

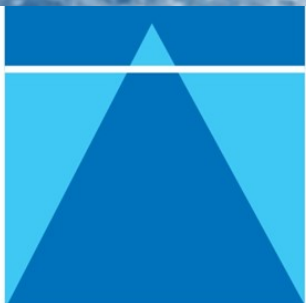
INQUIRY INTO 2022 REVIEW OF THE COMPULSORY THIRD PARTY INSURANCE SCHEME

Organisation: NSW Taxi Council

Date Received: 21 September 2022



NSW TAXI COUNCIL



Country Taxi
Operators Association

*This submission is provided in response
to the NSW Legislative Council 2022
Review of the Compulsory Third Party
Insurance Scheme Terms of reference.*

NSW Taxi Council Submission

**2022 REVIEW OF
THE CTP
INSURANCE
SCHEME**

21 September 2022

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EXECUTIVE SUMMARY

The NSW Taxi Council welcomes the opportunity to review and respond to the terms of reference paper released by the NSW Legislative Council's Standing Committee on Law and Justice for the review of the Compulsory Third Party Insurance Scheme.

This submission has been prepared on behalf of members of two Associations affiliated with the Taxis NSW organisation;

- 1) NSW Taxi Council
- 2) Country Taxi Operators Association

Taxis NSW acknowledges the current challenges in the competitive set within the Point to Point Transport sector; hence we are grateful for the ongoing collaboration and consultation between the NSW Taxi Council and the State Insurance Regulatory Authority (SIRA) working towards addressing some of these challenges.

We acknowledge the work being undertaken by SIRA towards reforming the framework for CTP. It is vital that this reform is completed ASAP to ensure the delivery of a competitor neutral scheme between Rideshare, Hire Cars and Taxis. Whilst there have been some developments already made in the Point to Point sector in relation to CTP, more is required to achieve a true level playing field for all participants.

The NSW Taxi Council together with its members strongly believe that a true levelling of the playing field will only be achieved if all Point to Point Service Providers, including Taxis were grouped in Class 1 for CTP. We have seen this evident in other states, such as Queensland, where all Personalised Transport Service Providers have been put in the same class, ensuring competitor neutrality.

In addition to CTP inequities, there is also a significant issue in the disparity of workers compensation between Taxis and Rideshare. Taxi Operators are mandated to take out a workers compensation policy for any drivers they bail a Taxi to, however Rideshare operators and the equivalent do not have the same requirement for any drivers they lease or provide a vehicle to. We have seen the Rideshare model evolve over the recent years from an individual choosing to drive part time to earn some additional income, to now seeing more full time participants enter Rideshare on a full time basis. This has led to a large number of individuals operating fleets of vehicles and leasing out to drivers, in the same manner a Taxi Operator bails a Taxi to a driver.

So why are Taxi Operators required to take out Workers Compensation, and yet a Rideshare Operator does not? How are Rideshare drivers protected from an incident resulting in serious injury?

We look forward to continuing to work with the State Insurance Regulatory Authority, as we aim to achieve a more competitor neutral scheme within the Point to Point Transport Sector, delivering better outcomes for the travelling public.

THE KEY RECOMMENDATIONS OUTLINED IN THIS SUBMISSION:

Recommendation 1:

The NSW Government to amend the Legislation for Clause 10, Schedule 1 of the 1998 Workplace Injury Management and Workers Compensation Act to add “Rideshare Services” under the definition of services provided as captured under the Legislation.

Recommendation 2:

The NSW Government to adjust the Fares Order set for Taxis in NSW to allow Taxis to pass on the variable CTP kilometer rate for all rank and hail journeys. This may extend to include a CTP amount for each Metro and Country Fares Order.

Recommendation 3:

For the State Insurance Regulatory Authority (SIRA) to move Taxis into Class 1 Premiums to be aligned with Rideshare vehicles or move Rideshare into a class of their own with Taxis.

Recommendation 4:

To make it mandatory for all Rideshare Providers to upload all vehicles within their fleets to the Point to Point Transport Commission Portal. Other agencies such as SIRA are to have access to the Portal for Compliance and Audit purposes.

Recommendation 5:

The NSW Government needs to ensure appropriate penalties are prescribed and enforced, to deter from misclassification of vehicle use.

Recommendation 6:

The NSW Government to review and adjust the demurrage rates to bring in line with increases in CPI and inflation rates.

INTRODUCTION

The NSW Taxi Council is the peak body for the NSW Taxi Industry. It represents Taxi Service Providers (formerly known as “networks”), owners and operators, and it also advocates for better outcomes for NSW Taxi drivers.

In NSW there are over 4,000 licence owners, in excess of 250 authorised Taxi service providers, over 3,000 Taxi operators and more than 15,000 authorised drivers. Therefore the industry is the livelihood of over 30,000 people and their families.

The NSW Taxi Industry is a major contributor to the state’s public transport system. It provides approximately 40 million passenger trips each year (pre covid pandemic) and it meets customer travel needs right across NSW. It functions as a door through door transport service that operates 24 hours a day 7 days a week. The NSW Taxi Industry also provides services at times when other forms of public transport either significantly reduce service levels or cease operations altogether. Taxis are often the only form of public transport for some members of the community, and they provide essential transport services to some of the most disadvantaged people in the state. The NSW Taxi Industry was the first private transport provider to offer transport services for passengers travelling in a wheelchair. In fact, our history goes as far back as 1980 when the first wheelchair accessible Taxi was established.

The NSW Taxi Industry is also a significant contributor to the state’s economy, providing employment opportunities for tens of thousands of drivers, operators, and network management staff as well as for other industries which rely on economic activity that the NSW Taxi Industry generates. The Taxi industry contributes to the economic generation of the state by connecting people efficiently and effectively for business, education, tourism and essential lifestyle activities. International accounting firm Deloitte Access Economics has previously undertaken an independent assessment of the economic contribution of the NSW Taxi Industry and has estimated the annual contribution of the industry to the NSW economy to be in the order of \$1.15 billion per annum.

The NSW Taxi Industry is made up of a complex array of providers, ranging from the licence owners (the licence being the principal legal instrument to provide a Taxi service), through to operators and drivers. A licence owner may own, operate and drive a Taxi, but a licence owner may also lease the Taxi licence to a separate Taxi operator. Authorised Taxi service providers are the principal means through which Taxi services are coordinated. They provide direct booking services, as well as access to rank and hail services to the public and a range of safety and other services to operators and drivers.

Authorised Taxi Service Providers may not have a direct commercial relationship with Taxi drivers. The members of Taxi networks are Taxi operators who pay networks a fee for use of the network’s services (including its booking services). The affiliation of a Taxi

with an authorised Taxi Service Provider allows the Taxi legal access to the rank and hail market, which has been preserved exclusively for Taxis.

Taxi drivers bail Taxis from Taxi operators and pay a bailment fee to the operator (either a set “pay-in” or a share of the takings from a shift bailing a Taxi). It is the Taxi driver and not the network or the operator who collects the fare from the passenger.

The NSW Government does not, unlike other forms of public transport, procure Taxi services from the NSW Taxi Industry. Whilst some financial support is provided to assist disadvantaged members of the community to access Taxi services, on the whole the Taxi transport system has been created and continues to operate as a consequence of the many people and organisations that have committed capital to invest in the industry. The NSW Taxi Industry has also generated revenue for the NSW Government through the sale of licences and stamp duty on third party licence sales. It also generates other revenue through authorisation fees and indirect taxes.

The NSW Taxi Industry has gone through a period of unprecedented change. The NSW Government’s Point to Point Transport reforms have introduced a new approach to the regulation of the NSW Taxi Industry as an integral part of the Point to Point Transport sector and the industry has transitioned to a markedly different regulatory environment as a consequence.

Accordingly, the NSW Taxi Council welcomed the reforms that were announced for the Compulsory Third Party Insurance scheme for NSW and looks forward to continuing to work with the NSW Government towards delivering a scheme that provides a complete level playing field within the NSW Point to Point Transport Sector.

This submission focuses on the key issues of inequities that currently exists between Taxis and Rideshare Services, with the view to remove these inequities, delivering a competitor neutral scheme.

BACKGROUND TO SUBMISSION

The Point to Point Transport sector consists of a wide range of service providers including the Taxi industry, the hire car industry and ridesharing (collectively known as hire vehicles under the Point to Point Transport (Taxis and Hire Vehicles) Act 2016 (Act)), and the community transport sector.

Ridesharing operations operated illegally in NSW from approximately April 2014 until December 2015, when the NSW Government accepted 56 of 57 recommendations made by the Point to Point Transport Taskforce, which had been established to review the passenger transport industry. At that time, a significant number of regulations contained within the Passenger Transport Regulation 2007 were removed and ridesharing operations were effectively legalised.

The Act passed NSW Parliament in June 2016 and the Point to Point Transport Regulation (2017) was rolled out on 1 November, 2017.

During this time, SIRA has been working with the Point to Point Transport Industry to deliver reforms for the Industry, through the introduction of technology and other instruments, such as an Industry portal. It has been pleasing to see these reforms introduced, applying more accountability to those choosing to provide passenger services. Examples of these changes include;

- Introduced in April 2018 requiring Rideshare Operators to pay for engaged kilometers, and Taxis for total kilometers.
- Introduced in May 2019 Opt in model for Taxis to report trip data four monthly (metro) and six monthly (Regional/Country), with a rebate scheme applicable to Taxi Operators.

While the NSW Taxi Council appreciates the work undertaken by SIRA in implementing recent reforms to the Compulsory Third Party Insurance Scheme, we acknowledge that ongoing collaboration and consultation with the NSW Government is necessary in order to achieve true competitor neutrality within the Point to Point Transport sector.

Accordingly, the NSW Taxi Council appreciates the ongoing engagement by SIRA. We consider that this Inquiry is a key step towards achieving competitor neutrality as we continue to work with Government in achieving better outcomes for customers and businesses.

RESPONSE TO PARLIAMENTARY INQUIRY INTO 2020 REVIEW INTO COMPULSORY THIRD PARTY INSURANCE SCHEME TERMS OF REFERENCE

1. WORKERS COMPENSATION SCHEME

The NSW Taxi Industry currently operates under Clause 10, Schedule 1 of the 1998 Workplace Injury Management and Workers Compensation Act.

“Drivers of hire-vehicles or hire-vessels--contract of bailment

A person engaged in plying for hire with any vehicle or vessel, the use of which is obtained by that person under a contract of bailment (other than a hire purchase agreement), in consideration of the payment of a fixed sum, or a share in the earnings or otherwise, is, for the purposes of this Act, taken to be a worker employed by the person from whom the use of the vehicle or vessel is so obtained.”

Taxis in Metropolitan Sydney and the Greater Urban area (Newcastle, Central Coast and Wollongong) operate under the NSW Contract Determination. This means that a vehicle is used under a “Bailment” arrangement between an Operator and a Driver.

Rideshare Operators and Drivers do not operate under a “Bailment” arrangement and therefore are not required to comply with the same Workers Compensation guidelines as Taxis.

Furthermore, there has been a significant increase in the number of individuals operating Rideshare fleets, predominantly across Sydney and Greater Metropolitan Sydney. We are aware of a number of Rideshare Operators managing the leasing of up to two hundred vehicles to individual drivers. In all cases, Workers Compensation is not required to be taken out, leaving the Drivers seriously exposed and not covered in the case of a workplace injury incident.

In addition, this is providing an unfair advantage to Rideshare Operators over Taxi Operators, making it extremely difficult to compete with having to deal with higher costs to operate.

The NSW Taxi Council has made enquiries in the past about the inequities with Workers Compensation and there does not seem to be a view to fix this problem. The response has been, “this will need to be challenged in the courts”. This is not a fair and reasonable approach towards competitor neutrality.

A reform of the Workers Compensation Scheme is critical, as the Taxi sector is still operating under a 1988 framework. Whilst we have seen some areas of the Passenger Transport Act transition into the new Point to Point Transport Regime, Workers Compensation is one key area that has not been modernised and reformed appropriately to reflect the true competitive environment of the Point to Point Transport industry.

We are looking to this Parliamentary Inquiry as the means to drive the change that is needed to ensure that Rideshare Operators are brought in under the same requirements as Taxi Operators

for the purpose of protecting drivers of Rideshare, with appropriate cover of Workers Compensation, leading to a more equitable framework for workers compensation.

Recommendation 1:

The NSW Government to amend the Legislation for Clause 10, Schedule 1 of the 1998 Workplace Injury Management and Workers Compensation Act to add “Rideshare Services” under the definition of services provided that are captured under the legislation.

RESPONSE TO PARLIAMENTARY INQUIRY

- 2022 REVIEW INTO COMPULSORY THIRD PARTY INSURANCE SCHEME TERMS OF REFERENCE

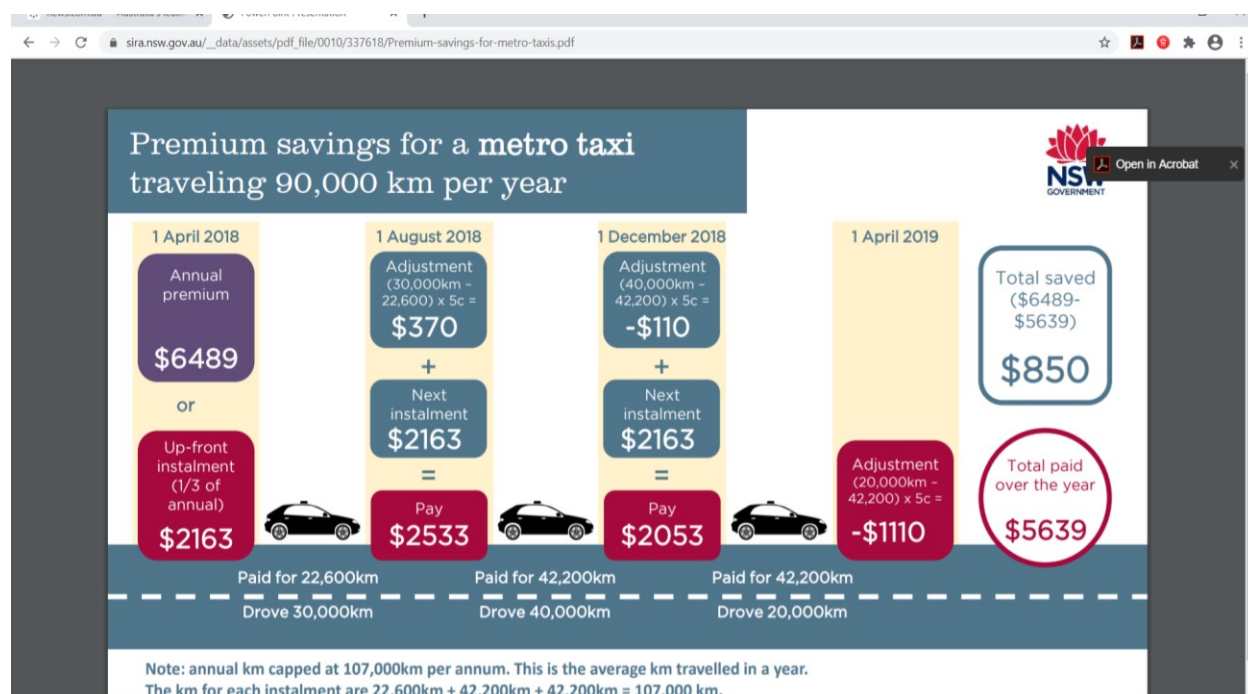
2. MOTOR ACCIDENTS SCHEME

Compulsory Third Party (CTP) Insurance is one of the largest cost components for an Operator within the NSW Taxi Industry. Previously, an Operator in Sydney and Greater Sydney, was paying in excess of \$9,000 for a single CTP policy for each vehicle that they Operated.

We appreciate the work that has been done over the past couple of years to lower this cost, resulting in premiums for Operators in Sydney and Greater Urban now paying closer to \$5,600. The average estimate in Country and Regional NSW is \$3,200 per annum.

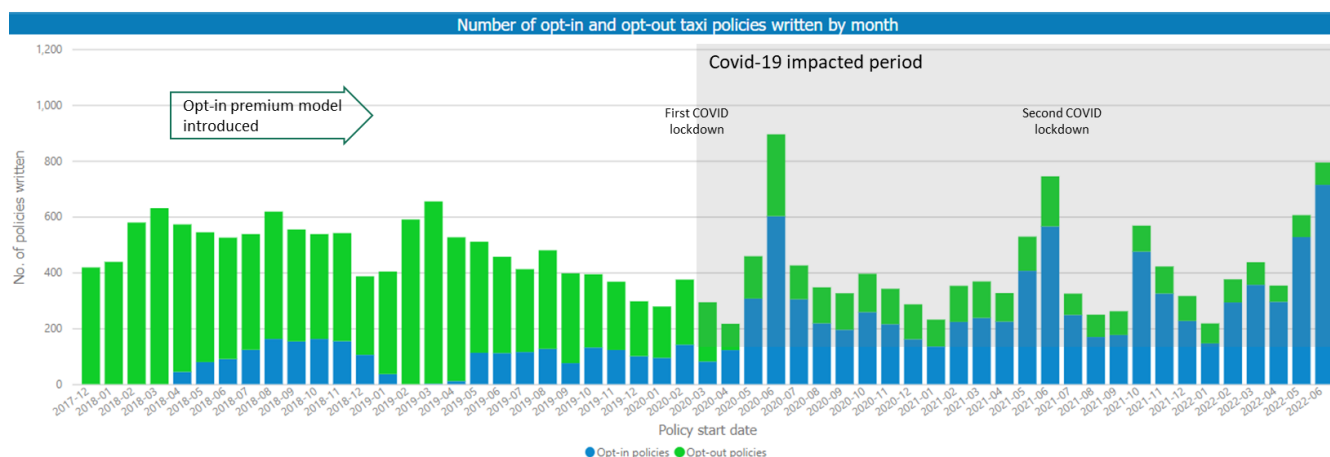
SIRA introduced a model in 2018 giving Taxi Operators the opportunity to “opt in” to a rebate scheme paid on a four-month cycle (six-monthly for Country and Regional). The Operator is to make an upfront payment at the commencement of the policy. This enables the Operator to report total kilometers travelled in a four month period. This would then be calculated at \$0.05 per km travelled.

Below is a visual illustration of a possible scenario for a Taxi Operator who has chosen the opt in model.



We are seeing more policy holders moving towards a variable model, ie the opt in model. Recent data has shown that in NSW we saw an increase of policy holders moving to the opt in model - from 26% to 80% for the 12 months to June 2022. See chart below;
(Source: Neil Singleton presentation at ATIA conference 2022.)

In NSW, Opt-in taxi policies (paying by instalments instead of full premium upfront) increased from 26% of all taxi policies in the 12 months to March 2020 (pre-covid) to 80% of all taxi policies in the 12 months to June 2022



The disadvantage to the opt in mode for a Taxi is that an Operator must outlay a higher portion of the Premium upfront and wait for any rebate to be paid down the track. This will have an impact on cash flow for the Operator. Furthermore, Taxi Service Providers in smaller towns are at a commercial disadvantage based on current models in place.

Whilst there have been some improvements to the CTP scheme for Taxis, there are still a number of inequities that exist within the Point to Point Transport industry that need to be addressed in order for a competitor neutral framework to be achieved.

The following issues have been identified with the current scheme;

1. Taxis are still paying more than Rideshare – Higher Upfront Costs

As illustrated in the opt in model above, a Taxi Operator is required to outlay significantly more upfront dollars for a Policy than what is required for a Rideshare Policy. For example a Taxi Operator who chooses the opt in model and travels less than 107,000 kilometers for the year, may be required to pay \$2,163 for the first instalment. Whereas a Rideshare Operator may only be required to pay \$500-\$600 for the annual policy, with distance travelled kilometers to be “paid as you go”. Furthermore, a Rideshare Provider can pass on this cost to the travelling passenger, and therefore not costing the Rideshare operator/driver any more than the actual up front premium. Furthermore, this can lead to a negative outcome as this method removes any accountability from the driver, because they are not paying the distance fee.

Unfortunately, the Taxi Operator/Driver does not have the ability to pass on any distance based charges to the travelling customer in rank and hail due to the maximum fares order set by the NSW Government.

The NSW Fares Order for Taxis needs to stipulate a CTP amount for each Metro and Country Fares Order.

The Fares Order needs to include one of the following methods;

- (i) Set fare per trip
- (ii) The Fare Calculation Device works out the CTP component for total fare paying kilometers travelled in the Taxi

Recommendation 2:

The NSW Government to adjust the Fares Order set for Taxis in NSW to allow Taxis to pass on the variable CTP kilometer rate for all rank and hail journeys. This may extend to include a CTP amount for each Metro and Country Fares Order.

2. Rideshare are in Class 1 whilst Taxis are in Class 7

How can you identify when a private vehicle is being used to provide passenger services, and when it is being used as a private vehicle?

This is one of the key challenges with Rideshare being in the class 1 category. This is enabling many Rideshare Operators to “fly under the radar” undetected, as their policy is sitting within an excess of 1 million other private vehicle policies.

Furthermore, this is resulting in the pool of funds to be attributed across a much larger number of vehicles. Taxis on the other hand are in their own class – that is Class 7. If there is a decoupling of the distance rates between class 1 and class 7, Taxis could be at an extreme disadvantage given the smaller number of vehicles in the class, which could lead to significantly higher Premium costs for Taxis.

It is our belief that Taxis and Rideshare Vehicles carry out the same type of work and therefore need to be in the same class. Preferably, all vehicles moving into class 1 will deliver a fairer and more neutral scheme for all players.

In Queensland, the CTP model was reformed with the establishment of the Personalised Transport Vehicle model. All Personalised Transport Providers, including Taxis and Rideshare, were moved into a single class. This has resulted in Queensland premiums being one of the lowest in the country, with annual Premiums at \$712 since October 2021. Refer to figure 1 & 2 below. (Source: Neil Singleton presentation at ATIA conference 2022.)

Taxi premiums nationally – 2022

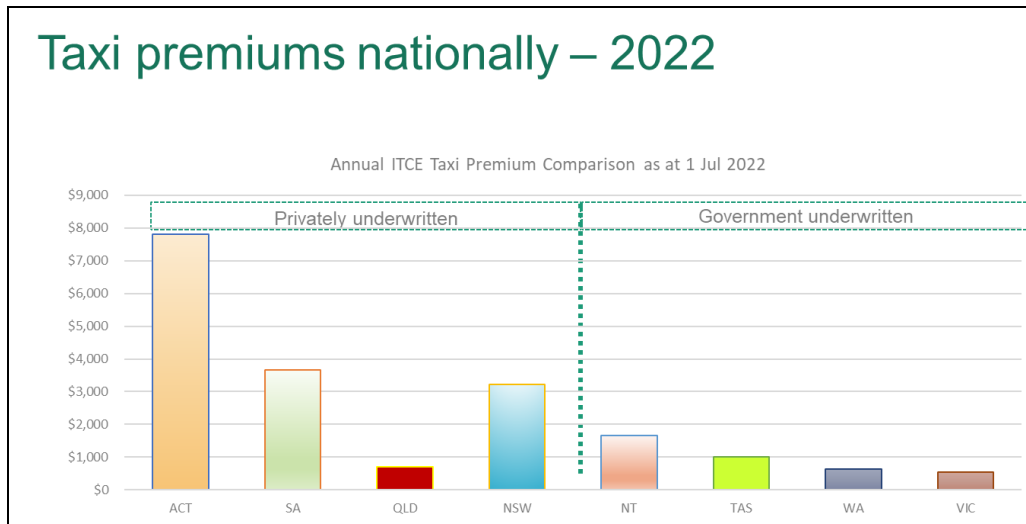


Figure 1 – “Taxi Premiums Nationally 2022”.

The data shown in figure 1 above, highlights the variances between the Government underwritten schemes versus the Privately underwritten schemes. With the exception to Queensland, all states under the Privately underwritten models are paying significantly higher premiums than the other states.

The graph below shows the outcome of the Queensland model under a privately underwritten scheme, with all Personalised Transport policies, including Taxis costing \$712.

If Queensland can do this, why can’t NSW achieve this as well?

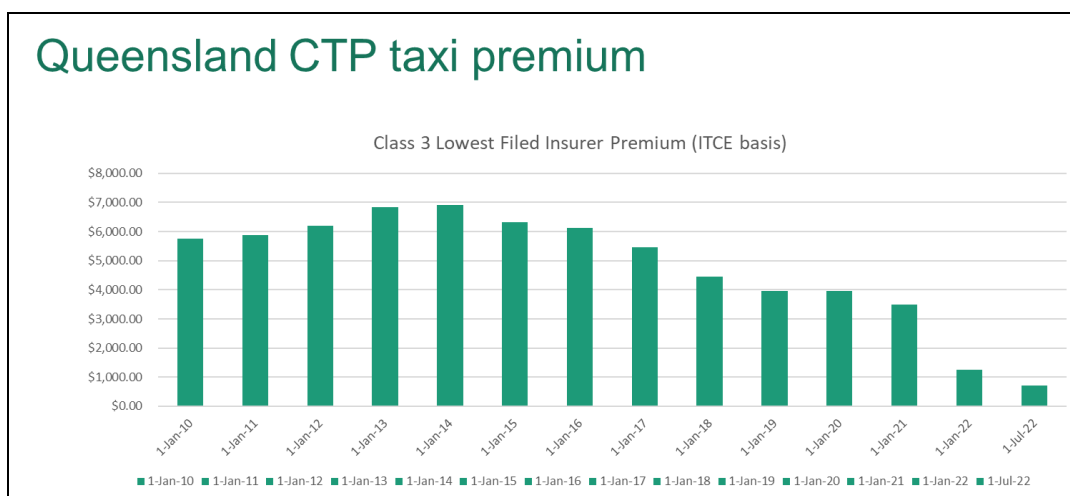


Figure 2 – “Qld CTP Taxi Premiums”.

Recommendation 3:

For the State Insurance Regulatory Authority (SIRA) to move Taxis into Class 1 Premiums to be aligned with Rideshare vehicles or move Rideshare & Taxis into a class of their own.

3. Inability to identify a vehicle being used as Rideshare

As noted earlier in this submission, it is near impossible to identify a vehicle being used to provide Rideshare services if the correct policy has not been taken out from the outset. This is allowing many Rideshare Operators to get away with not paying any excess kilometers when conveying passengers.

We have a strong view that it should be mandatory for all Rideshare Providers to upload vehicle details to the Point to Point Transport Commission Portal to allow for visibility and compliance to be undertaken on an ongoing basis. It would also be beneficial for other agencies such as SIRA to have access to the portal for compliance and auditing purposes.

Recommendation 4:

To make it mandatory for all Rideshare Providers to upload all vehicles within their fleets to the Point to Point Transport Commission Portal. Other agencies such as SIRA are to have access to the Portal for Compliance and Audit purposes.

4. Lack of Data available on Rideshare incidents

It is fact that Rideshare Services are operating at peak levels during the busier periods. This includes Friday and Saturday nights, as well as around major events. It is also known that it is during these busier periods where incidences of accidents resulting in injuries are at significantly higher levels. This is the case in particular at key locations such as Sydney CBD, and around major venues.

Unfortunately, the Insurance Regulator does not seem to have the appropriate level of data to identify these incidents due to the non-conforming nature of Rideshare Providers not taking out the correct policy and also not being identified as a Rideshare Provider when a claim is submitted.

Whilst we understood this to be a challenge for SIRA when the Point to Point Reforms were introduced in November 2017, it still seems to be a challenge five years in.

Recommendation 5:

The NSW Government needs to ensure appropriate penalties are prescribed and enforced, to deter from misclassification of vehicle use.

OTHER MATTERS/ISSUES FOR CONSIDERATION

The NSW Taxi Council has identified several items that require further consideration as part of this Inquiry.

These matters include;

1. Demurrage Rates

Demurrage rates are used by Insurers to calculate potential value of downtime lost as a result of an accident. This is calculated to determine an estimate payment that is to be made to the policy holder, usually the Taxi Operator.

The following shows an updated calculation based on the fare increases awarded in Sydney since 2001 as follows:

Year	Fare/Cost Increase	Demurrage Rate
2001	4.10%	\$66.62
2002	4.20%	\$69.42
2003	4.70%	\$72.69
2004	2.34%	\$74.39
2005	2.87%	\$76.52
2006	3.50%	\$79.20
2007	6.00%	\$83.95
2008	3.80%	\$87.14
2009	4.20%	\$90.80
2010	3.00%	\$93.53
2011	3.50%	\$96.80
2012	3.70%	\$100.38
2013	2.3%	\$102.69
2014	2.5%	\$105.25

The demurrage rates displayed in the table above highlight the fact that there has been no adjustment in the rates since 2014. This means that the Demurrage rates that were previously set, do not reflect the current conditions as they relate back to 2014.

Recommendation 6:

The NSW Government to review and adjust the demurrage rates to bring in line with increases in CPI and inflation rates.

2. The Cost of Technology

Whilst the introduction of technology can lead to potential savings and other efficiencies, many Service Providers, particularly in Regional NSW may not have the technology, resources or infrastructure to adapt new technology into their business. For many, the cost to do this would be too high, putting the viability of the business at serious risk of collapse.

There needs to be flexibility and consideration for smaller service providers to ensure they are not at a commercial disadvantage in any way. This issue is highly prevalent in smaller Taxi towns across Country & regional NSW.

CONCLUSION

The NSW Taxi Council acknowledges the work being done to remove inequities between Taxis and Rideshare.

A true level playing field would mean that there are no commercial disparities between Taxis and Rideshare and that all rules of engagement would apply to any player within the Point to Point sector. At present, we still see certain rules for some, but not for others. This includes Workers Compensation requirements as well as CTP classifications. These inequities need to be fixed in order for competitor neutrality to be achieved.

We look forward to the ongoing collaboration with SIRA and other NSW Government agencies as we work towards a competitor neutral scheme that will deliver benefits to all stakeholders, including industry participants, passengers and members of the public.

We would be happy to provide any further information if required as part of this Inquiry. The NSW Taxi Council is happy to meet with members of the Standing Committee of Law and Justice if required to discuss any aspects of our submission.

The NSW Taxi Council appreciates the time and consideration given to our submission.