

From: Damien Le Breton
To: [Richard O'Reilly](#)
Cc: [Michael Cummins](#); [Andrea McDonald](#); [Steve Penman](#)
Subject: Choice and SPS
Date: Tuesday, 17 October 2017 11:01:18 AM
Attachments: [Call Centre overview v3.pdf](#)
[Out of Scope](#)

<!--[if =mso]> <![endif]-->

Hi Richard,

Just to update you on where we're at with Choice and SPS.

Having reviewed the legislation and our own system architecture, we don't believe we fall within the definition of a transport facilitator.

</p>

The way Choice and the Mobility as a Service platform are designed is as how a call centre would operate – only via digital means. We connect an electronic call from a customer with potential service providers. It is the service providers who then assign the work to a driver and payment is made directly to the driver/service provider.

Choice simply takes an electronic call from a customer and passes the relevant information on to a transport provider (ie: a taxi company) who assigns the work however they choose. The fact this is handled digitally is irrelevant.

<p class="MsoNormal">

I've attached a diagram that tries to explain that visually, let me know if you want to discuss any further.

Damien

Damien Le Breton

Senior Manager, Incubation

Connected Journey Solutions

NZ Transport Agency 04 894 6382 /  / [e d=mien.lebreton@nzta.govt.nz](mailto:damien.lebreton@nzta.govt.nz)

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Call Centre

1) Placing a call to service providers



"Hi could you book me a taxi please, I am at the corner of Smith Street and want one now"



User downloads application (Registration optional)



User plans journey with start and end location and submits request to 3rd party business (API call) via app.



Driver connects and provides service to user via facilitator.

Payment is made by user via facilitator to driver



Other modes omitted for clarity but process is the same via API call to 3rd party service providers.

Facilitator

2) Service provider (Facilitator) books service and dispatches driver



"Hi, We have a taxi available and can be with you in five minutes and will cost \$20. Would you like me to send it?"



Request for information (ETA, Cost) arrives at transport provider/s and provider/s return a response via API call to 3rd party app (Call centre)

If customer (call centre user) wants a service the facilitator will then dispatch a driver via digital booking, dispatch or phone.

User chooses best offer from Facilitator, confirms booking and the facilitator then tells user where the taxi is and estimated time of arrival



"Thanks dispatch, I am on my way to the customer now"



Facilitator dispatches driver via digital system, radio or phone to the users location.

From: Richard O'Reilly
To: [Damien Le Breton](#)
Cc: [Michael Cummins](#); [Robert Brodnax](#); [Martin McMullan](#); [Barbara Tebbs](#); [Jenny Chetwynd](#)
Subject: FW: Small Passenger Service Requirements.
Date: Thursday, 5 October 2017 3:32:37 PM
Attachments: [Out of Scope](#)

Hi Damien

Thanks for meeting with me to discuss matters related to the Facilitator role under the new small passenger service laws, the "Choice" application and the requirement to hold a TSL. Apologies for the delay in replying.

Below is my official advice to you as a "regulated party" but, as we discussed at the meeting and because we are Agency employees, there are several different perspectives, which reflect the Agency's different roles.

The first and primary questions you are asking are with your hat on as a potentially affected regulated party, as a result of the new small passenger service laws - i.e. you as the 'person in control' of the Agency's pilot "Choice" application. In responding to these queries, I must do so (and have done so below) in the same way as I have and would respond to any other potentially affected regulated party.

Naturally, because we're employees of the Agency and are aware of the other responsibilities of the Agency, you're asking questions about the nature and level of consideration and discussions of risks and issues with the administration of the new small passenger services regime.

In order to preserve the integrity of our Agency regulator role, I cannot discuss these matters with you (with your hat on as a 'regulated party'). The issues and risks you have raised have been, and continue to be discussed by Barbara Tebbs and other members of the senior management team across the relevant parts of the Agency. There are significant issues that need to be discussed by senior management and Barbara is briefing them accordingly.

I can though, wearing the Agency's regulator hat, respond to your questions about how you are impacted as an affected party under the new small passenger service laws. In addressing your primary queries I note that one of the Agency's roles is to provide general information about what the law says and what the legal requirements are. We do this in a number of ways from information on our websites, through our contact centre, and via discussions with customers. The Agency always provides advice in general terms because we cannot possibly know, understand and document all the variations and differences there are in different scenarios and situations applying to individual people or companies. The Agency also cannot provide legal advice to customers (including regulated parties who are customers) and so where appropriate we suggest customers seek their own

independent legal advice. We are of course always happy to meet with regulated parties to discuss compliance matters and the people in our TAD group are more than happy to do this.

So as the person in control of the “Choice” application, the Agency as a regulator cannot provide you with legal advice on whether your operation is, or is not, within the scope of the legislation. Of course, because you are an employee of the Agency, your responsibility as the ‘person in control’ of the “Choice” application is part of your job role and the Agency is taking on a role (via you) as a regulated party, separate from our regulator role.

I understand how confusing this can become. In this email I’m describing three different roles, which we must keep well separated within the Agency:

1. Being a regulated party (designated person in control of the Choice application and so being a potentially affected party under the new law)
2. Being the regulator – working with MoT on the content and settings of the new law; and being responsible for enforcing compliance with the law
3. Strategic and tactical risk management – whereby the senior management team need to make decisions and manage the risks associated with carrying out both roles 1 and 2 above

Here is my advice to you as a potentially affected ‘regulated party’:

From what I understand and have heard of the “Choice” application, it sounds like it would be caught within the new facilitator provision. Ultimately it is a question that you and your team need to reach a view on, and it is not one that the Agency (in its regulator role) can definitively answer for you. By applying for a licence it sounds like you have made a decision already, and that is sensible.

In its role as a regulator, the only time the Agency does make an assessment of whether an operation is in compliance with the law is when it is taking enforcement or compliance action, but that is obviously not helpful for you in your present situation. In relation to compliance, the law sets out the offences and penalties, see the below amendments to the Land Transport (Offences and Penalties) Regulations:

<http://www.legislation.govt.nz/regulation/public/2017/0252/latest/DLM7417066.html>

Again, if you wish to discuss these matters further please do not hesitate to give me or one of the people in TAD a call.

Cheers
Richard

Richard O’Reilly / Lead Advisor Regulatory Policy
Strategy, Policy & Planning

DDI **s 9(2)(a)**
E richard.oreilly@nzta.govt.nz / w nzta.govt.nz
Chews Lane, 50 Victoria Street

From: Damien Le Breton
Sent: Monday, 2 October 2017 3:08 p.m.
To: Richard O'Reilly
Cc: Andrea McDonald; Steve Penman; Dave Chowdhury; Michael Cummins; Robert Brodnax; Martin McMullan
Subject: RE: Small Passenger Service Requirements.

Hey Richard,

Thanks for this – the reason I ask for formal confirmation is that given the nature of the issue and potential risks/outcomes involved, I think it would be wise to elevate the discussion/decision making and give visibility of the issue at the SLT level.

Cheers,

Damien

From: Damien Le Breton
Sent: Monday, 2 October 2017 2:30 p.m.
To: Richard O'Reilly
Cc: Andrea McDonald; Steve Penman; Dave Chowdhury; Michael Cummins
Subject: RE: Small Passenger Service Requirements.

Hi Richard,

Appreciate that – I'm just seeking some certainty on decision making and that the discussion has been had at the appropriate level before I commit to what is potentially a lot of work.

Damien

From: Richard O'Reilly

From: Richard O'Reilly
Sent: Monday, 2 October 2017 1:35 p.m.
To: Damien Le Breton
Cc: Andrea McDonald; Steve Penman; Dave Chowdhury; Michael Cummins
Subject: RE: Small Passenger Service Requirements.

Hi Damien, I will send you a formal response shortly, but there isn't much more that the Agency can confirm other than what is in the material you have already been provided with.

If you want to have a discussion, please feel free to give me a call.

Cheers
Richard

Strategy, Policy & Planning

DDI [REDACTED] s 9(2)(a)

E richard.oreilly@nzta.govt.nz / w nzta.govt.nz

Chews Lane, 50 Victoria Street

Private Bag 6995, Wellington 6141, New Zealand

From: Damien Le Breton

Sent: Wednesday, 27 September 2017 12:02 p.m.

To: Richard O'Reilly

Cc: Andrea McDonald; Steve Penman; Dave Chowdhury; Michael Cummins; Damien Le Breton

Subject: RE: Small Passenger Service Requirements.

Hi there Richard,

Thanks very much and I appreciate the time and assistance you and the team have put into answering my questions and concerns – as well as bringing this to my attention in the first instance.

I think the first thing that the Transport Agency could assist me with is providing me with written confirmation that “Choice” falls within the scope of the small passenger services reform legislation and confirmation of what my obligations are as a transport “facilitator” as well as the impacts of any potential non-compliance.

As you can appreciate, formal confirmation of the decision/implications of the legislation will be required for me to put in place the necessary processes and plan for, and request, the appropriate resources to ensure compliance with any obligations.

I understand the first step towards compliance is an application to be an SPS licence holder. I'll undertake to begin this process in the interim.

If you could please provide formal confirmation of the Transport Agency's position as soon as possible, I'd really appreciate it.

Regards,

Damien

Damien Le Breton

Senior Manager, Incubation

Connected Journey Solutions

NZ Transport Agency

t 04 894 6382 / [REDACTED] / e damien.lebreton@nzta.govt.nz



Please consider the environment before printing this email

From: Richard O'Reilly
Sent: Tuesday, 26 September 2017 4:50 p.m.
To: Damien Le Breton
Cc: Andrea McDonald; Steve Penman; Dave Chowdhury; Michael Cummins
Subject: Small Passenger Service Requirements.

Hi Damien, good to discuss the "Choice" application at the meeting we had just now and the implications of that application being subject to the requirements of the small passenger services licensing regime from next week.

As mentioned the Agency is working with industry to inform and educate them about the new requirements and are doing so through a range of mechanisms. We are particularly keen to assist entities who have previously not been subject to the operator licensing system to understand the requirements and comply with them.

As you are a potential new applicant for a Small Passenger Services Licence for the "Choice" application we are happy to work with you.

The attached emails are electronic versions of the paper versions you took away from the meeting just now. Please note the first email "Requirements..." was written at the start of July which was before the legislation and rules were in their final legislated form. It is still broadly accurate and is a useful summary of the requirements – but it is not the exact wording of the law nor is it comprehensive. There is a significant amount of material available on the NZTA website see <https://www.nzta.govt.nz/commercial-driving/taxis-shuttles-buses-and-other-passenger-services/new-passenger-service-rules-2017/> and there is also a helpful and pretty comprehensive transitional guide see: <https://www.nzta.govt.nz/assets/Commercial-Driving/Small-passenger-services-transitional-guide.pdf>

As mentioned we are happy to discuss or explain requirements of the law in more detail if you wish.

Cheers
Richard

Richard O'Reilly / Lead Advisor Regulatory Policy
Strategy, Policy & Planning
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E richard.oreilly@nzta.govt.nz / w nzta.govt.nz
Chews Lane, 50 Victoria Street
Private Bag 6995, Wellington 6141, New Zealand

From: Martin McMullan
To: [Barbara Tebbs](#); [Damien Le Breton](#)
Subject: Fwd: Choice and Facilitator Role
Date: Saturday, 28 October 2017 2:19:50 PM

FYI

Begin forwarded message:

From: Fergus Gammie <xxxxxx.xxxxxx@xxxx.xxxx.xx>
Subject: Choice and Facilitator Role
Date: 27 October 2017 at 7:20:17 PM GMT-4
To: Barbara Harrison <xxxxxx.xxxxxxx@xxxx.xxxx.x>, Bernice McLaughlin <xxxxxxxxxxxx@xxxx.xxxx.xx>, Charles Ronaldson <xxxxxxxxxxxx@xxxx.xxxx.xx>, Emma Speight <xxxx.xxxxxx@xxxx.xxxx.xx>, Fergus Gammie <xxxxxx.xxxxxx@xxxx.xxxx.xx>, Giles Southwell <xxxxxx.xxxxxxx@xxxx.xxxx.x>, Harry Wilson <xxxxxx.xxxxxxx@xxxx.xxxx.x>, Howard Cattermole <xxxxxx.xxxxxxx@xxxx.xxxx.x>, Jenny Chetwynd <xxxxxx.xxxxxxx@xxxx.xxxx.x>, Jim Harland <xxx.xxxxxxx@xxxx.xxxx.xx>, Leigh Mitchell <xxxxxx.xxxxxxx@xxxx.xxxx.x>, Martin McMullan <xxxxxx.xxxxxxx@xxxx.xxxx.x>, Parekawhia McLean <xxxxxxxxxxxx@xxxx.xxxx.xx>, Peter Clark <xxxxxx.xxxxxx@xxxx.xxxx.x>, Raewyn Bleakley <xxxxxx.xxxxxxx@xxxx.xxxx.x>, Robert Brodnax <xxxxxx.xxxxxxx@xxxx.xxxx.x>, Robyn Fisher <xxxxxx.xxxxxxx@xxxx.xxxx.x>, Tommy Parker <xxxxxx.xxxxxxx@xxxx.xxxx.xx>

Kia Ora

As you may be aware there is some legal doubt regarding the status of applications such as Choice, Google or the Air New Zealand app under the new small passenger services rules. We believe that it was not the intention of the Land Transport Amendment Act 2017 to catch these Apps however the matter has not yet been judicially considered. It is arguable that the manner in which these Apps assist in connecting the public to drivers operates, may fall within the definition of 'facilitators' in the Act. It is equally arguable that these Apps are no more than call centres and excluded from the definition of Facilitator.

We are seeking legal advice to clarify which is the case. In the mean-time Choice will apply for the relevant licence purely as a precaution and to ensure that there is no doubt that the Agency takes compliance with the legislation and the safety of the public seriously. The team are also reviewing what we can do to the App to ensure that there are appropriate in-built protections for users.

I have spoken to Robert and he has agreed to work with Connected Journey Solutions and the CDD team to expedite the application process. Robert has also

clarified that our compliance focus remains on the areas of highest risk at this point in time which is the companies that actually employ drivers, the drivers and their vehicles themselves.

Regards
Fergus

Fergus Gammie / Chief Executive

s 9(2)(a)

E xxxxxx.xxxxxx@xxxx.xxxx.xx / w nzta.govt.nz

National Office / Victoria Arcade, 50 Victoria Street, Private Bag 6995, Wellington 6141, New Zealand



Martin McMullan
Director, Connected Journeys
Connected Journeys Solutions
DDI s 9(2)(a)

From: Debbie Despard
To: [Damien Le Breton](#); [Barbara Tebbs](#)
Cc: [Andrea McDonald](#)
Subject: RE: Confirming Choice's legal advice re SPS
Date: Wednesday, 22 November 2017 7:43:08 AM

Hi Damien

Just confirming that we are comfortable with this result. Barbara I've sent you a note about this also.

Kind regards
Deb

From: Damien Le Breton
Sent: Monday, 20 November 2017 5:30 PM
To: Barbara Tebbs <[x@xxx](#)>; Debbie Despard <[x@xxx](#)>
Cc: Andrea McDonald <[x@xxx](#)>
Subject: Confirming Choice's legal advice re SPS

Hi there,

Just to confirm, we've had legal advice come back from Chapmann Tripp which suggests the legislative intent of the SPS reform puts Choice outside of the regulatory framework.

I've attached the legal advice for your review.

At this stage, based on this advice, we don't intend on applying for a small PSL.

Let me know if you want to discuss further.

Cheers,

Damien

Damien Le Breton
Senior Manager, Incubation
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