



Ref: 179/2016

RWK:gc

22 August 2016

Mr A. Henskens SC MP
Chair
Legislative Assembly Committee on Transport and Infrastructure
NSW Parliament
Macquarie Road
SYDNEY NSW 2000

Dear Mr Henskens,

Re: NSW Parliament Legislative Assembly Committee on Infrastructure and Transport Review into Workplace Relations in the point to point transport sector

We refer to your letter of 2 August 2016 regarding the NSW Parliament Legislative Assembly Committee (the Committee) on Infrastructure and Transport Review into Workplace Relations in the point to point transport sector.

We thank you for the opportunity to provide further information to the Committee in response to the supplementary questions that you have asked and hereby provide our responses as set out below:

On page 4 of your evidence you refer to a decision of the Federal Court concerning the employment arrangement between taxi owners and taxi drivers. Could you provide us with the case details?

Please find attached the relevant case law as follows:

1. *De Luxe Red Yellow Cabs v Commissioner of Taxation 1997*
2. *Commissioner of Taxation of Commonwealth of Australia v De Luxe Red Yellow Cabs 1998*
3. *Fair Work Commission James Voros vs Alan Dick*

The Committee should note that in each case, the Federal Court and the full bench of the Fair Work Commission determined that the taxi driver was not an employee but rather a bailee and that no employment relationship exists.

Specifically in *De Luxe Red Yellow Cabs v Commissioner of Taxation 1997*, Justice Hill found that:

In my view, reinforced by the preponderance of authority to which reference has been made, the agreement between (taxi) operators and (taxi) drivers in each of the present cases was one of bailment and not one employment.

In 1998, Justices Beaumont, Foster and Sackville of the Federal Court upheld this decision on 15 April 1998 when they found:

...in our view, that it should be held that the relevant relationship here was one of bailment rather than employment or the provision of labour

This position (the nature of the relationship between a taxi operator and a taxi driver) was also held by the full bench of the Fair Work Commission in *Fair Work Commission James Voros vs Alan Dick*, December 2013.

In your submission, you recommend the removal of Chapter 6 of the Industrial Relations Act to reduce costs on taxi operators in providing entitlement to taxi drivers, such as annual and sick leave. If this Chapter was removed, please explain how these savings would be passed on to the taxi driver and to the customer.

As outlined in our submission, Chapter 6 is considered an oddity in Australia and internationally. No other State or Territory has legislation that provides that an industrial tribunal is to regulate the commercial relationship whereby taxi drivers bail an operator's taxi to earn fare income. Nor is it a model replicated elsewhere in the world.

The obligations placed on operators in metropolitan Sydney by the Determination made under Ch 6, including providing paid leave and pay for downtime, do not exist elsewhere in NSW or Australia. In addition, Ch 6 of the IR Act provides taxi drivers with a right unique to NSW to challenge the termination of a bailment contract, and does so on terms more favourable than unfair dismissal rights.

The breadth and scope of this legislation is particularly significant given that no comparable legislation applies to competitors in the point to point transport industry, notwithstanding that Uber in particular is a large multinational organisation whereas the vast bulk of operators in the taxi industry are very small businesses.

As also outlined in our submission, there is a significant disparity between ridesharing service providers and businesses, particularly in the area of employment relations. Under Chapter 6 of the *Industrial Relations Act, 1996* taxi operators must provide for a range of entitlements that are not only inconsistent with a contract of bailment in other jurisdictions, but are also not applied to point to point providers such as Uber.

This lack of competitive neutrality is uneconomic and will ultimately, if left unresolved, lead to ridesharing providers prevailing over taxi businesses in the medium to longer term. The corollary of this outcome is that more point to point drivers will driver for ridesharing services where there are no basic protections such as workers compensation cover.

Furthermore, with reduced costs, ridesharing providers such as Uber are able charge far more competitive prices than taxis, thus exacerbating the competitive imbalance between the respective business models.

The NSW Government has sought to address this lack of competitive neutrality through point to point transport reforms. This includes granting taxi networks and businesses the ability to set prices, particularly for booked work in an unregulated environment. This greater flexibility will allow authorised taxi services to work collegiately with taxi operators and drivers to set prices at more competitive levels. This will have significant consumer benefit and will also potentially lead to greater productivity of taxi fleets and drivers, which in turn can produce higher earnings.

This will be able to be achieved if supply chain costs can be better and more flexibly managed and the current rigidity of Chapter 6, particularly when compared to the absolute freedom available to ridesharing providers in this context, inhibits the ability of networks to be competitive and consumer responsive.

The Committee should note that this was the very principle upon which the Independent Pricing and Regulatory Tribunal (IPART) based its recommendations on fare and licence policy on the very premise of reducing costs to improve competitiveness and stimulate latent demand.

It should be noted that IPART specifically identified improved price competitiveness as a means of stimulating productivity and thereby improving driver remuneration.

...the demand for driver labour should put drivers in a better position to bargain for lower pay-ins. Furthermore, an increase in taxis and a reduction in fares that converts latent demand to actual demand could increase the total fare revenue available to the industry.¹

While the focus by IPART was mostly on licence costs (which have since reduced by approximately 40% from July 2015) it is a principle that equally applies to all overheads including workplace relations.

In your submission, you note that the lines between hailing and e-hailing are 'becoming increasingly blurred' making it confusing for taxi drivers as well. Given consumers are shifting the ways in which they use technology to purchase services, how do you propose the taxi industry proceed in order to stay competitive and meet customer needs?

As strong and viable taxi industry that provides affordable, reliable and quality taxi services to passengers is in the public interest. The NSW Parliament has recognised this in its passing of the *Point to Point Transport (Taxi and Hire Vehicle) Bill, 2016*.

In order for the NSW Taxi Industry to remain competitive and build a strong and viable future it must be able to compete on a level playing field, particularly given that ridesharing services providers face little of the overhead costs that are placed on taxi businesses. This includes duress alarm systems, safety cameras, vehicle tracking devices that are all fixed to the vehicle.

In response to this, and for sound public safety reasons, the NSW Government has determined that rank and hail services are to be exclusively the domain of taxis. As outlined in the Point to Point Transport Taskforce Report, Professor Gary Sturgess stated:

We agree with the Taxi Council that safety is of critical importance. It is for this reason that there should be strict enforcement of the distinction between booked and rank & hail services: it is vital that in framing legislative and regulatory provisions, and in approaches to compliance and enforcement, that government makes it clear that this distinction is of fundamental importance for the safety of passengers and drivers. There should be severe penalties for anyone who provides, or represents that they provide, rank & hail services when the

¹ IPART, *Annual Taxi Licence Release for Sydney, 2013/2014*, October 2012

*service is not being provided in a licensed taxi with the relevant security equipment in full working order.*²

Whilst this policy position provides taxi services access to a wider market than other point to point transport operators, it does not offset the lack of competitive neutrality between taxis and ridesharing providers.

Pre-booked services can now occur almost instantaneously. A booking through an app such as Uber or Go-Car is nothing more than an electronic hail (e-hail). It is in this context that the lines between taxi and ridesharing providers are becoming increasingly blurred and as technology improves, this trend will continue.

Ultimately, driverless taxis/ridesharing vehicles will potentially remove this distinction altogether.

Whilst access to rank and hail markets have some value in inner city areas where this is mostly the preferred means of accessing a taxi, outside of the inner city, this changes significantly. In outer metropolitan suburbs and in rural and regional NSW, pre-bookings are the preferred method of catching taxis. In some towns, rank and hail works represents less than 10% of hirings for taxi.

Given these market behaviours, it is vital that there is competitive neutrality between all point to point transport providers. In this regard the two areas that remain largely unresolved in this context are Compulsory Third Party Insurance and workplace relations. In these two areas ridesharing services have a highly disproportionate advantage over taxis which, if they remain unresolved, will ultimately render the provision of taxi services uneconomic and the market will shift to the low cost business model of ridesharing services.

Consistent with NSW Government policy and based on the determination of the NSW Parliament, this outcome would not be in the public interest.

The NSW Taxi Industry does recognise that its future viability also depends on its performance in areas of reliability and quality. In this context, the NSW Taxi Industry provides a good service overall which is borne out of independent research.

The yearly Transport for NSW Customer Satisfaction Index Report the NSW Taxi Industry has consistently scored in excess of 80% in terms of overall satisfaction ratings, with key performance areas of safety, reliability and quality rating in the 85%+ range. For a privately funded public transport services, this is a highly commendable achievement.

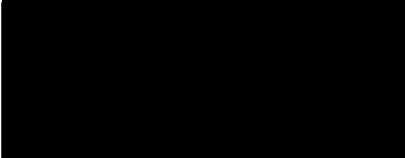
Furthermore, in its independent assessment of the disability community, TfNSW found that over 90% of the Wheelchair Accessible Taxi (WAT) users were more than satisfied with the service provided by the NSW Taxi Industry.

These results notwithstanding, the NSW Taxi Industry is not resting on its laurels and it continues to innovate to build on these service outcomes. Specially, customer service initiatives including universal booking apps, improved dispatch technology, driver training and improved safety equipment are all being further developed and implemented.

² G. Sturgess, *Point to Point Transport Taskforce Report*, November 2015, p.24

The NSW Taxi Industry will continue on this path of continuous improvement to help improve its overall competitiveness however this can only be truly effective if the structural inequities in the areas of workplace relations and CTP insurance are effectively addressed.

Yours sincerely,



Roy Wakelin-King, AM
Chief Executive Officer