



Passenger transport industry fact sheet

Safety duties

The *Transport (Road Passenger Services) Act 2018* (the Act) applies a safety framework for the passenger transport industry in Western Australia. At the core of the legislation is a chain of accountability for the industry, which is based on the concept of duty of care.

The Act defines roles for those involved in the industry and sets out their obligations and responsibilities, particularly in relation to the health and safety of passengers, drivers and the public. These people are “safety duty holders” and defining their roles allows the Department of Transport (DoT) to clearly identify who is responsible for compliance and enforcement purposes.

Who are safety duty holders?

There are differing levels of safety duties for everyone depending on their role in the industry and individual circumstances. Safety duty holders include:

- providers of on-demand booking services (ODBS);
- providers of passenger transport services;
- providers of passenger transport vehicles (PTVs);
- officers of providers of an ODBS or PTVs; and
- drivers of vehicles used to transport passengers for hire or reward (PTDs).

Under the Act, safety duties assigned to one person cannot be transferred to another person.

It is possible for a person to fall into more than one class of duty holder at any given time. For example, an individual may be an officer for an ODBS and a driver – they will be responsible for carrying out both sets of safety duties.

Who is an officer?

The term “officer” refers to an individual who has the capacity to make decisions related to operation of an ODBS or other passenger transport service, or provision of PTVs.

Their role is to ensure that the duty holder (i.e. the provider of the ODBS or PTV) complies with their safety duty.

Primary duty of care

All parties involved in providing passenger transport services are responsible for ensuring the health and safety of their passengers, drivers and vehicles while providing a passenger transport service.

For example, an ODBS provider is responsible for the health and safety of the passengers and drivers in connection with their services. Providers of PTVs, whether they own one vehicle, or an entire fleet, are responsible for ensuring the vehicles are safe and will not cause injury or harm to anyone.

When driving for hire or reward, a passenger transport driver must:

- ensure their own health and safety;
- ensure that their acts or omissions do not adversely affect the health and safety of others;
- comply with any reasonable instruction given by an ODBS or PTV provider, to allow them to comply with the Act; and
- cooperate with any reasonable health and safety policy or procedure of the ODBS or PTV provider.

Safety duty offences

There are three categories of safety duty offences, which can attract serious penalties.

Category 1

A Category 1 safety duty offence occurs if the person that has a safety duty knowingly engages in conduct that breaches that duty and exposes an individual to whom that duty is owed to a risk of death, serious injury or illness. A Category 1 offence is considered a crime.

Penalty: Imprisonment of 2 years and a fine of \$300,000 for an individual, or \$3 million for a body corporate.

Category 2

A Category 2 safety duty offence occurs if the person that has a safety duty (fails to comply with that duty and that failure exposes an individual to whom the duty is owed to a risk of death, serious injury or illness. A Category 2 offence is considered a crime.

Penalty: Fine of \$150,000 for an individual, or \$1.5 million for a body corporate.

Category 3

A Category 3 safety duty offence occurs if the person that has a safety duty fails to comply with that safety duty.

Penalty: Fine of \$50,000 for an individual, or \$500,000 for a body corporate.

Reasonable steps defence

The legislation provides for a reasonable steps defence. This means that if charged with a Category 1, Category 2 or Category 3 offence, demonstrating the following can be used as a defence:

- that the person did not know and could not reasonably be expected to have known that an offence was committed; and either
- they had taken all reasonable steps to prevent a breach of the safety duty; or
- there were no steps they could reasonably have taken to prevent the breach of the safety duty.

Principles that DoT works under

With the passenger transport industry operating under a chain of accountability framework, there are some key principles that DoT works under:

- Customer service issues are a matter for individual businesses to address at a customer level.
- Processes for handling complaints, fare evasions and lost property need to be established and maintained by the ODBS.
- The Regulations require that customers are provided with a written or electronic record of their journey that include the ODBS name or authorisation number.
- DoT's role is to assist operators to understand their obligations under the legislation, to encourage compliance. If operators are willfully and repeatedly non-compliant, DoT can apply a range of sanctions to maintain a culture of safety across the industry, including:
 - improvement notices;
 - infringements; and
 - prosecutions.
- DoT uses a range of information and communication technologies to monitor and address non-compliance with safety duties by industry. The Act allows information to be exchanged between DoT and an ODBS regarding driver and vehicle authorisation status. This supports the ODBS to identify and manage risks.
- The *Enforcement and Prosecution Policy* outlines how DoT assesses and enforces compliance, by detecting breaches, alerting offenders and applying penalties.

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Last modified: 21 December 2021