate to vehicle maintenance standards and roadworthiness. There is also an expectation that operators have a good understanding of the goals and objectives of HACC and CTP, the guidelines and standards that are issued from time to time, their rights and responsibilities, and reporting and data requirements. These form part of the contract.

The HACC program also requires a police check for all staff. Other requirements, such as a “working with children check” are already required by law if an employer provides child-related employment. All drivers and vehicles must meet the general licensing and registration requirements of roads legislation and organisations are bound by occupational health and safety and other requirements for employees and volunteers.

TfNSW does not impose other requirements on community transport operators. The onus is on the governing body of the organisation to be satisfied that appropriate processes are in place.

Given the vulnerability of community transport customers, the Government is considering strengthening the safety framework for service delivery. TfNSW will work with community transport operators and user groups to determine the precise detail of additional requirements that will be incorporated into TfNSW funding agreements.

3.4.2 Reform options

Accreditation of operators

Based on feedback from larger TfNSW-funded community transport organisations, TfNSW is considering including accreditation requirements, similar to those for operators of other contracted passenger transport services, in the funding agreements for large organisations providing HACC and CTP services. Funding over a specified level would be the criterion for establishing this requirement.

The main purpose of operator accreditation is to ensure safe and reliable services for the travelling public. TfNSW uses accreditation to assess whether a person is of suitable character and fitness and is competent to operate public passenger services in accordance with conditions prescribed by the PT Act or Regulation or imposed by the Director General.

These standards and conditions aim to raise operators’ awareness of safety, service delivery and business acumen and to hold them accountable for assurance systems for passenger transport operations.

Smaller organisations receiving less than a specified level could opt-in and seek operator accreditation on a voluntary basis. However, they would not be required to do so under their funding agreement.

Passenger transport legislation would be amended to include:

- A definition of “community transport” that specifies it only covers services funded by TfNSW
- A provision that gives TfNSW discretion to decide if accreditation is needed for particular community transport contracts e.g. “TfNSW may accredit community transport operators”. This will enable the Government to decide which operators require accreditation.

Proposed approach

TfNSW is considering including accreditation requirements, similar to those for operators of other contracted passenger transport services, in the funding agreements for large organisations providing HACC and CTP services. Funding over a specified level would be the criterion for establishing this requirement.

What do you think?

3.5 Powers to set and review fares

Maximum fares for passenger transport services are set by two agencies: the Independent Pricing and Regulatory Tribunal (IPART) and TfNSW. Fares are set by mode, different arrangements apply across modes and the roles and responsibilities of the agencies administering the legislation are not always clear.

IPART sets maximum fares for most services provided by: CityRail; Sydney Buses; Sydney Ferries; Newcastle Buses and Ferries; and timetabled bus services in metropolitan, outer metropolitan and rural and regional areas operated under contract with TfNSW.

TfNSW sets maximum fares for taxis and certain private ferry services. IPART can review fares for these services and recommend the maximum fares operators may charge.

This complexity is reflected in the legislation. There are provisions in three Acts: the PT Act, the *Transport Administration Act 1988 (TA Act)* and the *Independent Pricing and Regulatory Tribunal Act 1992 (IPART Act)*.

Under the proposed changes, the arrangements governing these functions would be streamlined and consolidated into the revised passenger transport legislation. This would mean, as happens now:

- Government can determine the services where fares are regulated
- Government can ask IPART to set maximum fares for services
- Government can ask IPART to undertake reviews or make recommendations for maximum fares and then Government can set the maximum fares.

These changes would result in a more streamlined approach to fare regulation, with clearly defined roles and responsibilities contained in a single piece of legislation.

Proposed approach

Place all provisions governing setting maximum fares in the revised passenger transport legislation.

What do you think?

3.6 Powers for determining eligibility for transport concessions

Under the TA Act, the arrangements for who determines eligibility for transport concessions are complex and unclear.

For example, the Minister for Transport determines who is eligible for free and concession travel on passenger transport services provided by RailCorp, State Transit and Sydney Ferries. However, it is less clear who determines eligibility for “subsidised transport schemes” such as the Taxi Transport Subsidy Scheme and the School Student Transport Scheme, which are provided by public and private operators.

For consistency, it is proposed to put all provisions for determining eligibility for transport concessions in the revised passenger transport legislation and to allow the Minister to determine eligibility for concessions across all modes of passenger transport.

This will clarify who has access to a concession or free travel regardless of the mode of transport being used and who is providing the service.

Proposed approach

Place all provisions for determining eligibility for transport concessions in the revised passenger transport legislation.

What do you think?

4 SAFETY

This section of the Discussion Paper is for information only – it is not part of the public comment process.

As a result of adopting new national transport laws, some legislation will be repealed and some legislation will need to change. This section of the Discussion Paper describes the current status of these reforms and their impact on NSW passenger transport legislation.

Since 2009, NSW Government has been involved in a program of national transport reform. This involves establishing national regulators and nationally-consistent laws for rail, heavy vehicles (which will apply to buses over 4.5t) and commercial vessels (which will apply to ferries).

The new national frameworks will provide streamlined and consistent regulation across jurisdictions for the many transport service providers who operate across borders.

The national regulators, in consultation with States and Territories, are developing national “applied” legislation i.e. legislation that is enacted in participating jurisdictions using “application acts”. These acts will describe how the national laws will be applied in NSW.

NSW has been involved in an ongoing process of discussion and negotiation to establish the new regulatory frameworks and laws and ensure a high level of safety is maintained. These processes are nearly finalised.

For more information, see Figure 1 or visit one of the national transport legislation websites.

Further information – new national transport laws

Trains www.nrsrproject.sa.gov.au

Buses **About the Regulator**
www.NHVR.gov.au

About the law
www.NTC.gov.au

Ferries www.nationalsystem.amsa.gov.au



4.1 Trains and light rail³

4.1.1 Current regulatory framework

Rail services are currently regulated by the *Rail Safety Act 2008* and Regulations. These include:

- General safety duties, operator accreditation and safety management systems
- Monitoring and enforcing compliance with safety duties by the Independent Transport Safety Regulator (ITSR)
- Independent investigation of serious train safety incidents by the Office of Transport Safety Investigations (OTSI)
- Passenger fare payment and conduct provisions.

In addition to the rail safety laws, light rail operations on public roads are subject to road traffic laws and road rules administered by Roads and Maritime Services (RMS) and the NSW Police Force.

4.1.2 National reform

From January 2013 a new Rail Safety National Law (RSNL) will commence. The new arrangements for rail include:

- **New safety law:** The new Rail Safety National Law (RSNL) will be administered by the National Rail Safety Regulator (NRSR) in all States and Territories. In NSW, ITSR will administer the national law via a Service Level Agreement.
- **New national framework for investigating rail incidents:** Rail safety incidents will be investigated by the Australian Transport Safety Bureau (ATSB). Previously, ATSB only investigated incidents on the Defined Interstate Rail Network (DIRN), but under the new national framework it will be responsible for investigating all rail safety incidents. In NSW and Victoria, state-based safety investigators will conduct investigations on behalf of ATSB. In NSW, investigations will be conducted by the Office of Transport Safety Investigations (OTSI).

While the RSNL is similar to the current *NSW Rail Safety Act 2008*, it introduces some new requirements including:

- New general safety duties for parties loading and unloading rail freight
- New requirements for accredited operator safety management systems, including procedures for rail safety worker induction and ongoing training, and methods to promote and maintain a positive safety culture
- Requirements for rail infrastructure managers to notify and consult the regulator and stakeholders on proposed changes to network rules.

³ On 23 March 2012 the NSW Government announced it had bought the company that owns the light rail and the monorail, enabling the efficient delivery of future light rail extensions and clearing the way for the removal of the monorail to accommodate the new convention centre at Darling Harbour.

4.1.3 NSW implementation of national reforms

In NSW the national rail safety and investigation reforms will be implemented as follows:

- The NSW Rail Safety Act and Regulations will be repealed
- Head office functions will be carried out by the NRSR, based in South Australia
- ITSIR will administer and enforce the national law under a service level agreement with the NRSR. It will apply to both heavy and light rail services.
- OTSI will work with ATSB to jointly investigate rail incidents in NSW under a Collaboration Agreement
- OTSI will be able to conduct investigations into train incidents whenever ATSB decides not to investigate.

4.1.4 NSW only requirements in the national law

NSW will retain the current fatigue management requirements for train drivers and drug and alcohol testing requirements for rail safety workers once the National Rail Safety Regulator is established. These arrangements are designed to ensure the safe operation of Australia's busiest rail network. They include:

- Legislated work and rest time limits for train drivers as currently contained in Schedule 2 of the *Rail Safety Act 2008*
- Requiring operators to undertake random drug and alcohol testing on a minimum of 25% of their rail safety workers, including contractors
- Requiring operators to test to an evidentiary standard that could be presented before a court
- Requiring operators to report positive results to the Regulator, including details of the rail safety worker, for investigation and possible prosecution.

These arrangements will be reviewed after three years.

4.2 Buses

4.2.1 Current regulatory framework

Bus services are subject to NSW transport safety laws and arrangements. These include:

- **Road transport laws** administered by RMS and the NSW Police Force, including driver licensing, vehicle registration, vehicle design standards, mass and dimensions, driver fatigue (including heavy vehicles) and the road rules
- **The PT Act provisions** administered by TfNSW, which include additional requirements for the safety of passenger bus services. These include operator accreditation, driver authorisation, operator safety management systems (SMS), drug and alcohol programs and testing, other safety requirements and independent incident investigations by OTSI.

4.2.2 National reform

From January 2013, a new Heavy Vehicle National Law (HVNL) will be administered by the National Heavy Vehicle Regulator (NHVR). The new national law for heavy vehicles includes:

- Nationally coordinated decisions about route access
- National registration of heavy vehicles
- Harmonised national penalties for breaches of the law.

The national law applies to buses over 4.5t. Other buses will continue to be regulated under NSW road transport laws. All heavy vehicles, including buses, will continue to be subject to NSW driver licensing laws, the road rules and other safety laws.

Within the HVNL framework, jurisdictions are allowed to maintain existing detailed productivity and safety initiatives. Some state-based initiatives will be adopted as “exemption notices” within the national law, while others will be retained within state-based legislation. The additional productivity and safety measures that NSW is retaining for buses are described in **Appendix D**.

4.2.3 NSW implementation of national reforms for heavy vehicles

NSW, the NHVR reforms will be implemented as follows:

- Head office functions will be carried out by the NHVR, based in Queensland
- RMS will administer and enforce the national law under a service level agreement with the NHVR
- NSW Police will continue to enforce heavy vehicle legislation; and
- Incidents in NSW will be investigated by OTSI or an independent Board of Inquiry established by the Minister for Transport.

4.2.4 Areas for future reform

Through its involvement in the national reform process, the bus industry has raised concerns about the different ways that bus operators are accredited and drivers are authorised across jurisdictions. Cross border operators and drivers must be accredited/authorised in two or more jurisdictions, resulting in red tape. This does not form part of the HVNL but has been noted as an area for future reform by NSW.

TfNSW will work with industry and Victoria, Queensland and the ACT to better understand the impacts of these issues and develop options for addressing them. This work will commence in 2013 following the completion of the Passenger Transport Legislation Review.

4.3 Ferries

4.3.1 Current regulatory framework

Ferry services are subject to NSW transport safety laws and arrangements including;

- **The *Marine Safety Act 1998*** administered by RMS. It applies to all recreational and commercial vessels and includes: navigation rules; port and pilot management; drug and alcohol testing; incident notification to RMS; inspection and investigation powers; vessel registration and design standards; master and crew certificates of competency; public wharf safety.
- **The *PT Act***, administered by RMS. It includes additional provisions for vessels used for passenger transport, including: safety management systems (SMS); drug and alcohol programs; record-keeping; ferry master offences; incident reporting; and independent incident investigations by OTSI.

4.3.2 National reforms

From January 2013, the way commercial vessel safety in Australia is regulated and operated will change. A Marine Safety (Domestic Commercial Vessels) National Law Act will apply to the operations of the domestic commercial vessel fleet; and the Australian Maritime Safety Authority (AMSA) will become the National Regulator of the national system.

The draft national law includes:

- General safety duties, similar to general duties under work health and safety and rail safety laws
- Vessel identification and certification
- Master and crew competency certification
- Incident reporting
- Inspection and investigation powers.

In line with the *NSW Marine Safety Act 1998*, the national law will be supported by National Standards for Commercial Vessels covering design, construction, equipment and operations.

States and Territories may continue to maintain laws for areas not covered by the national law, including: wharf maintenance; navigation rules; drug and alcohol offences; passenger management; and work and electrical safety.

4.3.3 NSW implementation of national reforms for domestic commercial vessels

When the national law for domestic commercial vessels is introduced:

- A National Regulator (Australian Maritime Safety Authority) will administer the national law as it applies to interstate and intrastate domestic commercial vessel operations
- RMS will administer the National Law in NSW under a Service Level Agreement with the National Regulator
- Incidents will continue to be investigated by OTSI or an independent Board of Inquiry established by the Minister
- NSW will retain responsibility for: regulating waterways; managing ports, harbours, moorings and wharves; and associated issues such as setting and enforcing speed limits and drug and alcohol offences for commercial and recreational vessels.

4.3.4 NSW arrangements for drug and alcohol testing

The draft National Law does not include provisions for drug and alcohol programs and testing. It does allow the State and Territory laws to include provisions for “the actions of persons under the influence of alcohol or other drugs”.

NSW will retain the following arrangements for drug and alcohol testing in respect of ferry operations:

- Operators have a duty to implement a drug and alcohol program
- Operators have a duty to ensure workers are not under the influence of drugs and alcohol when working on a ferry or about to work on a ferry
- Operators may conduct random, targeted and post-incident testing of employees

As far as possible, the penalties for drug and alcohol offences will be aligned across modes.

5 TICKETING, REVENUE PROTECTION AND PASSENGER CONDUCT REGULATIONS

5.1 Overview

The key passenger transport regulations are the *Passenger Transport Regulation 2007 (PTR)* and the *Rail Safety (Offences) Regulation 2008 (RSR)*. The review focused on ticketing, revenue protection and passenger conduct.

Proposed changes to legislation will be implemented separately from other recommendations of the Review to allow for the introduction of the Opal electronic ticketing system in late 2012.

5.2 Current regulatory approach

Historically, legislation dealing with trains was developed separately to other transport modes. As a result, two Regulations govern ticketing, revenue protection and passenger behaviour offences across the major public transport modes: the *Passenger Transport Regulation 2007* and the *Rail Safety (Offences) Regulation 2008*.

The PTR and the RSR cover the same subject matter but treat revenue protection, ticketing and passenger behaviour offences differently for different transport modes.

The PTR and the RSR are enforced by 'authorised officers'. **Authorised officers include** Compliance Officers employed by the Roads and Maritime Service; State Transit Authority (STA) Revenue Protection Officers; RailCorp Transit Officers; and NSW Police Officers. The role and responsibilities of authorised officers are different across modes of transport.

5.3 Future changes

The NSW transport network requires consistent rules for ticketing and passenger behaviour offences. It is proposed that all requirements will be placed in a single regulation. This will:

- Ensure an integrated approach to managing the transport network.
- Make it easier for customers to understand their obligations and responsibilities.
- Ensure the same offence attracts the same penalty.

The consistent application of regulations will create more certainty for public transport customers and ensure that regulations continue to play an effective role in deterring anti-social behaviour. These outcomes reflect the goals of the NSW Government in the 10-year State Plan, *NSW 2021*, of improving customer experience with transport services while helping to grow patronage by making it a more attractive choice.

Consistent rules will also enable a more effective approach to compliance by clarifying the roles of authorised officers and NSW Police Officers on public transport. This will support an integrated approach to enforcement across all public passenger transport modes in NSW.

Other changes will be needed to allow the introduction of the Opal electronic ticketing system (ETS). This new system is not included in the current regulations.

The remaining offence provisions will be combined if they are the same or similar and mode-specific offences will be retained in the new regulation.



Summary of proposed changes to passenger transport regulations

1. Amend the PT Act to allow rail to be covered under the *Passenger Transport Regulation 2007*.
2. Consolidate ticketing provisions to enable the introduction of electronic ticketing.
3. Amalgamate ticketing and passenger offence provisions for all public transport modes into a single Regulation.
4. Amend a number of existing offences for consistency and introduce new offences to address current concerns.
5. Align penalty amounts for similar offences on different modes.
6. Confirm classes of authorised officer and define their responsibilities.

There will be a significantly expanded police presence on public transport with the establishment of the new NSW Police Transport Command. Under these plans, enforcement and revenue protection activities will be conducted by the Police Transport Command and a small revenue protection group will be retained to operate on all modes of public transport. This work is being conducted under a separate process from this Review.

5.4 Ticketing

5.4.1 Current ticketing

At present, Government-run buses, trains and ferries use the Automated Fare Collection (AFC) system for automated ticketing and fare collection. The current AFC system generally uses magnetic stripe cards dispensed by staff or from self-service vending machines. The use of these tickets is regulated by the PTR and the RSR.

A new smartcard-based automated fare collection system is being developed for the Greater Metropolitan Area of Sydney. The Opal electronic ticketing system (ETS) will be introduced in stages on public transport in Greater Metropolitan Area of Sydney commencing in December 2012. The smart card will replace the AFC system on all CityRail, Sydney Buses, Sydney Ferries and Newcastle Buses and Ferries services and will include private-sector bus and ferry operators. Initially, Opal will run in parallel with the current ticketing system.

The new integrated ticketing system is not recognised by current regulations so several changes will need to be made to enable an ETS to be implemented. Proposed amendments will:

- a) Enable operation of an ETS on the NSW passenger transport network (in parallel with current ticketing arrangements);
- b) Provide a revenue protection framework for the ETS; and
- c) Provide scope for the Director General, TfNSW to approve the relevant business rules, terms and conditions of use and systems for ETS through publication in the NSW Government Gazette.

5.4.2 How Opal works

Customers travelling with Opal cards will be required to tap on and tap off at the start and end of each leg of their journey to pay for their travel. For train and ferry journeys in the Sydney Greater Metropolitan Area, tapping on and tapping off will be required every time the passenger enters and leaves the 'paid area' of a train station or ferry wharf. For bus journeys, passengers will be required to tap on and tap off every time they enter and exit a bus.

5.4.3 Proposed amendments

To enable the use of the Opal smartcard, the PTR will be revised to recognise:

- Definitions - the regulations need to define a smartcard, smartcard readers (including those carried by authorised officers) and the process for validation and inspection of tickets. Other definitions need to be reviewed for consistency to ensure ticketing arrangements are consistent across all public transport modes;
- Parallel operation - due to the staged implementation of ETS, the regulations will need to allow the continuation of current tickets in conjunction with the operation of the smartcard across the various modes, including tap on/tap off technology; and
- Valid tickets - there is a need to further clarify arrangements for travelling with a valid ticket under ETS.

Legislation will provide scope for the Director General to approve the relevant business rules, terms and conditions of use and systems for ETS through publication in the NSW Government Gazette.

Under this arrangement, any future changes to these operational business rules can be amended by an order published in the NSW Government Gazette instead of legislative amendment. This approach will give the Government flexibility to make future changes and to respond in a timely and efficient manner as the Opal card is rolled out across the transport network.

5.5 Passenger behaviour

5.5.1 Current passenger behaviour provisions

Currently, behavioural regulations for passenger transport are set out in different pieces of legislation and are not always consistent across transport modes. It is proposed to have one set of passenger behaviour offences applicable to trains, buses and ferries to create a customer focused - rather than transport mode focused - approach to regulation.

The current passenger behaviour offences under the PTR will be amalgamated with offences under the RSR to improve the consistency of consequences for inappropriate behaviour across modes. This will also improve understanding of behaviour expectations for passengers, authorised officers and the Courts.

5.5.2 Proposed amendments

As part of the Passenger Transport Legislation Review, passenger behaviour offence provisions between the PTR and RSR were compared to identify any gaps or inconsistencies between them.

The comparison was informed by NSW transport agencies and looked at the suitability of existing provisions as well as behaviours on the network that were not addressed in the current offences.

A number of changes to existing offences are proposed in response to findings from the Review. These are:

- a) Amendments to the following offences to better address dangerous behaviour and fare evasion:
- **PTR, Clause 58 No Throwing**, this clause will be amended to include throwing objects *in, from and/or at a vehicle*;
 - **PTR, Clause 61 Entry to and exit from buses and ferries**, this clause will be amended to include the use gangways for ferries;
 - **PTR, Clause 75 Concession tickets**, this clause will be amended to apply the RSR offence for presenting a fraudulent concession card to other modes;
 - **PTR, Clause 77 Inspection of tickets**, this clause will be amended to specify the requirement to hand over a ticket for inspection and processing; and
 - **RSR, Clause 56 Removal of persons**, this clause will be applied to buses, trains and ferries where a person refuses to leave a service.

b) New offences

Consultation with transport agencies has revealed that a number of security and behaviour-related issues occurring on public transport that are not included in the current regulations. The following behaviours are recommended for inclusion:

- Hindering the driver of a bus or an authorised officer in the course of their duty, to discourage dangerous practices that can cause harm to customers and drivers;
- Transport of flammable/dangerous goods, to deter vandalism on public transport and ensure customer and driver safety; and
- Interfering with a moving train, to discourage dangerous practices that can cause harm to customers and drivers.

Further information on these amendments is provided in Appendix E.

To ensure Transport for NSW is meeting the needs and expectations of the community, groups of our customers from across Sydney were asked what they thought of the proposed amendments. Feedback from the groups indicated strong support for the recommended changes. Broadly, customers believed that clear and consistent regulations and appropriate penalties are essential for efficient public transport services that meet the needs of the community.

Passenger behaviour offences

TfNSW is proposing amendments to passenger behaviour and revenue protection offences to create a single consistent and responsive regulation. This will involve:

1. Amending the five offence provisions referring to throwing objects, entry and exit from buses and ferries, concession tickets, the inspection of tickets and the removal of persons.
2. Introducing three new offences for hindering a bus driver or authorised officer, transporting flammable/dangerous goods and interfering with a moving train.

What do you think?

5.6 Penalties

5.6.1 Improved consistency

The NSW Law Reform Commission (NSWLRC) has released *The New South Wales Law Reform Commission Report 132: Penalty Notices*, which examines the use of penalty notices in New South Wales.

The Report recommends improved consistency for similar offences, guidelines for setting penalty amounts, the consideration of warnings and that penalty amounts be appropriate for the seriousness of the offences.

The amendments proposed by TfNSW follow these principles and recommend a single regulation to ensure an integrated approach to managing the transport network. This includes providing a single penalty amount for the same offence on different modes of public transport that reflects the seriousness of the behaviour.

5.6.2 Penalty amounts

To achieve true integration of passenger transport in NSW, offence provisions should carry the same penalty amounts across all modes of transport. Currently, similar offences in the PTR and RSR can attract differing penalties. For example, the offence of throwing items in or from a vehicle in the PTR attracts a maximum fine of five penalty units while the prohibition of throwing items at or from a train in the RSR attracts a maximum fine of 20 penalty units.

There are numerous other examples where the penalties under these instruments differ for the same offence. Consolidating the offence provisions across public transport modes also requires the development of a consistent penalty for each offence regardless of the mode of transport on which it occurs.

TfNSW proposes that where different penalties exist for common offences, the higher value will be applied within a new single regulation. The consistent application of penalties will create greater certainty and consistency for customers. The retention of the stronger penalty amounts reflects the nature and seriousness of the offences and will help to discourage anti-social behaviour across all public transport modes.

As passenger transport is used for millions of customer journeys every year and vehicles are an isolated environment once boarded, the retention of these penalty amounts is appropriate. These outcomes reflect the goals of the NSW Government in *NSW 2021* of improving customer experience with transport services while helping to grow patronage by making public transport a more attractive choice.

Penalty notices

TfNSW is proposing to introduce single penalty amounts for the same offence on buses, ferries and trains. The penalty notice amounts will reflect the nature of the actions and the seriousness of the behaviour.

What do you think?

6 CONCLUSION

Passenger transport legislation sets the framework for the delivery of passenger transport services in NSW.

The confusion, crossover and duplication in the current provisions are inconsistent with the new service delivery principles outlined in the *Transport Administration Act 1988*. The current PT Act limits the options that are available to customers by focusing on the vehicle providing the service rather than on the service being delivered to customers.

Realigning passenger transport legislation along principles common to all transport modes is an essential element in creating a passenger transport system that:

- Focuses on the **customer**.
- Is **integrated** and **coherent** across transport modes.
- Allows for **innovation**.
- Delivers **seamless** and **flexible** transport systems.
- Is based on a strong **purchaser-operator** model that is consistent across modes.

Revising passenger transport legislation in line with the recommendations outlined in this Discussion Paper will help create a regulatory framework that is flexible enough to meet these objectives and match the Government's long term plan for passenger transport in NSW.



APPENDICES

Appendix A **Current contracting arrangements for passenger transport services**

Trains

While services on other modes may be delivered by any “accredited operator”, the provisions for trains apply only to services “operated by RailCorp”.

RailCorp operates two types of service:

- CityRail, which operates metropolitan passenger train services; and
- CountryLink, which operates long distance services.

CityRail services cover suburban Sydney and extend to the Hunter, Central Coast, Blue Mountains, Southern Highlands and South Coast regions. Nearly 40% of all journeys to work in the Sydney CBD are via CityRail.

CountryLink carries almost two million passengers each year to over 365 destinations in rural NSW as well as interstate to Queensland, Victoria and the ACT.

In July 2010, TfNSW signed a new five-year contract with RailCorp.

On 15 May 2012, the Government announced the “Fixing the Trains” program. As part of this program, RailCorp will be split into separate entities so the distinct needs of Sydney and regional/intercity train customers are better met.

These new arrangements may create the need for new service contracts between TfNSW and each of these entities.

In naming an operator as the sole service provider, the current PT Act is out of step with a “purchaser-operator model” that provides flexibility for Government, encourages competition between operators and supports the Transport Administration Act’s objectives of integrated and efficient transport.

Light rail

Light rail in NSW operates only in Sydney, between Central Station and Lilyfield. In early 2011, approval was given to extend the light rail line a further 5.6 kilometres from Lilyfield to Dulwich Hill.

The Inner West Light Rail Extension is the first step in the NSW Government’s plan to extend light rail in Sydney. The Government is also investigating the feasibility of extending light rail into the Sydney CBD, from Central to the University of NSW, and from Central to the University of Sydney. The light rail system was developed by a private company, Metro Transport Sydney (MTS) under a 30-year lease arrangement with the Government. It is operated by Veolia Transport under contract to MTS. In March 2012, the Government purchased MTS, giving TfNSW more flexibility to expand the light rail network and integrate it with other transport modes. When the Government announced it had bought MTS, it also announced the removal of the monorail to accommodate the new convention centre at Darling Harbour.

There is currently no provision for it within the PT Act and hence no “service contract” for the operation of light rail services within the scope of that Act.

Buses

There are 1,506 accredited bus operators in NSW and four types of accredited bus service:

- Long distance (e.g. a Sydney to Brisbane journey open to the general public)
- Tourist (e.g. a Hunter Valley Wine Tour open to the general public)
- Charter (e.g. a sports club charters a bus for a rugby game)
- Regular passenger services (e.g. a timetabled transport service travelling along a regular route such as those delivered by the State Transit Authority).

Under the PT Act, only the last of these, “regular passenger services”, requires a service contract with the Government.

On December 2011, 746 of these bus contracts were operating in NSW. They are managed under three broad contract types.

Metropolitan Bus System Contracts

Metropolitan buses make around one million bus journeys each weekday in Sydney. These journeys are made by private and public (State Transit Authority) bus operators holding a Metropolitan Bus Service Contract (MBSC) with the Government. There are currently 15 MBSC contracts.

In May 2012, the Government announced that contracts for existing MBSC operators would not be renewed. Operators will be required to competitively tender for existing MBSC contracts. The introduction of tendering for private bus operator regions will be staged over two tender rounds, commencing in July 2012.

Outer Metropolitan Bus System Contracts

In addition to metropolitan operators, there are 10 Outer Metropolitan Bus Service Contract (OMBSC) regions covering the Hunter, Central Coast, Wollongong and the Blue Mountains. These contracts are similar to MBSC contracts.

Rural and Regional Bus System Contracts

Rural and regional operators generally service larger geographical areas with lower population densities than metropolitan and outer metropolitan operators. Rural and regional bus system contracts, with an initial seven-year term and a further seven-year “first right of refusal”, were signed during 2008. There are two distinct types of rural and regional contract:

- Type A Contracts provide dedicated school bus services
- Type B Contracts cover rural town passenger services and school services.

On December 2011, there were 636 Type A Contracts and 76 Type B Contracts.

Ferries

There are two ferry-contracting regimes within the Act: a new regime introduced in 2009 and the pre-existing regime. The older-style contracts are divided into commercial and non-commercial contracts.

Although there are two contracting regimes in place, the Government has exempted some operators from operating under a contract. An example is the private operators providing commercial high-speed services between Manly and Circular Quay.

Older-style contracts

The old regime, for ferry contracts issued before 2009, provides for commercial and non-commercial contracts:

- Commercial contracts are funded by passenger fares
- Non-commercial contracts are funded by TfNSW at “a contract price or remuneration fixed at an agreed rate”.

The new ferry contract

In response to recommendations from the 2007 Report of the Special Commission of Inquiry into Sydney Ferries Corporation (the Walker Inquiry), a number of amendments were made to the PT Act to support the reform of Sydney Ferries. A new type of contract was defined which removed exclusive rights and automatic rights of renewal. These amendments enabled TfNSW to develop the Ferry System Contract which was established specifically to support the franchising of Sydney Ferries. The contract includes a much stronger focus on performance standards and enables the Government to retain control over service levels with fares determined by the Independent Pricing and Regulatory Tribunal.

Exempted services

Given the current regulatory constraints with ferry contracts, the Government has exempted certain services from the scope of the Act. This has been done in a number of ways.

For example, the Government amended the definition of “regular ferry services” to allow commercially-operated fast ferries to provide a high-speed ferry service between Manly and Circular Quay after the JetCat services ceased. This was done by specifically excluding “a high-speed ferry service between Manly and Circular Quay” from the definition. These services are cost-neutral – they are funded through passenger fares rather than via Government funding. The exemption excludes these services from the need to operate under a Government contract.

Newcastle and Palm Beach ferries have also been exempted from the need to operate under a Government contract, in this case via an “Instrument of Exemption” (IOE).

Appendix B NSW intrastate air routes

Table 3 – NSW intrastate air routes

SYDNEY-LINKED AIRPORT	CALENDAR YEAR PATRONAGE				
	2007	2008	2009	2010	2011
Coffs Harbour	306,017	305,603	293,446	303,853	305,095
Ballina	272,868	267,679	269,130	265,808	263,021
Albury	163,860	222,768	235,876	246,706	239,327
Port Macquarie	114,488	159,660	189,749	209,365	198,692
Wagga Wagga	179,658	180,957	175,666	185,240	179,985
Dubbo	178,096	183,970	164,329	173,213	165,815
Tamworth	103,144	110,139	115,079	131,989	132,234
Armidale	90,914	95,019	97,953	104,750	102,519
Orange	59,757	58,196	52,528	56,936	61,943
Griffith	64,934	62,902	58,311	59,989	59,495
Lismore	69,168	65,748	57,015	52,299	46,807
Merimbula	40,155	37,901	33,621	34,254	34,369
Parkes	33,338	34,230	28,352	31,660	31,693
Newcastle (Williamtown)	49,347	47,303	36,286	33,335	27,385
Broken Hill	20,392	24,357	23,847	26,374	27,082
Bathurst	24,656	23,985	23,317	25,542	26,999
Moree	23,382	25,599	26,629	27,464	26,786
Lord Howe Island	27,911	28,081	27,116	27,189	25,546
Moruya	18,485	19,066	17,852	19,029	18,098
Taree	18,600	21,699	18,600	18,909	17,239
Grafton	20,826	20,334	18,861	18,227	16,941
Narrabri	14,069	16,023	13,937	12,132	13,840
Narrandera	15,438	14,518	12,539	12,649	11,992
Mudgee	8,853	8,719	2,150	9,994	10,614
Cobar	8,569	6,658	--	1,620	7,858
Cooma	16,355	--	--	4,217	4,829
TOTAL	1,954,942	2,050,443	1,992,820	2,092,743	2,056,203

N.B. Current deregulated routes are highlighted in blue

Appendix C **Descriptions of NSW Home and Community Care (HACC) and Community Transport Program (CTP)**

Home and Community Care (HACC)

The HACC program provides community care services to frail aged and younger people with disabilities and their carers. The aim of the program is to enhance the independence of people in these groups and avoid their premature or inappropriate admission to long term residential care.

HACC is a national program, with the costs shared between the Commonwealth Government (60%) and State Government (40%). In NSW, the Ageing, Disability and Home Care (ADHC) branch in the Department of Family and Community Services undertakes the planning and policy development of transport services provided through the HACC Community Transport sub-program. TfNSW administers the bulk of the community transport component of the HACC program.

Community Transport Program (CTP)

The NSW Community Transport Program (CTP) is funded by the NSW Government. It aims to address local transport disadvantage by promoting efficient use of transport resources within the community.

The CTP targets people whose access to mainstream transport services is limited by physical, social or geographical factors. The following criteria are used in determining eligibility for services:

- People with a permanent or temporary mobility disability that leaves them unable to use conventional transport systems.
- People living in villages of less than 500 people that do not have access to conventional transport systems.
- People who need to access community facilities and resources that are not available within the hours when conventional passenger transport operates.

Appendix D Productivity and safety initiatives for buses

Productivity initiatives to be included in national law

The following NSW productivity initiatives will be included in the HVNL under exemption notices issued by NHVR. The draft national exemption notices will be circulated for review, then the NSW Government will review them to ensure current NSW exemptions are preserved. This is important because of the safety matters in Table 4.

Table 4 – Productivity initiatives that will be retained for NSW buses

Current exemption notice	NSW variation
Controlled Access Bus Notice 2010 – Rear overhang	NSW law sets a controlled access bus rear overhang limit of the lesser of 4.9m or 70% of distance from centre of front axle and rear overhang line. The draft HVNL provides rear overhang limit of the lesser of 3.7m or 60% of distance from centre of front axle and rear overhang line.
Controlled Access Bus Notice 2010 – Approved routes	The draft HVNL allows NHVR to authorise routes for non-articulated buses 12.5-14.5m long. NHVR has indicated it will develop a National Class 2 Notice specifying approved routes for controlled access buses. Existing approved NSW routes will be incorporated into the draft Notice.
Ultra-Low Floor Bus Mass Limit Exemption Notice 2007	As per the existing Notice, non-articulated ultra-low floor buses with single axles may exceed 16t mass limit by up to 650kgs (total mass 16.650t)
Complying Bus Mass Limit Exemption Notice 2011	“Complying buses” may exceed the regulated mass limits by 0.5t. The draft HVNL includes the same mass limits for “complying buses” as per the current NSW regulation.
Metropolitan High Capacity Bus Mass Limit Exemption Notice 2009	Metrobus services can exceed regulated mass limits by up to 0.8t on specified routes. (i.e. rigid buses up to 20.8t and articulated buses up to 26.8t). The draft HVNL sets 20t and 26t limits.

Exemption from fatigue and speeding compliance provisions for non-commercial buses and private hire cars

The national regulator’s Project Office is considering how to maintain a number of additional NSW exemptions relating to fatigue and speeding compliance.

These include:

- an exemption from the work and rest time “rounding rule” for NSW Government contract bus services;
- an exemption from work diary requirements for NSW Government contract bus services (irrespective of distance travelled);
- an exemption for bus operators enrolled in AFM relating to certain requirements which are already covered by the BOAS requirements; and
- an exemption for non-commercial buses and private hire cars from the speeding compliance and driver fatigue provisions under the national law
- if these NSW exemptions are not maintained under the new national law or under a national notice as a productivity initiative, NSW will consider maintaining these as a NSW variation when the national law is implemented in NSW.

Safety initiatives

NSW has a strong emphasis on the safety of people travelling on buses and will retain a range of additional safety initiatives by various methods – see Table 5.

Table 5 – Additional safety initiatives that will be retained for NSW buses

Area	Standards/requirements to be retained
Bus safety standards that are not included in the national law	Standards for door safety systems and field of view systems so the driver can see the doorways; safety padding on handrails and backs of seats.
Warning signs and wig wag lights on school buses	The requirement for warning signs and wig wag lights to be fitted on school buses to current NSW safety standards.
Bi-annual inspections of public passenger buses	The requirement for bi-annual inspections of public passenger buses will be maintained for the first three years of the NHVR while a nationally-uniform inspection scheme is developed.

In addition, NSW is considering retaining the requirement for vehicle monitoring devices (analogue tachographs).

Appendix E Passenger behaviour regulations

Existing offences

The following five offences in the Passenger Transport Regulation (PTR) have been reviewed by transport-operating agencies and were considered in focus groups commissioned by TfNSW.

Feedback from the focus groups indicated some instances of limited awareness of offences and fines. TfNSW will be conducting an awareness campaign of existing and any new offences and fines in 2013 to address this.

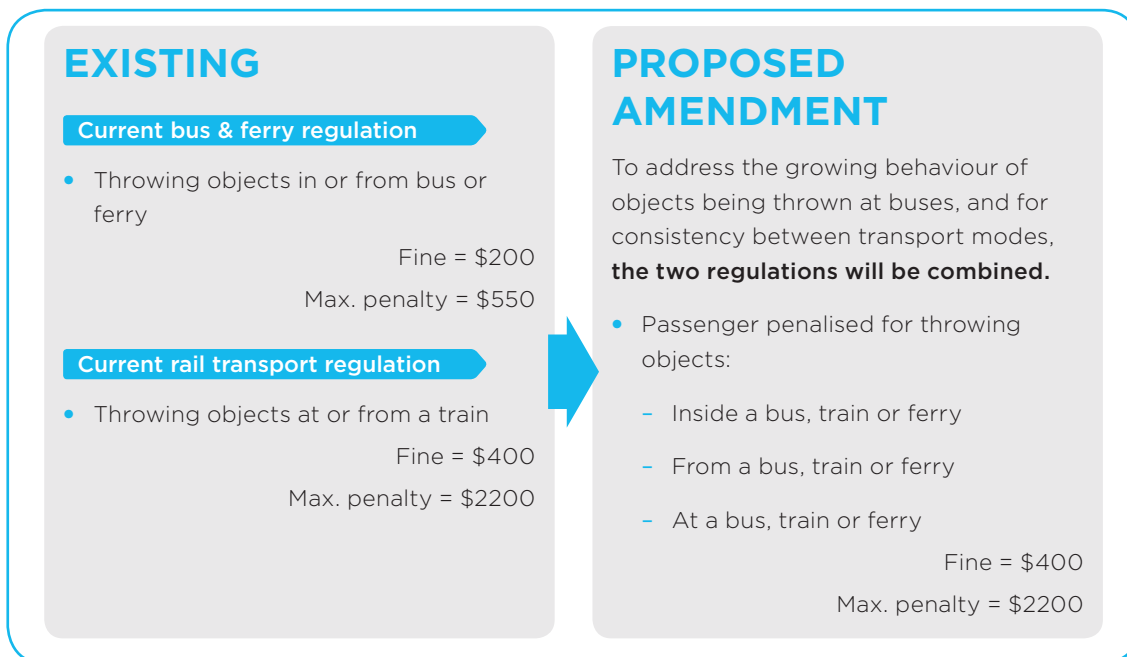
Clause 58 No throwing

The current wording of this clause only provides for throwing *in or out* of a public passenger vehicle. It does not include throwing an object at a public passenger vehicle; however the corresponding provision within the Rail Safety (Offences) Regulation (RSR) (clause 36) does make this distinction.

While acknowledging there is a separate offence in s49A of the Crimes Act 1900 (Crimes Act) 'Throwing rocks and other objects at vehicles and vessels', the object of the proposed amendment relates to the throwing of less dangerous objects at public passenger vehicles. Advice provided to TfNSW by the State Transit Authority (STA) indicates that the throwing of less dangerous objects identified above is a very common occurrence and can still present a safety issue and can result in delays to services. In 2011 there were 385 reported incidents of projectiles being thrown at buses.

Currently, when an item is thrown at a bus, NSW Police must be called to handle the matter. Under the Crimes Act this offence carries a maximum penalty of imprisonment for 5 years. While this maybe the appropriate course of action for some cases, the inclusion of an offence in the combined transport regulations would distinguish the less serious nature of some instances of school students throwing fruit or small pebbles at the back of buses when little or no property damage or injury to others generally occurs. It would also act as an appropriate deterrent for these less serious incidents, which still present a safety issue, and potential delays to services.

Throwing objects inside, from or at bus, train or ferry



Source: Research to inform the development of new and existing passenger offences, Stokes Mischewski, April 2012

Clause 61 Entry to and exit from buses and ferries

There are issues with customers stepping from wharves onto the ferries by means other than the gangway. This has been raised as a serious concern by authorised officers on ferry services.

To combat this behaviour, it is proposed to amend the clause in the PTR about entry to and exit from buses and ferries to include words to the effect that persons must enter or alight from a ferry using the gangway or other entrance-way as directed by the ferry crew or authorised officer.

Entry to and exit from a bus, train or ferry

EXISTING

Current bus & ferry regulation

- No entry or exit:
 - While the vehicle is in motion
 - Via the windows of the vehicle
 - *Ferry specific:*
Except at the side of the ferry adjoining the wharf

Fine = \$200
Max. penalty = \$550

Current rail transport regulation

- No entry or exit:
 - While the vehicle is in motion
 - Via the windows of the vehicle
 - Except at the side of the vehicle adjoining the platform/light rail stop

Fine = \$200
Max. penalty = \$550

PROPOSED AMENDMENT

To address the dangerous behaviour of jumping over ferry gangways, regulations will state that persons must enter or alight from a vehicle or vessel **by using designated entrance/exit as directed.**

- No entry or exit:
 - While the vehicle/vessel is in motion
 - Except via the permitted passenger entries, e.g. doors, gangway, etc.

Fine = \$200
Max. penalty = \$550

Source: Research to inform the development of new and existing passenger offences, Stokes Mischewski, April 2012

Clause 75 Concession tickets

Under the PTR, while a person must not travel on a public passenger vehicle using a concession ticket unless entitled, it is not an offence to knowingly give any information or tender any document that contains false or misleading information (i.e. a fraudulent concession card) to an authorised officer. Under clause 8 of the RSR, it is an offence to produce a false concession card in connection with travelling on a concession ticket.

Over 90% of penalty notices issued on the public transport network are for fare-related offences, including travel without a valid concession. It also currently leads to significant revenue loss with the cost ultimately borne by the broader community. Use of fraudulent concession tickets is a significant issue for enforcement officers and it is therefore considered that the approach within the RSR is the most appropriate for use in any new instrument covering all public transport modes.

Travelling with concession ticket when not eligible for concession

EXISTING	PROPOSED AMENDMENT
<p>Current bus & ferry regulation</p> <ul style="list-style-type: none"> Travelling with a concession ticket when not eligible for the concession Not showing/handing over proof of concession eligibility during inspection Fine per offence = \$100 Max. penalty per offence = \$550 	<p>The great majority of penalties issued on the public transport network are for fare-related offences. To capture the use of fraudulent concession cards, the rail provisions will be applied across all modes.</p> <p>Passengers penalised for:</p> <ul style="list-style-type: none"> Travelling with a concession ticket when not eligible for a concession ticket Not showing/handing concession card when asked Producing a false/invalid concession card as proof of being eligible for a concession ticket Fine U18 = \$50 Fine per offence = \$200 Max. penalty per offence = \$550
<p>Current rail transport regulation</p> <ul style="list-style-type: none"> Travelling with a concession ticket when not eligible for a concession ticket Not showing/handing over proof of concession eligibility during inspection Producing a false/invalid proof of concession card as proof of being eligible for a concession ticket Fine per offence = \$200 Max. penalty per offence = \$550 	

Source: Research to inform the development of new and existing passenger offences, Stokes Mischewski, April 2012

Clause 77 Inspection of tickets

TfNSW has been advised by revenue protection officers that the wording within the PTR, which only requires passengers to 'make their ticket available' for inspection, is exploited by customers refusing to hand over tickets. These customers advise authorised officers that they may look at the ticket without touching it.

Clause 9 of the RSR provides scope for an authorised officer to request customers to make tickets available for inspection or *processing*. Therefore, when amalgamating the two regulations, it is considered appropriate to require a person to produce their ticket for inspection or processing to an authorised officer upon request. This amendment will be required for the introduction of the Opal card.

Failing to produce ticket during an inspection

EXISTING

Current bus & ferry regulation

- Passenger must make their ticket available for inspection upon request
Fine = \$100
Max. penalty = \$550

Current rail transport regulation

- Person must make their ticket available for inspection or processing upon request
Fine = \$200
Max. penalty = \$550

PROPOSED AMENDMENT

To address passengers refusing to 'hand over' tickets for inspection (preventing proper inspection) and to enable electronic ticketing; the terminology of the clause will be amended **to ensure that a ticket is 'produced' on request.**

- Person must produce (show **and** hand over) for inspection or processing upon request
Fine U18 = \$50
Fine = \$200
Max. penalty = \$550

Source: Research to inform the development of new and existing passenger offences, Stokes Mischewski, April 2012

Clause 53 Removal of persons

The STA has advised TfNSW that it is becoming a more common occurrence for customers on bus services to disregard a direction by an authorised officer to leave a bus. Authorised officers have no power under this regulation to remove persons, creating a situation where services are delayed and other customers are frustrated.

Under the RSR, the ability to deal with such situations is addressed under clause 56, which provides that 'a person who refuses or fails to comply with a direction given under this Regulation to leave any train or railway premises or part of monorail works may be removed from the train or premises or part of the monorail works by a rail safety officer'.

In amalgamating the two regulations, it is considered necessary to apply this provision across modes. This amendment will ensure authorised officers have consistent powers across modes and will allow them to relieve frustrating situations where services are delayed. This could potentially be limited to certain classes of authorised officers who receive appropriate training.

Refusing to leave bus, train or ferry

EXISTING	PROPOSED AMENDMENT
<p>Current bus & ferry regulation</p> <ul style="list-style-type: none">Refusing to leave the bus or ferry Fine = \$200 Max. penalty = \$550	<p>When a passenger disregards a direction to leave a bus or ferry, there is currently no power for the person to be removed, or prevented from re-entering the vehicle.</p> <p>To prevent disruptions to services and impacts on other passengers, the rail regulation will be applied across all modes.</p> <p>Passengers penalised for:</p> <ul style="list-style-type: none">Refusing to leave the bus, train or ferryRe-entering vehicle once asked to leave Fine per offence = \$400 Max. penalty per offence = \$1100
<p>Current rail transport regulation</p> <ul style="list-style-type: none">Refusing to leave the train Fine = \$400 Max. penalty = \$1100Re-entering the vehicle once asked to leave Fine = \$400 Max. penalty = \$1100Safety officer can direct persons refusing to leave	

Source: Research to inform the development of new and existing passenger offences, Stokes Mischewski, April 2012

New offences

The following additional offences have been identified and recommended for inclusion when the passenger transport regulations are amalgamated.

Hindering the driver of a bus or an authorised officer in the course of their duty

There is no appropriate offence for obstructing the driver of a public passenger vehicle in the course of performing their duties (for example, distracting the driver of a bus with a laser light).

There may be scope for this offence to be dealt with under other clauses (for example, no offensive behaviour). However, considering the dangerous consequences of such actions, separately identifying this behaviour and creating a new offence is considered the most appropriate course of action. The new offence would apply to people on a customer service and is not intended to capture people outside the vehicle.

Hindering the bus driver/officer while on duty

NEW OFFENCE

What is the regulation?

- Passengers must not hinder a driver or authorised officer while they are performing their duties
 - For example, must not distract the bus driver with a laser light

What is it being introduced?

- To discourage dangerous practices that can cause harm to passengers and drivers
- Protect safety of drivers, officers and passengers onboard

What is the penalty?

Fine: \$300

Max. penalty: \$1100 equivalent to no “offensive behaviour or language” offences

Source: Research to inform the development of new and existing passenger offences, Stokes Mischewski, April 2012

Transport of flammable/dangerous goods

The transport of flammable and/or dangerous goods on public transport has been raised as a major safety issue by authorised officers on bus, ferry and train services. Specific incidents include carrying acid onto the rail network to vandalise trains using acid etching on windows and walls. Other examples include transporting petrol and other highly flammable substances on congested trains and bus services.

The purpose of developing this new offence is to prevent the transport of dangerous or flammable goods in an enclosed and potentially highly patronised environment. It is not intended to capture items of a personal nature being carried by a passenger, such as cigarette lighters or nail polish remover.

Passengers carrying flammable/dangerous goods on public transport

NEW OFFENCE

What is the regulation?

- Passengers must not carry flammable and dangerous goods on public transport
 - For example, must not carry acid (used to vandalise trains), petrol or other flammable substances
- These would not include personal items belonging to passengers
 - For example, cigarette lighters, nail polish remover

What is it being introduced?

- Protect the safety of passengers and drivers aboard the vehicle
- To stamp out vandalism on public transport

What is the penalty?

Fine: \$400

Max. penalty: \$1100 reflecting the seriousness of the conduct

Source: Research to inform the development of new and existing passenger offences, Stokes Mischewski, April 2012

Interfere with a moving train

RailCorp has advised TfNSW that there are customers – especially young people – engaging in the dangerous practice of standing close to the edge of a train platform while an express service passes through the station. They extend their hand past the edge of the platform to touch one of the carriages as it passes by at speed. This is a serious safety concern.

The CityRail website features a list of student responsibilities, including a Code of Conduct indicating that students should refrain from touching train doors, safety equipment or any part of a moving train. Despite the Code of Conduct, young people are still engaging in this dangerous practice. There is currently no specific offence or penalty within the RSR to deter other classes of customers.

RailCorp has advised TfNSW that this practice is extremely dangerous and should be discouraged by making it a punishable offence under the regulations. It is proposed that this offence be made mode-specific to trains.

Passengers interfering with a moving train

NEW OFFENCE

What is the regulation?

- A new train specific offence
- Passengers must not interact with or ride on the exterior of the rail carriage while it's in motion

What is it being introduced?

- To discourage dangerous practices that can cause harm to passengers and drivers
- Transport for NSW has been informed that 'thrill seeking' younger customers are standing close to the edge of a train platform and extending their hand past the platform edge to try to touch the carriages while an express service passes through the station

What is the penalty?

Fine: \$200

Max. penalty: \$550 Comparable to penalty which applies to similar conduct from within a train

Source: Research to inform the development of new and existing passenger offences, Stokes Mischewski, April 2012

