

**Submission  
No 5**

## **WORKPLACE ARRANGEMENTS IN THE POINT TO POINT TRANSPORT INDUSTRY**

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**Transport  
for NSW**  

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**Industrial  
Relations**

**INQUIRY INTO WORKPLACE  
ARRANGEMENTS IN THE POINT TO POINT  
TRANSPORT INDUSTRY  
JULY 2016**

1. NSW Treasury and Transport for NSW welcomes the opportunity to make a submission to the Legislative Assembly Committee on Transport and Infrastructure's inquiry into workplace arrangements in the point to point transport industry.

## **Section 1: Chapter 6 - Industrial Relations Act 1996**

### **How does Chapter 6 operate?**

2. Section 307(1) of the *Industrial Relations Act* (IR Act) provides that a contract of bailment is a contract under which:
  - (a) a public vehicle<sup>1</sup> that is a taxi-cab is bailed to a person to enable the person to ply for hire, or
  - (b) a public vehicle that is a private hire vehicle is bailed to a person to transport passengers.
3. Under the Chapter, the Industrial Relations Commission of NSW (IRC) is given the power to make contract determinations (similar to awards) in respect of contracts of bailment, and to approve contract agreements (similar to enterprise agreements) between parties in relation to such contracts. A contract determination can be made in respect of driver remuneration, annual, sick and long service leave, the minimum and maximum number of bailment hours and other matters it considers necessary.
4. Chapter 6 also empowers the IRC to resolve disputes, provides for the registration of associations of contract drivers and associations of employing contractors. Reinstatement determinations may also be made by the IRC but only on the application of a registered association.
5. Rideshare drivers are unlikely to be covered by Chapter 6 of the IR Act (unless they are bailing the vehicle)..

## **Section 2: Taxi Industry (Contract Drivers) Contract Determination, 1984**

6. The *Taxi Industry (Contract Drivers) Contract Determination, 1984* applies to contracts of bailment between a bailor (taxi operator) and a bailee (driver) in the Sydney Metropolitan Transport District.
7. Essentially, a bailee driver leases a taxi cab from the taxi operator for the duration of one shift. There is a payment required by the bailee to the bailor as a fee for the lease and the amount and method of this payment is regulated by the Determination.

### **Payment methods**

8. A driver may elect to pay under 'Method 1' or 'Method 2' under the Determination. Under Method 1, a driver must pay the operator 50% of their fare earnings (55% in the first year) and the operator pays for fuel. In regional and rural areas of NSW, it is

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<sup>1</sup> The Dictionary of the IR Act will provide that a public vehicle means a taxi or hire vehicle within the meaning of the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* upon its proclamation.

understood that bailee conditions are similar to the Method 1 arrangements under the Determination.<sup>2</sup>

9. The overwhelming majority of drivers are remunerated under Method 2 where a driver retains from the fares received, the balance left after deducting a set daily pay-in amount. The driver is also liable to pay for fuel and car wash under this Method. The current maximum pay-in amounts range from \$175.01 for a day shift, to \$266.55 for a Friday or Saturday night shift.

#### **Types of bailment**

10. There are two types of bailments available under the Determination, a driver can either be a permanent bailee or a casual bailee.
11. A permanent bailee is a driver who regularly takes a taxi cab on bailment from the same taxi owner/operator for five shifts per week; or at least 220 night shifts or 230 day shifts per year.
12. A permanent bailee (as defined) is entitled to annual leave, sick leave and long service leave under the Determination

#### **No contracting out of entitlements**

13. Clause 3(iii)(b) of the Determination makes it clear that while the bailor and bailee may agree to a lower pay-in amount, when they do so, any annual, sick or long service leave entitlement shall still be payable.

#### **Compliance campaigns in the taxi industry**

14. NSW IR as a regulator has the jurisdiction and authority to monitor the compliance and enforcement of taxi industry bailment agreements which fall under the Determination.
15. NSW IR also pursues a number of strategies to educate taxi owner/operators about their legal entitlements and obligations. These include education campaigns which involves direct engagement with peak industry stakeholders, facilitating information sessions, delivering webinars, and publishing fact sheets and other resource material on the NSW IR website.

#### **Section 3: Point to Point transport reforms**

16. On 1 July 2015, the Minister for Transport announced that an independent taskforce, led by Professor Gary Sturgess AM and Tom Parry AM, would inquire into and make recommendations to the Government on the regulatory framework for point to point transport in NSW.
17. The taskforce met with representatives of more than 140 businesses and community organisations around NSW and took into account the views raised in more than 5,600 submissions in its report to Government in November 2015.

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<sup>2</sup> Legislative Council Inquiry into the NSW Taxi Industry Report, June 2010, p.197

18. There was limited consideration of workplace arrangements in submissions to the taskforce, and although there is some discussion of related matters, the taskforce report did not make any recommendations on the existing arrangements.
19. Overall, the report found that the traditional point to point industry has been challenged by the emergence of new technology and business models and that over-regulation and unnecessary costs had stifled innovation.
20. The Government announced its response to the Taskforce report on 17 December 2015, which accepted 56 of 57 of the taskforce recommendations to modernise the safety framework and put the industry on a sustainable footing into the future.
21. Submissions to the taskforce, its discussion paper and report, as well as the Government response are available at [www.transport.nsw.gov.au/pointtopoint](http://www.transport.nsw.gov.au/pointtopoint).
22. The Government's approach in resetting the regulatory framework in recognition of digital disruption is consistent with recommendations of various leading think tanks. See for example, the OECD's International Transport Forum's Report *App-based Ride and Taxi Services: Principles for Regulation* <http://www.itf-oecd.org/sites/default/files/docs/app-ride-taxi-regulation.pdf>; the Productivity Commission's research paper *Digital Disruption: what do governments need to do?* <http://www.pc.gov.au/research/completed/digital-disruption>; and the Grattan Institute's report *Peer-to-peer pressure: policy for the sharing economy* <http://grattan.edu.au/wp-content/uploads/2016/04/871-Peer-to-peer-pressure.pdf>.
23. The Government's reforms involved some immediate steps to liberalise the booked market for point to point transport and to reduce red tape for the incumbent industry without making any changes to safety standards. The reforms also give drivers more opportunities to drive for multiple or different providers. The taskforce report suggested that this would give drivers greater negotiating power. It also found that the flexibility offered by new business models was attractive to many drivers.
24. Early evidence from these initial changes indicate that there has been an overall growth in the point to point market, with customers and businesses reporting increases in usage and the numbers of people seeking to work as point to point drivers also increasing, as outlined in the Minister for Transport's second reading speech on the Point to Point legislation.
25. The second stage of the reforms includes the new risk-based, outcomes focused regulatory framework and the new regulator established in the Point to Point Act. Transport for NSW is currently preparing regulations to support the new legislation and will continue to consult with industry. Commencement of the Act will take into account the need to ensure industry readiness for the breadth of the changes.
26. The legislation also provides for the \$250 million industry adjustment assistance package to help the industry transition to a new business environment. Applications for the first transition assistance payments of \$20,000 per licence for up to two licences open in mid-July 2016.

## **Annexure A**

On 22 June 2016, the Opposition proposed a number of amendments to the Point to Point Transport (Taxis and Hire Vehicles) Bill 2016 in the Legislative Council. While the amendments were defeated, it was agreed amendments (Nos 1-3) be referred to the Committee's inquiry for further consideration. The proposed amendments are as follows.

### **Amendments numbers 1 and 2 – Functions of authorised officers and Functions of the Point to Point Transport Commissioner**

Amendment number 1 would provide authorised officers appointed under the Point to Point (Taxis and Hire Vehicles) Act with the power to investigate and determine the extent of compliance with relevant awards or determinations made under the Act or the IR Act in the industry.

Amendment number 2 would provide the Point to Point Transport Commissioner with the power to monitor compliance with relevant awards or determinations made under the Act or the IR Act in the industry.

The focus of the Point to Point Transport Commissioner is on ensuring industry accountability for the safety of passenger services. The above proposals appear to duplicate the role of NSW Industrial Relations (NSW IR) which is the long-standing regulator with responsibility to monitor, and if necessary enforce compliance with NSW industrial laws. These functions are carried out by a dedicated Industrial Inspectorate appointed under s384 of the IR Act by the Minister for Industrial Relations. NSW IR has extensive experience in providing advice about obligations and entitlements under awards and contract determinations, undertaking targeted industry compliance campaigns and investigating complaints in the industry relating to alleged breaches.

Apart from the on-the-ground activities of NSW IR inspectors, the agency engages and liaises with peak industry stakeholders such as the NSW Taxi Council and various driver representatives. These peak industry stakeholders understand and appreciate the discrete roles and responsibilities of agencies, such as Transport for NSW and NSW IR. If enacted, it appears these provisions would subject the point to point transport industry to unnecessary duplication and red tape through dual monitoring and enforcement powers.

### **Amendment number 3 – Industrial matters relating to drivers**

#### **Minimum remuneration**

Amendment number 3 proposes to establish a minimum remuneration for all point to point transport drivers by ensuring that the driver is not paid less than the remuneration set by any award or determination under the IR Act for a person performing the work as an employee or, if there is no such award or determination, the remuneration that could reasonably be expected to be paid to a person

performing the work as an employee. It is, however, not entirely clear how this provision is expected to operate in practice.

As noted earlier, contracts of bailment between a taxi operator and a driver in the Sydney metropolitan area are covered by the *Taxi Industry (Contract Drivers) Contract Determination, 1984*. While the Determination provides for certain methods of payment to be agreed to by the operator and driver, it does not provide a minimum amount of remuneration to be paid to the driver.

Under the Determination, the amount that a driver shall be entitled to receive and retain from the chargeable fares is dependent upon which method of payment the driver has elected to choose. The driver can choose to receive either a percentage amount of the takings or alternatively the balance left after deducting the prescribed pay-in or an agreed lesser amount.

#### Applications to Industrial Relations Commission

This Opposition amendment proposes a new dispute resolution mechanism to be included in the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.

It would allow applications to be made by a driver, an industrial organisation acting on behalf of driver/s registered under the IR Act, or the Point to Point Transport Commissioner to the Industrial Relations Commission to have a question, dispute or difficulty to be determined by conciliation, and if necessary, arbitration. The Industrial Relations Commission would be empowered to make an award or Determination.

Part 4 of Chapter 6 of the IR Act already provides a statutory framework to deal with dispute resolution processes for contracts of bailment. It provides for the Industrial Relations Commission to conduct compulsory conferences where a registered association, or a bailor becomes aware of an industrial dispute about a contract of bailment. In certain circumstances, the Commission under s332(5) may make an interim Determination to settle the dispute.