

Uber response to the Future of Small Passenger Services consultation paper.

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Summary.

Ridesharing is the deployment of personal, underutilised vehicles to provide rides. Uber is a technology platform that facilitates ridesharing between a registered partner-driver and a registered rider. For partner-drivers, ridesharing is a flexible source of supplementary income. For riders, ridesharing offers a safe and reliable way to move around their cities. Ridesharing is not currently offered in New Zealand and there is a need for swift changes to the regulatory framework and the administration of licensing.

In its discussion paper, the Ministry of Transport acknowledges that ridesharing is a promising form of point-to-point transport that falls outside existing regulations. Ridesharing is safe, affordable and efficient. As the review acknowledges, ridesharing mitigates safety risks and economic risks in a different way to incumbent transport models. And the discussion paper embraces this exciting economic opportunity. It envisages a smaller bureaucracy, greater competition, and improved service.

Sadly, these objectives will be frustrated if there is not sufficient focus on repairing the convoluted administration and ill-devised regulation: costly and time consuming licensing systems coupled with redundant statutory requirements. These are not merely “undesirable” cosmetic rules. They are obsolete regulatory imposts, and they will prove fatal to the emergence of a ridesharing industry in New Zealand.

Timeframe.

Uber has engaged with the review process for 12 months and is concerned that changes to the regulatory framework to allow ridesharing may not occur for a further 12 months. By regional standards, that is a gratuitous timeframe.

Over the same period, three Australian jurisdictions, as well as Mexico, the Philippines and Jakarta in Indonesia have chosen to regulate ridesharing and reform the transport sector. The State of New South Wales undertook a comprehensive independent review in only 90 days. In each case,

governments were faced with the same challenges of reforming a highly regulated transport industry.

New Zealand, by comparison, will take over two years to streamline an already-deregulated transport industry.

In announcing the review in January of 2014, New Zealand was on track to be a world leader. Alas, it has been overtaken by other jurisdictions that by comparison have much more highly regulated and complex changes to make than New Zealand.

Protracted reviews are a staple of New Zealand transport lawmaking. For instance, the Land Transport Rule: Operator Licensing 2007 was promulgated after an eight-year consultation period, two discussion papers and a draft Rule.¹ The Rule is a delegated legislative order. It is difficult to imagine the time required to implement the reforms proposed in this consultation paper.

Yet the reform of the transport industry and the regulation of ridesharing are two separable projects. National industry reform takes time. Licensing new services does not. The Government can expedite the latter to enable New Zealanders to take advantage of emerging economic opportunities. At present, however, the review is slow, repetitive and speculative. It will miss the mark - and miss the boat - for a well-regulated ridesharing industry.

Sound policy objectives but poor implementation.

Uber supports the guiding principles of the review.² These include safety, incentivising innovation, and lowering compliance burdens. The fourth regulatory option (a single licence class with operator responsibility) is a useful starting point for reforming the incumbent industry pursuant to those objectives.

¹ *Land Transport Rule: Operator Licensing 2007*, 'Extent of consultation'.

² Ministry of Transport, *Future of small passenger services: Consultation paper*, 2015, 13.

However, the proposal suffers a number of shortcomings. Without significant attention to the administrative imposts and barriers to entry the market will not substantially change. Any reforms should be geared toward delivering consumers better outcomes, providing more flexible opportunities to provide safe and reliable transport. Without further changes than those proposed by the review Ridesharing will not be viable in New Zealand and the review will not have achieved its threshold objectives.

Centralised administration (but not centralised responsibility)

Uber supports any effort to devolve administrative responsibility away from the overburdened regulator. We welcome the suggestion in Option 4 that “responsibility for compliance with the rules is focussed first at the operator level, and then at drivers”.

The existing administrative process is unworkable. In our experience, the median processing time for P-endorsement applications with the New Zealand Transport Agency is 12 weeks. Fifty-eight per cent of completed P-endorsement applications from Uber partner-drivers are outstanding after more than 3 months. Over 86 per cent of partner-driver applicants referred to the P-Endorsement process by Uber decline to complete the process because it takes too long or is too expensive.

The backlog is partly attributable to the time-consuming process by which the Agency procures background checks, individual-by-individual, from New Zealand Police. It must then perform a discretionary and nebulous “fit and proper person” test, which introduces additional time, cost and uncertainty.³ Even under the proposed reforms, a P-endorsement is projected to take up to 20 days. There is no suggestion that this process will be streamlined during the reforms.

³ See the criteria in *Land Transport Act 1998* (NZ) ss 30C, 30D.

Processing time and cost (New Zealand)		
	Time	Cost
Passport ⁴	3 days	\$360
Pilot licence ⁵	1 week	\$230
Firearm licence ⁶	4 weeks	\$126.50
P-endorsement with training	12 weeks	~\$800

Over 75 per cent of ridesharing partner-drivers who undertake ridesharing in comparable markets value it as a supplemental rather than primary source of income. They work variable hours, structuring their driving around existing personal or occupational commitments. Half drive for less than 10 hours per week.⁷ The Review must look outside of the scope of the incumbent market and look to create rules and an administrative framework that will accommodate a new market. Thus far the review has failed to do this.

It is unreasonable and unrealistic to expect that these individuals will tolerate administrative barriers to entry as great as a target 20 day waiting period, an actual 12-week waiting period, or the existing \$800 endorsement fee.

The time and cost involved in these processes will make it impossible for the growth of the ridesharing sector or allow other new business models to incubate and develop.

Someone who wants to provide rides for a few hours a week, or a few hours a month will not wait 12 weeks and pay \$800 for a license. These administrative burdens kill off the potential of flexible transport that ridesharing can provide.

⁴ Department of Internal Affairs, <https://www.passports.govt.nz/Fees-and-charges---adult-passports>.

⁵ Civil Aviation Authority, https://www.caa.govt.nz/pilots/getting_a_licence_pilot.htm.

⁶ Library of Congress, <http://www.loc.gov/law/help/firearms-control/newzealand.php>.

⁷ Uber can provide summary data as required to help the regulator and ministry understand rideshare driver profiles in countries where it exists.

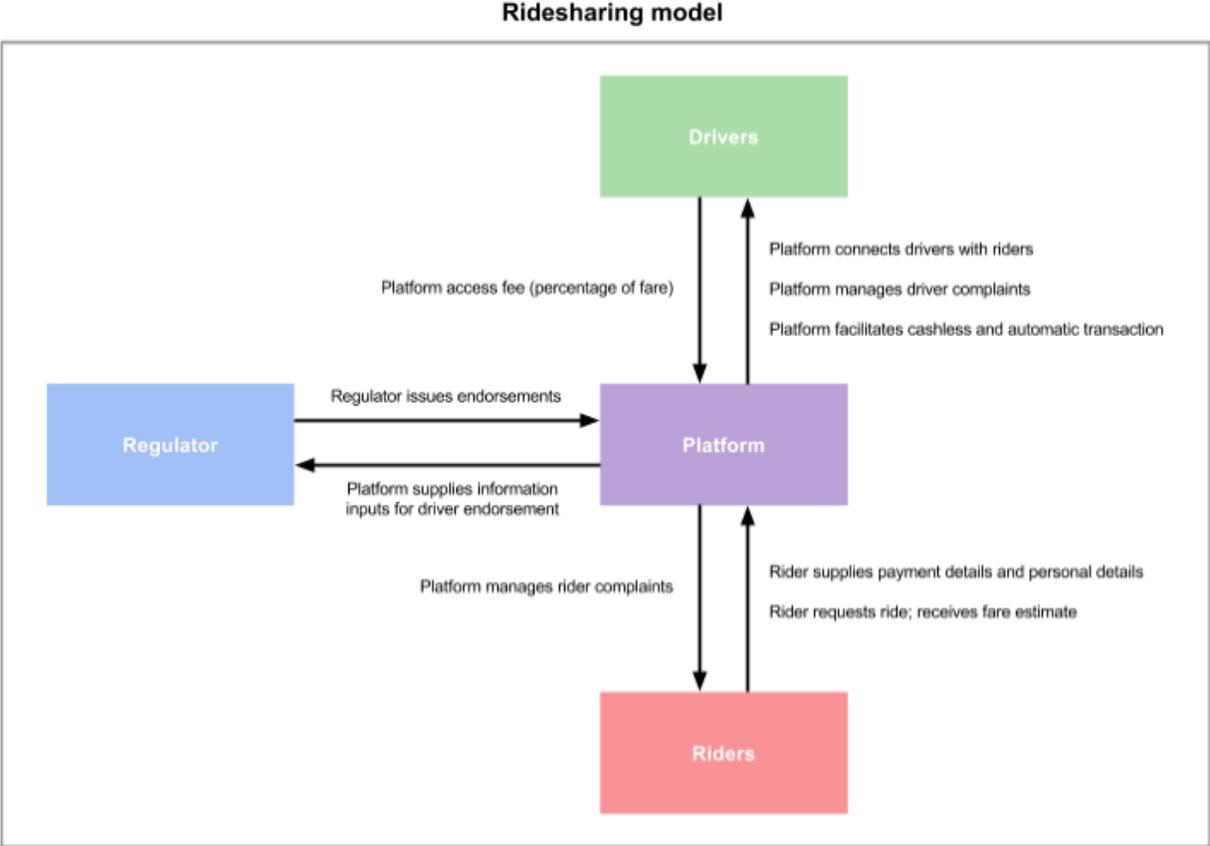
For example, in regional areas or small towns ridesharing participants may only choose work on weekends or evenings when they know the existing transport services cannot cope. These are also the times when people make poor choices about drink driving. To deprive someone who only wants to work a few hours, and deprive the community of a significant benefit because the administrative process of a Government agency are inefficient is not acceptable and should not be accepted by the Government.

A streamlined regulatory system would see the regulator deal primarily with the operator or platform at all stages of the regulatory process. Operators and platforms are better equipped to obtain the information necessary for statutory accreditation and compliance checks. A ridesharing regulatory model, for instance, would involve the following:

1. Legislation clarifies with greater precision the criteria of the fit and proper person test.
2. Partner-driver applicants provide the platform (such as Uber) with proof of identity and evidence of a vehicle warrant of fitness.
3. The platform obtains criminal background checks via cost-effective bulk arrangements with sources such as the Ministry of Justice.
4. The platform securely transmits these documents in batches to the Agency for fast track processing alongside driving history information supplied by the Agency. The platform identifies borderline cases for closer scrutiny by the Agency.
5. The Agency issues a P-endorsement within a reasonable 3-day period, effective upon approval by the Agency.
6. All successful applicants would be registered on the NTZA Driver Check System to ensure that the platform would be notified if a licence is restricted or revoked for any reason.
7. The platform undertakes to suspend access to the app system if a partner-driver neglects to maintain a valid warrant of fitness, or if a rider levies a serious complaint. Partner-drivers are unable to accept requests or find work without the app.
8. Platforms agree to strict auditing and compliance oversight by the Agency.

Furthermore, streamlining the administrative system in this way would resolve significant defects in existing arrangements. The Auditor-General has previously expressed concern that the regulator is

unable to test fitness and propriety on a regular basis.⁸ More efficient administrative infrastructure would allow the regulator to assess drivers routinely.



This division of administrative responsibility should not be confused with a division of legal responsibility. Partner-drivers must still owe legal responsibilities in their own right, such as maintaining their vehicle in accordance with general road law, and monitoring their work hours (time which could accrue with a single operator/platform or across multiple operators/platforms).

Platforms would still owe legal responsibilities, such as a duty to verify partner-driver applications faithfully and with diligence. Other responsibilities would include ensuring that the fare basis is agreed in advance, such as through an app.

⁸ Controller and Auditor-General, *Follow-up report on the effectiveness of controls over the taxi industry*, 2007, <http://www.oag.govt.nz/2007/taxi-industry/docs/oag-taxi-follow-up.pdf>, p 10.

Drivers who are independent contractors that use a booking service, platform or some other kind of technology assisted mechanism to enable connections to riders or passengers should still bear responsibility during the journey. While platforms like Uber can take steps to ensure that its partners understand and adhere to strict protocols, a level of responsibility should remain with the individual driver undertaking the activity.

Different models face different risks.

Uber supports the elimination of unnecessary administrative barriers to entry for all transport models. However, safety regulations applicable to one transport model are not necessarily applicable to others. The recommendation in Options 3 and 4 - that different transport models operate “under the same rules” in all respects is a poor approach to public policy.

It is not ‘unfair’ that one mode of personal transport has different burdens or barriers to entry than another, if the different modes mitigate risks in different ways and have access to different portions of the market.

For example, regulators have already recognised that chauffeured hire cars and taxis should have different rules because they have different risks, and access to different portions of the market.

Standardising safety regulations without heeding relevant distinctions is likely to impose unnecessary burdens, such as CCTV cameras, on new transport models that mitigate safety risks in a different way to traditional models. Other governments and taxi industry associations⁹ have already conceded that CCTV cameras are unnecessary in de-anonymised ridesharing models. Under the ridesharing model:

⁹ Victorian Taxi Association, *Regulatory Framework Proposal*, 2015,

<http://www.victaxi.com.au/assets/downloads/Regulatory%20Framework%20Proposal%20FINAL.pdf>.

‘Safety cameras would not be required in a ride hail vehicle because there is a record of the journey with the passenger’s identity, the same justification as in the case of hire cars.’

- Riders are supplied the name, photo and vehicle registration of the partner-driver before entering the vehicle. The vehicle identified in the app is guaranteed to be an accredited vehicle.
- Partner-drivers are supplied with the rider's name and destination upon collecting them.
- Journeys are GPS-tracked in real-time and the route recorded by Uber.
- Riders can share their ETA and route in real-time with family or friends.
- Transactions are cashless and automatic, and riders must supply their payment details prior to opening an Uber account. Riders are emailed a receipt containing a map of their route, and Uber can adjust fares in the event of a dispute.
- Riders and partner-drivers must provide mutual feedback at the conclusion of each trip. This feedback directly influences whether the rider or partner-driver can continue to access the platform.

These features perform three functions. First, they deter unethical or illegal behaviour by removing the anonymity of both riders and partner-drivers.

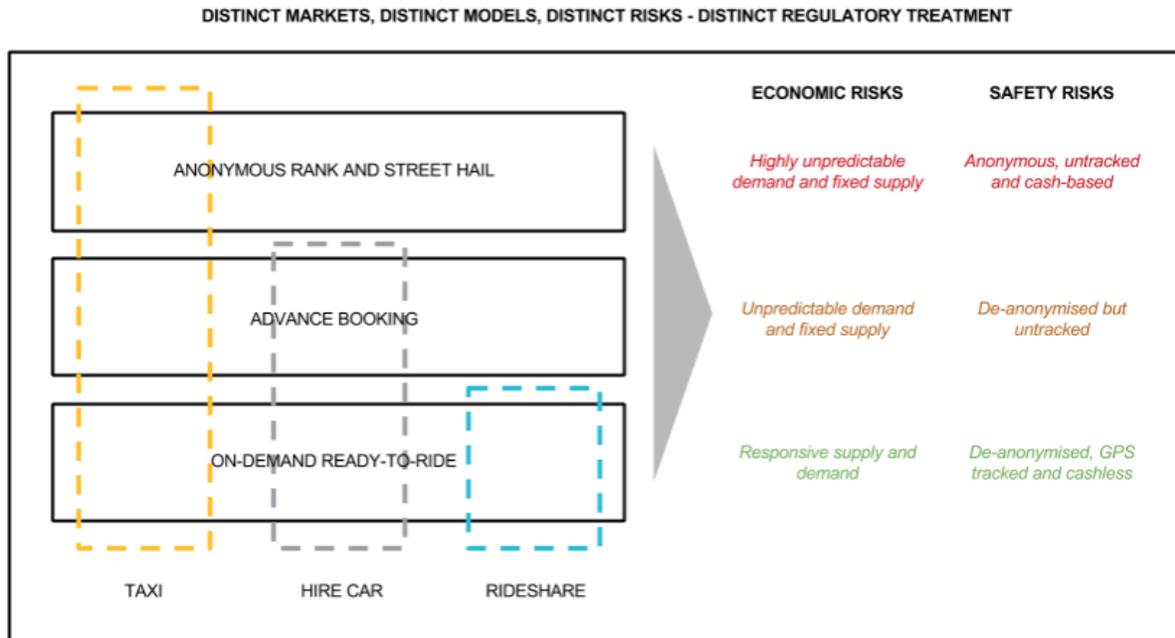
Second, they eliminate the threat of cash robbery, fare evasion or credit card fraud since the calculation and payment of fees is beyond the control of either party.

Third, they facilitate the prompt investigation of incidents by recording the personal details of both parties and by recording the route taken.

Taxis, by comparison, are characterised by anonymous and unsupervised hails in the street or from a taxi rank. Vehicle livery, driver uniforms and CCTV systems are necessary to enable the passenger to recognise an accredited vehicle, and to ensure the safety and accountability of both drivers and passengers. These requirements are not applicable to ridesharing, which uses smart technology to achieve better safety outcomes.

“Taxis caught from a rank or hailed in the street are anonymous, and so additional security measures, such as security cameras, are necessary. Booked trips come with a record of the journey and so have different safety requirements.”

In this environment, it is inappropriate to legislate that all passenger service vehicles must carry safety equipment adapted to anonymous street and rank hails.



These distinctions have two implications for the proposed reforms.

First, the discussion paper recommends an exemption to the camera requirement for models that meet certain criteria. However, discretionary exemptions introduce considerable uncertainty and delay into the regulatory framework. They create another layer of administrative burden that extends its own kind of red tape, delay and costs. Even at the conclusion of this lengthy review and the promulgation of new regulations, ridesharing will still be contingent on an Agency decision. In this way, the “single class” regulatory proposal is likely to generate more administrative work rather than less. There is no reason why the distinction between “rank and hail” work and de-anonymised pre-booked work cannot be recognised in advance in primary legislation.

¹⁰ NSW Government, ‘Point to point transport: The NSW Government response to the taskforce report’, 18 December 2015.

Second, the discussion paper implies that any transport model can engage in anonymous rank and hail work. That is the only explanation for the requirement that all models carry cameras under a single and undiscriminating set of rules. However, ridesharing platforms such as Uber have no ambition to engage in anonymous and untracked rank or hail work. That market should remain the exclusive domain of taxis.

Moreover, the amalgamation of these models could increase the risk to consumers. Option 4 anticipates the deregulation of livery and signage of all vehicles, including taxis. Yet it is unclear how Option 4 will enable consumers to recognise accredited vehicles externally - that is, prior to entering a potentially unaccredited vehicle.

This example illustrates that the standardisation of regulations cannot proceed with blind disregard for relevant distinctions between different models that mitigate risks in different ways. The present proposal is a compromise that will make the operation of a hire car or ridesharing vehicle more onerous, whilst making taxis less safe.

A more productive regulatory scheme would streamline driver accreditation for all models, abolish service licences for all models, but incorporate relevant safety distinctions according to the following logic:

	Taxis	Hire cars	Ridesharing vehicles
Definition	A passenger vehicle authorised to be hailed in the street or from a designated rank	A passenger vehicle authorised to accept bookings via any means	A passenger vehicle authorised to accept requests via accredited booking platforms
Privileges	Can perform rank and hail work or accept bookings	Can accept advance bookings by any means	Can accept requests from an accredited booking platform only
Limitations	None	Cannot undertake rank and hail work	Cannot accept or solicit requests outside an accredited booking platform

			Cannot undertake rank and hail work
Regulation	<p>Driver checks (streamlined)</p> <p>Cameras</p> <p>External markings (the only way to verify an accredited vehicle during a spontaneous street or rank hail)</p>	Driver checks (streamlined)	<p>Driver checks (streamlined)</p> <p>Mandatory affiliation with a booking platform (mandatory since only a booking platform can verify the accredited status of a vehicle)</p> <p>Booking platform accreditation and audits</p>

New Zealand already incorporates these distinctions in its transport rules.¹¹ It is a sound approach to regulation that recognises that different models perform different functions and face different risks. In Australia, for example, all nine transport jurisdictions broadly endorse this dichotomy between taxis and other vehicles. Even in those states that have regulated ridesharing, it remains a relevant regulatory distinction.

Abolishing the distinction altogether is unwise.

The review proposes obsolete safety requirements.

The review proposes other legislative requirements that are unjustified for any transport model. They are obsolete and ineffective. There are more powerful, technology-driven ways to achieve the same objective.

¹¹ *Land Transport Rule: Operator Licensing 2007* (NZ) cll 4.4(1), 4.5(1) (taxis), 6.1(2) (private hire vehicles).

Logbooks.

Self-completed logbooks are prone to error and fraud. They do not meaningfully prevent drivers from exceeding their work limits. A driver who intends to breach the regulated limits can forge the logbook to escape liability. Conversely, a driver who intends to comply may be subject to serious penalties for basic completion errors. Ultimately, logbooks play little role in deterring or detecting non-compliance.

As a matter of business policy, ridesharing platforms such as Uber already monitor partner work hours and advise partners of their responsibilities. The work hours data collected by the Uber app cannot be altered intentionally or mistakenly. It is a more reliable approach to fatigue management than self-reporting.

Medicals and vehicle certificates of fitness.

It is unclear why industry participants must obtain driver medical checks and vehicle certificates of fitness that exceed the requirements applicable to private drivers. The consequences of an unfit driver or unroadworthy vehicles affect all road users, whether or not the driver or vehicle in question is deemed “commercial”.

Moreover, in a ridesharing industry characterised by variable work hours, the risk profile of a personal vehicle that undertakes occasional ridesharing is materially similar to that of a purely personal vehicle. Vehicles do not deteriorate any faster by virtue of providing commercial rides, nor do the drivers.

	Risk profile of class			
Relevant risks	Personal	Ridesharing	Hire car	Taxi
Time on the road	Variable	Variable	Often (during booked trips)	Frequently (bookings and plying for hire)
Carriage of third party passengers	Variable	Variable	Frequently	Frequently

Dedicated medical examinations and six-monthly certificates of fitness are costly and unnecessary regulatory imposts. The requirement for a medical examination is predicated on the baseless assumption that an applicant is either unaware of their health, or that they would dishonestly complete a medical self-declaration. The content of the certificate of fitness is identical to the warrant of fitness, save for an inspection of towing connections and load restraints.¹²

If the regulator is satisfied with private drivers holding a driver's licence after a medical self-declaration and warrant of fitness, that self-declaration and warrant should permit them to drive their personal vehicle for supplemental income. If the regulator is not so satisfied, it should consider reforming the requirements for all drivers, whether private or commercial.

Duty to accept first hire.

The duty to accept the first hire is intended to prevent drivers from declining short or undesirable fares, or from otherwise discriminating between consumers. In principle, this is a sound objective. However, the content of the duty requires further clarification. The duty should not, for instance, operate to require ridesharing partner-drivers to accept a request when the pickup location is a considerable distance from their current position.

The app technology that powers the Uber platform offers a better solution. Partner-drivers are not supplied the intended destination or photograph of a rider until they have arrived to collect the rider. They cannot cancel a trip once the rider enters the vehicle. In this way, riders are not prejudiced by their destination, appearance, gender or age.

The Uber system also creates redundancy so that should one driver decline, another can pick up the trip, the rider experiences no degradation of experience. This is a better method of dealing with the intent of regulation, which doesn't currently allow for technology to provide a solution.

¹² New Zealand Transport Agency, <https://www.nzta.govt.nz/vehicles/warrants-and-certificates/warrant-of-fitness/>; <https://www.nzta.govt.nz/vehicles/warrants-and-certificates/certificate-of-fitness/>.

Duty to display P-endorsement card.

Identifiers such as paper cards are unnecessary in a technology-driven model such as ridesharing. Through the Uber app, for instance, riders are provided with the name, photograph, vehicle model and registration number of partner-drivers prior to entering the vehicle. Partner-drivers are supplied with the name and account details of riders prior to collecting them.

Without this exchange of information, the rider is unable to identify their vehicle or pay the partner-driver, and partner-drivers are unable to locate the rider. The arrangement cannot proceed outside the Uber platform. Riders are assured that the partner-driver collecting them via the app has been appropriately vetted.

Conclusion.

The review is motivated by sound principles. Yet in crucial respects, it proposes little more than a worsening of the status quo. The review does not acknowledge that ridesharing technology can solve many of the issues that plague the incumbent industry, nor does it acknowledge that different models should be treated differently. Instead, it treats all models as variations of a taxi. The proposed regulations will erode the economic value of efficient models such as ridesharing that are built on personal, underutilised vehicles, flexible work, and smarter solutions to safety.

If the proposed regulations proceed without amendment, and if the administrative burdens are not dealt with, this review could see a transport system that looks no different than its current make up. That should not be the outcome delivered. A review that intends to 'future proof' the regulations should deliver a better outcome for New Zealanders, not simply another version of the status quo.

If these changes are not made, then the benefits of ridesharing and other opportunities, such as technology assisted carpooling, through UberPOOL will not be able to be made available to New Zealand.

The review has coupled the regulation of ridesharing with further deregulation of taxis. These two projects can proceed independently. The discussion paper already endorses the essential elements of the ridesharing model. It is fundamentally different to taxi services and should be treated as such.

As an immediate step, the Government should act to regulate ridesharing in the interim using its delegated legislative powers, pending more ambitious reform of the entire industry.