



Point to Point
Transport Commissioner

Compliance and Enforcement Policy

Point to Point Transport Commissioner

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1 Introduction

The *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (the Act) and the *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* (the Regulation) provide the framework for the regulation of the NSW point to point transport industry which includes taxis and hire vehicles, including rideshare. The Point to Point Transport Commissioner (the Commissioner) is an independent statutory officer established under the Act and appointed by the Minister, to regulate the industry.

The purpose of this policy is to detail the Commissioner's approach to promoting, monitoring and enforcing compliance with the Act and the Regulation.

2 Aims of compliance and enforcement

The NSW Government is committed to the safety of point to point transport services. In realising this objective the Act and Regulation provides the Commissioner with a range of functions which are to:

- a) administer the authorisation and licensing schemes established by the Act,
- b) manage the enforcement of the Act and the regulations,
- c) recommend safety and other standards for passenger services or booking services,
- d) assist in the determination of liability for, and enforcement of payment of, the passenger service levy imposed under Schedule 4 of the Act,
- e) advise the Minister on matters relating to passenger services and booking services,
- f) other functions conferred or imposed on the Commissioner by or under the or any other Act.

The Commissioner is assisted in carrying out these functions by staff authorised by, or acting under delegation from, the Commissioner.

The Commissioner uses a mix of positive motivators, compliance monitoring and deterrent measures to promote and ensure compliance with point to point transport law.

3 NSW Point to Point Transport Law

Part 2 of the Act and the Regulation set out the safety duties and safety standards that apply to providers of taxi or booking services, their officers, drivers and other people who have responsibility such as affiliate service providers, holders of taxi licences, and owners of taxis and hire vehicles.

A person commits an offence if the person has a safety duty or is required to comply with a safety standard, or is responsible for ensuring compliance with a safety standard, and that safety duty or safety standard is not complied with.

3.1 Safety Duties

Primary duty of service providers

Providers of passenger services and booking services have a primary duty of care (primary responsibility) to ensure, so far as is reasonably practicable, the health and safety of drivers and other persons while they are engaged (carrying out functions) in providing the service.

Duty holders owe this duty of care to passengers, a person assisting a passenger into or out of a vehicle, or a person who comes into contact with the driver whilst the vehicle is being used to provide a passenger service. This includes:

- Eliminating risks to safety, so far as is reasonably practicable; and
- If it is not reasonably practicable to eliminate risks to safety, minimise those risks so far as is reasonably practicable.

Duty of officers

People who hold positions of responsibility in a taxi or booking service business are known as ‘officers’. Officers of providers of passenger services and booking services are also responsible for compliance with a safety duty, and must exercise due diligence to ensure that the provider of the service complies with their safety duties or obligations.

Exercising due diligence includes taking reasonable steps to:

- a) acquire (obtain) and keep up-to-date knowledge of safety matters relating to passenger services;
- b) gain an understanding of the nature of the operations of the duty holder (the provider of the passenger service or booking service) and of the hazards and risks associated with the operation of the passenger service;
- c) ensure that the duty holder has available for use and uses, appropriate resources and processes to eliminate or minimise risks to health and safety from the operation of the passenger service;
- d) ensure that the duty holder has appropriate processes for receiving and considering information regarding incidents, hazards and risks and responding in a timely way to that information;
- e) ensure that the duty holder has and implements processes for complying with any safety duty of the duty holder;
- f) verify the provision and use of the resources or processes outlined in points (c) to (e).

Duty of drivers

Drivers of taxis or hire vehicles also have a safety duty, which requires them whilst the vehicle is providing a passenger service to:

- a) take reasonable care for their own health or safety;
- b) take reasonable care that their own acts or omissions do not adversely affect the health and safety of others;
- c) comply with any reasonable instruction that is given by the provider of the passenger service to the driver, so far as the driver is reasonably able to comply; and
- d) co-operate with any reasonable policy or procedure of the provider of the passenger service relating to health or safety in connection with the service.

3.2 Safety standards

In addition to these safety duties, the point to point transport law also prescribes safety standards that must be followed to ensure services are safe.

All industry participants must adhere to the applicable safety standards.

There are currently five categories of safety standards:

- Safety Management System
- Vehicle standards
- Insurance
- Provision of information
- Drivers

Depending on their role in the point to point transport industry, more than one participant may have responsibility for the same safety standard. This could occur, for example, if the safety standard is specified for a particular person, but provides that other persons are responsible persons for the same obligation.

4 Key principles

The following six principles underpin the Commissioner's compliance and enforcement activity.

4.1 Engagement with regulated parties

The Commissioner provides information and guidance to industry participants to build their capacity and to assist them to comply with the Act and Regulation. The Commissioner's regulatory services are designed with input from users to make it easy for them to do business and to comply with the law.

4.2 Proportionality

In determining the appropriate compliance measures to implement, the Commissioner considers the seriousness of the risk/incident and/or breach of the point to point law, and responds proportionately. In applying discretion to its choice of regulatory strategies and compliance tools, the impact will be commensurate to the risks and the potential benefit to safety.

4.3 Consistency

Matters of a similar nature and circumstance lead to similar approaches being taken, in order to provide clarity to industry on matters relating to the safety of their services.

4.4 Transparency

The Commissioner demonstrates impartiality, balance and integrity and publishes information on its compliance and enforcement activities.

4.5 Targeted

The Commissioner focuses its compliance and enforcement activities on the areas assessed to be of highest risk, based on analysis of sound data and intelligence.

4.6 Accountability

The Commissioner explains its decisions to those impacted and advises of available avenues for review or appeal.

These are the principles that guide how the Commission works. They provide the basis of what the industry and NSW community can expect from the Commission at all times.

5 Promoting Compliance

The Commissioner promotes duty holders' compliance with their safety obligations by providing information, guidance and education through:

- conversations with duty holders in the course of compliance activities, such as audits
- conducting seminars, workshops and webinars
- publishing comprehensive information and fact sheets on the Commission's website relating to safety obligations
- public education campaigns
- formal consultative arrangements, such as the Industry Reference Group
- the industry portal, which enables services providers to transact regulatory matters online and provides access to the Driver and Vehicle Dashboard which enables service providers to check in real time if drivers and vehicles continue to meet safety standards

6 Monitoring compliance

The Commissioner monitors compliance with point to point transport law in a number of ways such as

- conducting advisory visits, audits, inspections and on-street compliance
- notifiable occurrence reports received from service providers
- reviewing the level of service wheelchair accessible taxis provide to those who travel in wheelchairs
- investigating complaints and suspected breaches of safety obligations

An audit is a documented evaluation of the operations of the service provider and an assessment of compliance with their safety duties or safety standards, in order to determine whether their operations are being carried out in a way that manages risks to safety.

The Commissioner's audit program is informed by its Risk and Assurance Framework, which categorises service providers on their relative operational risk. The assurance category assigned to a service provider informs the approach to, and level of engagement with them including the prioritisation of safety audits and other compliance activity.

The Commissioner gathers data and intelligence, including from its compliance and enforcement activities, to build a profile of the industry's safety performance and how the industry is managing safety.

This enables the Commissioner to identify areas of greatest risk and from that to proactively shape its resources and compliance efforts to focus on those risks, as detailed in the Commissioner's [Strategic Priorities](#).

Prior to determining whether to take action in relation to a possible breach, the Commissioner undertakes inquiries, for example in relation to a notifiable occurrence, to determine whether a breach has occurred and to gather information that may assist in preventing future breaches.

Authorised officers appointed by the Commissioner visit service providers premises to conduct advisory visits and audits; they may also do so when undertaking investigations. Investigations and audits are a feature of both planned and response work, undertaken to assess the extent of compliance with point to point transport law and to support compliance.

Authorised officers have considerable powers under point to point transport law including

- power to enter premises
- power to stop and detain motor vehicles
- power to secure a site

- power to issue a notice to require inspection or testing
- power to issue a notice to produce documents or rectify breaches

Investigations are undertaken for a range of reasons, such as to assess compliance with point to point transport law, to determine what action may be needed to prevent a further occurrence, and to determine what action may be appropriate to enforce compliance with point to point transport law. Lessons learnt from investigations also inform development of point to point transport guidance and policy, and may inform future changes to point to point transport laws.

7 Determining the Compliance Response

In determining the appropriate compliance response, the Commissioner takes the following factors into consideration:

- Public confidence in the safety of point to point transport services and the corrective measure proposed
- Immediate nature of breach - the nature and circumstances of the breach, including associated safety risks (e.g. whether there is an immediate risk, whether there are systemic risk concerns)
- Broader impact of breach - the broader repercussions of the breach- including the effect on other duty-holders or the public if it is not adequately addressed.
- Impact of proposed Commission action - consideration of a measure that is most likely to remedy the harm, maximise future compliance and that is proportionate to the risk. This requires the most effective point of intervention to achieve behavioural change, taking into account duty-holder control and influence, motivations, and broader educative or deterrent effect. This also includes whether the action is fair, reasonable and consistent.
- The circumstances of the duty-holder including:
 - willingness to comply (rather than blatant disregard or deliberate obstruction)
 - past history of breaches and likelihood of repeat breaches
 - previous and current response to breach and interactions with the Commissioner
 - level of knowledge and responsibility for the relevant obligation
 - other mitigating or aggravating circumstances.

8 Deterrent and Enforcement Actions

The Commissioner responds to non-compliance when it occurs, and has a wide range of powers available to deal with such matters appropriately. These include:

- providing information or guidance about obligations
- issuing official warnings
- issuing penalty notices
- issuing improvement notices
- issuing prohibition notices
- imposing conditions on authorisations and taxi licences
- varying, suspending or cancelling service provider authorisations or taxi licences
- accepting enforceable undertakings
- commencing prosecution action

The Act enables persons appointed as authorised officers to take certain enforcement actions on his behalf. These enforcement actions include issuing improvement, prohibition and penalty notices.

8.1 Information or guidance

Information and guidance aims to raise duty holders' awareness of their obligations and to help them know how to comply with point to point transport law and build their capacity to address safety issues and achieve compliance.

Having provided the duty holder with advice and if satisfied that a person has taken timely and satisfactory steps to remedy a breach at the time of detection or through agreed action, the Commissioner may decide to take no further action.

Advice or guidance can also be provided to support the use of other compliance and enforcement actions such as improvement and prohibition notices.

8.2 Official Warnings

In certain circumstances, the Commissioner may determine a caution to be appropriate in the circumstances.

- The matters considered when deciding whether it is appropriate to give a person a caution instead of a penalty notice include:
- the offending behaviour is at the lower end of the scale in terms of seriousness for that offence
- the person did not knowingly or deliberately commit the offence
- it is the person's first offence
- the person is cooperative and/or complies with a request to stop the offending conduct
- it is otherwise reasonable, in all the circumstances of the case, to give the person a caution.

8.3 Penalty Notices

Penalty notices are a means by which an immediate form of punishment is imposed for certain types of breaches and deter similar offending from recurring, sending a clear and timely message that there are consequences for non-compliance.

An authorised officer will generally issue a penalty notice where there is some punishment warranted for the breach but the nature of the breach is not serious enough to warrant prosecution.

Penalty notices are only available for matters prescribed by the Regulation as penalty notice offences where:

- an authorised officer has a reasonable belief that the person has committed an offence against the Act or Regulation. For example:
 - a driver of a hire vehicle, appearing to be providing passenger services, not displaying a retroreflective sign on or attached to the vehicle that makes it apparent that the vehicle is a hire vehicle
 - the driver of a taxi appearing available for hire not displaying their driver identity document
- the penalty notice is warranted for the contravention, but the nature of the contravention is not serious enough to warrant prosecution.

The decision to issue a penalty notice is made considering the surrounding facts and the circumstances applicable to that matter (as outlined above). The recipient of a penalty notice may have the notice reviewed through an internal review or elect to have the matter heard at court.

The penalty notice will explain several matters to the recipient including that:

- They may elect to have the matter dealt with by a court
- They may have the decision to issue the notice reviewed
- What will happen if they do not pay the fine by the due date

Offences that are more serious in nature, for example, where there has been repeated offending, or which carry a particularly high need for general deterrence within the industry, may be unsuitable for the issue of a Penalty Notice. In those cases the Commissioner may determine that prosecution is preferable as there is opportunity for greater sanctions to be applied.

8.4 Improvement notices

The purpose of an improvement notice is to rectify a breach of the Act or the Regulation. An improvement notice may be issued when:

- an authorised officer has a reasonable belief that a person is contravening the Act or Regulation; and
- there is reasonable belief that the contravention is likely to continue or be repeated.

An improvement notice may require the person to:

- remedy the contravention
- prevent a likely contravention from occurring
- remedy the things or operations causing the contravention or likely contravention.

Improvement notices may contain directions to make certain improvements and may also contain recommendations for actions to be taken by a service provider. Any recommendations made are non-binding.

8.5 Prohibition notices

Where a breach involves systems or hazards which pose a serious and immediate or imminent risk to the health and safety of any person, then a prohibition notice may be appropriate.

A prohibition notice can be issued where an activity is occurring in relation to the provision of a passenger service or booking service:

- that involves or will involve an immediate and serious risk to the health or safety of any person arising from an activity
- where an authorised officer reasonably believes the activity may occur, and the activity will involve an immediate or serious risk to the health or safety of a person.

In such instances the notice will relate to a particular activity, or a particular work procedure. A notice will not prohibit all activity. A prohibition notice may be issued after an improvement notice has been issued, if the degree of risk has increased since the improvement notice was issued.

If several unrelated activities/risks have been identified and need to be addressed, separate prohibition notices can be completed for each issue.

The prohibition notice will be in writing and state:

- the grounds for the issue and the basis for that belief, i.e. what was observed that led to the belief that there is a serious and immediate or imminent risk to health and safety;
- a description of the activity/matters that give rise or will give rise to the risk including the specific location of where the activity is occurring;
- the provision of the Act that the authorised officer believes is or will be contravened by the activity;
- what activities must be ceased; and
- what action is required to recommence those activities.

In addition, a prohibition notice prohibits the carrying on of an activity in a specific way, by specifying one or more of the following:

- prohibiting the use of a vehicle, or
- prohibiting the operation of a passenger service in a particular location or in a particular manner;
- anything that is not to be used in connection with the activity; and/or
- any procedure which is not to be followed in connection with the activity.

Prior to issuing an improvement or a prohibition notice an authorised officer must be able to establish a reasonable belief as to the objective circumstances of the matter. The test is whether there are facts that would lead a reasonable person to form the belief about whether it is necessary to use one or more powers for a purpose of the Act.

A person may appeal to the Local Court against the Authorised Officer's decision to issue an improvement notice or prohibition notice.

8.6 Administrative Sanctions – Authorisations and Taxi Licences

The Commissioner may determine that dealing with a service provider's authorisation or taxi licence is an appropriate enforcement action in the circumstances.

Where there has been a failure to comply with a standard or condition of the authorisation or taxi licence, or compliance with the Act or the Regulation, or for a reason that the Commissioner deems necessary, the Commissioner may:

- impose, vary or revoke conditions of authorisation or taxi licences; or
- vary, suspend or cancel an authorisation or taxi licence.

A person whose authorisation or taxi licence has been varied, suspended or cancelled may apply to the Commissioner to conduct an internal review of the decision, or to the NSW Civil and Administrative Tribunal (NCAT) (s145 (1) of the Act) for an administrative review of the decision.

8.7 Enforceable undertakings

An enforceable undertaking is a legally binding agreement entered into as an alternative to having a matter decided through legal proceedings for a contravention of the law.

The Commissioner is not compelled to accept a proposal for an enforceable undertaking. Whether the Commissioner agrees to accept an enforceable undertaking would depend on the circumstances and would involve consideration of a number of factors, including:

- the nature and extent of the contravention
- the quality of the remedial action proposed and the extent to which it achieves measurable improvements in safety

- the likelihood that the enforceable undertaking will deliver real safety benefits to the services provided, industry or community beyond that which would normally be expected of a duty holder.

An enforceable undertaking may be an appropriate alternative to prosecution if, in the circumstances, it was likely to deliver faster and/or more effective safety outcomes than a court sanction.

8.8 Prosecutions

For offences which are not penalty notice offences, or where the non-compliance or associated risk is more serious in nature, the Commissioner may decide to commence court proceedings for the offence.

In deciding to prosecute the Commissioner will consider whether:

- the evidence available is capable of establishing the offence beyond reasonable doubt
- there is a reasonable prospect of success
- the public interest in prosecuting the matter.

Determining whether or not there is a “reasonable prospect of conviction” requires an exercise of judgment. This will depend in part upon an evaluation of the weight of the available evidence and the strength of the prosecution case in light of the anticipated evidence that may be given by the defence.

Factors which alone or in conjunction are considered in determining whether there is public interest in prosecuting the matter include, but are not limited to:

- the seriousness of the alleged offence
- whether or not the prosecution would be perceived as counter-productive; for example, by bringing the law into disrepute
- whether or not the alleged offence is of general public concern
- whether the alleged offence is a continuing or repeat offence
- the prevalence of the alleged offence and any need for deterrence, both personal and general
- any mitigating or aggravating circumstances
- the availability and efficacy of any alternatives to prosecution.

The applicability of and weight to be given to these and other factors will vary widely and depend on the particular circumstances of each case.

8.9 Publishing information relating to enforcement actions

The Commissioner may disclose information about a person’s compliance with the requirements of the point to point legislation, but only if the Commissioner is satisfied that it is reasonably necessary to achieve the purposes of the legislation.

The Commissioner may determine that publishing information about enforcement actions taken is necessary in order to raise awareness of the safety requirements under the point to point transport law and the consequences of non-compliance. This may also be determined appropriate in order to deter industry participants from engaging in similar conduct and to promote better practices.

The Commissioner discloses compliance related information in the following ways:

- providing monthly updates on compliance activity on the website
- publishing news articles on significant compliance outcomes on the website

- publishing a yearly review which contains information about the Commission's operations, including compliance and enforcement activity, performance and key achievements.
- publishing a notice of a decision to accept an enforceable undertaking and the reasons for that decision on the Commissioner's website (this is a mandatory requirement).

At all times, the Commissioner aims to be accurate, impartial, balanced and fair in communications about investigations, inspections, audits and enforcement actions

9 Other NSW agencies involved in Point to Point compliance and enforcement

9.1 NSW Police Force

The Commissioner works closely with NSW Police Force by sharing information, conducting joint operations and keeping police up-to-date on relevant point to point transport matters.

NSW Police are authorised to issue penalty notices and commence prosecutions for offences under the Act and Regulation. NSW Police routinely issue penalty notices in the course of their duties.

9.2 Revenue NSW

Revenue NSW is responsible for collecting the passenger service levy, penalties and recovering unpaid taxi licence and annual authorisation fees on the Commissioner's behalf.

9.3 Safework NSW

The point to point transport laws operate concurrently with the work health and safety legislation in NSW. This means that service providers and other industry participants may have duties under both laws.

If a provision of the Act and a provision of the *Work Health and Safety Act 2011* deal with the same thing, and it is possible to comply with both provisions, a person must comply with both provisions.

However, to the extent it is not possible to comply with both provisions, the work health and safety laws prevail and a person must comply with the provision of the work health and safety law, rather than the point to point law.

Where an act, omission or circumstance constitutes an offence under the Act as well as under the work health and safety laws, the offender is not liable to be punished twice for the offence.

The Commission liaises with SafeWork NSW as appropriate in relation to each agency's jurisdiction in particular cases.