

REPORT ON PROCEEDINGS BEFORE

COMMITTEE ON TRANSPORT AND INFRASTRUCTURE

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

At Macquarie Room, Parliament House, Sydney on Thursday, 28 July 2016

The Committee met at 9:30 am

PRESENT

Mr A. Henskens(Chair)

Ms J. McKay
Mr R. Park
Ms M. Pavey

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The CHAIR: Good morning and thank you for attending this public hearing of the Legislative Assembly Committee on Transport and Infrastructure. My name is Alister Henskens. I am the Chair of the Committee and member for Ku-ring-gai. Joining me today are the Hon. Melinda Pavey, member for Oxley; Ms Jodi McKay, member for Strathfield; and Mr Ryan Park, member for Keira. Mr Notley-Smith, member for Coogee, is an apology for today's hearing. In June this year the Minister for Transport and Infrastructure referred to the Committee an inquiry into workplace arrangements for the point to point transport industry. A number of submissions to the inquiry have been received and today we are conducting our public hearing to explore in more detail some of the issues raised by inquiry participants. As a courtesy I remind all present that the Committee has authorised the audiovisual recording, photography and broadcasting of this public hearing in accordance with the Legislative Assembly's guidelines. I also remind everyone to switch off their mobile phones. I declare the hearing open.

ROY WAKELIN-KING, AM, Chief Executive Officer, NSW Taxi Council, sworn and examined

FRED LUKABYO, Director, NSW Taxi Council, sworn and examined

LEONIE KYRIACOU, Legal Counsel, NSW Taxi Council, affirmed and examined

The CHAIR: The first witnesses today represent the NSW Taxi Council. I welcome you and thank you very much for appearing before the Committee today to give evidence. Before we proceed, do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr WAKELIN-KING: No.

The CHAIR: Would you like to make a brief opening statement? I also encourage you to take the opportunity to respond to any of the other submissions that were made after your submission, because this is probably the best opportunity for you to do that.

Mr WAKELIN-KING: Thank you, Mr Chair. I very much welcome the opportunity to make a brief opening statement and provide some observations on the other submissions that have been made. First I would like to thank the New South Wales Parliament for holding this Committee and this inquiry into workplace relations in the point to point transport sector. The NSW Taxi Council believes that this is a very important process as part of the overall point to point reforms that have been introduced by the New South Wales Government and, most recently with the passing of the point to point transport legislation, have been endorsed by the whole of the New South Wales Parliament.

We recognise that as a consequence of that legislation there are significant changes that will impact upon our industry and indeed other industries in the point to point transport sector. Through the legalisation of what was previously known as ride sharing we obviously face a far more competitive environment than existed previously. That is not to say that we were not without competition—far from it—but it is obvious that the reforms that have been introduced have increased that competition. However, it is our considered opinion that the reforms create at this point in time some structural inequities from a regulatory perspective between us and our competitors, particularly those in what is known as private hire or, colloquially, the ride sharing industries.

Whilst we acknowledge that the legislation that has just recently been passed has gone some way to dealing with those inequities—the structural assistance package is a separate matter but we acknowledge that on the record; we have an ongoing debate about that issue but nonetheless we wish to acknowledge that—we believe that there are two key areas in which those structural inequities still exist. One of those is in the regulation of compulsory third party insurance, which is another matter being dealt with through a separate reform process and not the subject for today. The other area is that of workplace relations. We are very pleased, therefore, that this inquiry has been established by the New South Wales Parliament to examine this issue.

For us this is fundamentally an issue of competitive neutrality. We are held to a high standard in terms of workplace relations and there are many aspects of those workplace relations obligations which are sound. However, our competitors—particularly those in the ride sharing space—are not held to any standard and in some cases, with respect to those entities, seek to offshore their accountabilities in those respects. They invite, where people may disagree with their workplace conditions through contractual arrangements, to take action in an international jurisdiction. We think that is manifestly unfair in terms of a regulatory framework and needs to be addressed. We have made clear in our submissions what we think is the best way to deal with that issue, and that involves amendment to the New South Wales Industrial Relations Act, specifically around Chapter 6.

We also wish to highlight that taxi drivers are, with their operators, co-venturers. They are not employees. That has been tested all the way to the full bench of the Federal Court. It is well established by case law that it is an arrangement whereby taxi drivers are bailees. They bail the asset from the owner of the asset, being the taxi operator, and they ply for hire and carry out their work to earn their revenue. In fact they pay the operator or the owner of the asset an amount by way of commission and/or fixed paying for the privilege of undertaking that work. Over time there have been industrial arrangements introduced which create a unique setting, particularly in Sydney and New South Wales, that is anomalous to all other jurisdictions in Australia. We are seeking for that bailment arrangement to remain in place but to be aligned with all other State and Territory jurisdictions in Australia.

We are committed to key aspects of safety in the workplace, workers compensation and a range of other matters. We feel that it is vital that there is regulation to protect drivers from that perspective. As an industry we have a strong value proposition and commitment to that principle. We would not be seeking to see that change. However, we do need greater flexibility in the workplace. We think that there does need to be greater innovation. The point to point reforms will allow us to achieve that innovation, particularly in the area of

fare price setting and a range of other areas which are critical for us to be in a competitive environment. We therefore commend the Committee to hopefully working towards allowing greater flexibility with the basic minimum protections in place for some of the most vulnerable workers but allowing the industry to compete on a level playing field.

In this context we note that in the submissions there is a wide spectrum of response to the Committee's terms of reference. We note that in some cases, not surprisingly, with respect, Uber has put itself forward as a platform that facilitates part-time work. We do acknowledge this occurs but increasingly there is evidence that the Uber/ride sharing service is nothing more than a taxi industry on a low-cost model. Evidence is emerging of operators who sublease up to significant numbers of vehicles in a similar fashion as what happens in the taxi industry. We have professional drivers in Uber working full time, almost around the clock, and we know this because a lot of the Uber drivers—and it gives me no great satisfaction to provide this submission—are ex-taxi drivers and in fact a number of Uber drivers switch between modes of taxi services and provide Uber services as well.

We would encourage the Committee to recognise that Uber is not just your part-time mum and dad type owner-operator driver; there is a professionalisation of driving and fleet operations which is rapidly emerging in what is a low-cost taxi business, in effect. We note the comments made by the Transport Workers Union [TWU] in its submission but we would like to draw the Committee's attention to the fact that we are in litigation with the TWU through the Industrial Relations Commission on a matter pertaining to the contract bailment agreement and we would defer to that process accordingly, however say that we would not agree with the position put forward by the TWU.

The CHAIR: Can I just interrupt you for a second? Could you give us an idea about that litigation, more about the topic, not in great detail so that I understand what you just said?

Ms KYRIACOU: The Industrial Relations Act has the contract determination, which is part of it, and each year parties to that contract determination, which is the TWU or the Taxi Industry Association, can make application to vary the determination and from year to year that usually occurs when the Independent Pricing and Regulatory Tribunal [IPART] makes a decision about taxi fares. However, in 2014 the TWU sought to vary the determination to include, for the first time, minimum wage entitlements for taxi drivers. As you can imagine, it is disputed because taxi drivers and taxi operators run individual businesses, so a taxi operator has no knowledge actually as to what a taxi driver does during the day, so it is the Taxi Council's position that it is simply not possible to know whether or not you pick up the taxi and just sit under a tree, but this is the nature of the litigation.

The CHAIR: Thank you. That is helpful. Sorry to interrupt you, Mr Wakelin-King.

Mr WAKELIN-KING: Just to emphasise that point, Mr Chairman, the taxi operator has no powers of direction over the nature of the work that the taxi driver does and which is central to the issue at hand at that litigation. Returning to the remaining submissions, we note that there are a broad range of views contained within those submissions. It is not my intention to go through those in detail. Some of them are less clear than others but suffice to say there are some points that we do have imprints of all agreement with and others where we consider we would perhaps not be as aligned with what they have put forward. Thank you for the opportunity to make those opening remarks and we defer to any questions that you and your Committee members may have.

The CHAIR: I have a couple of topics I would like to take up with you and then I will pass over to my colleagues. The first is really to emphasise the uniqueness of Chapter 6 in the context of a bailment arrangement. If I were to engage a plumber to do some trenching work at my home—just to give an example completely away from the current situation—and the plumber went to Kennards in advance of providing the service and hired plant trenching equipment, et cetera, and came on to my property and started performing those services for me, nobody would suggest that the plumber was an employee of Kennards, the plant provider. The analogy is sound in terms of the taxi industry because the plate owner is a plant owner and the plant owner makes his plant available for a service provider, who is the driver, and the driver then takes the taxi as the plumber takes the trenching equipment and so on off to the building site and uses the plant to generate income under a contractual arrangement with the plant provider, and there are various different ways that they can have that arrangement under the existing determination. It is really quite unusual for the Industrial Relations Commission to then step in and regulate the arrangement between a plant owner and service provider with that plant, is it not?

Mr WAKELIN-KING: We would agree with that view in principle that the owner of the asset is making the asset available to someone to, in effect, rent that asset or bail, in our language, that asset to perform their work, so it is analogous to that situation. Where there is a further level of complexity is that there are rules

that the operator of the plant needs to abide by in terms of the brand associated with Kennards. For example, using your plumbing analogy, use the trenching equipment to go and do something else inappropriate with it because that would impinge upon the brand and reputation of Kennards. In that context the taxi driver has some obligations to comply with the rules of the network, so they cannot use the network's brand; for example, Premier Cabs or St George Cabs to perform services in a manner which is inappropriate with that brand, and that is where that relationship exists.

Mr LUKABYO: If I may take the analogy somewhat further; nobody in this room, I would hope, would argue that Kennards or any other provider of such equipment was opposed to appropriate safety regulations around the use of the plant on the plumbing job. What we find is highly unusual about Chapter 6 of the Industrial Relations Act is, firstly, its application. There is no other jurisdiction on earth of which we are aware which has anything which vaguely resembles this. There is certainly no Australian jurisdiction and cases in the Full Bench of Fair Work in the last two years, as well as the Full Federal Court in recent years have shown that these are not employment arrangements.

But Chapter 6 of the Industrial Relations Act in New South Wales goes further because the specific provisions it provides are so much stronger in many ways than any sort of Federal industrial relations regime which the rest of Australia considers as the framework for workplace law in Australia that it is almost draconian. The exemptions which apply to small business in Federal workplace law do not apply in the case of Chapter 6. When one considers that the taxi industry is highly fragmented at the taxi operator—plant owner and plant provider to use the analogy—level, there are a myriad, in fact thousands, of small businesses.

The CHAIR: As there are a number of plumbing businesses.

Mr LUKABYO: Exactly. And if we were to take the Federal industrial relations example as a parallel, there are various exemptions for small business but I take it a step further. Chapter 6 of the Industrial Relations Act only applies to taxis. Up until very recently, that is up until the passing of the most recent point to point transport Act in New South Wales, it had a presumption of an application for hire cars, private hire. That was removed in this Act. Private hire, hire cars, ride sharing, Uber, are now in a legislative sense all the one thing in New South Wales but this presumption of bailment that previously existed in Chapter 6 in those arrangements no longer exists. It was removed by statute just recently. So now it is only taxis; the only taxis nationally, in fact globally which have this. To take it further, it is only taxis in Sydney, not other parts of the State, and it is only taxis with a range of conditions that are highly unusual even if one were to draw a parallel of Federal industrial law which applies to those who work in our community generally.

The CHAIR: I think we are in violent agreement that Chapter 6 is unique. Ms McKay raised as a related matter whether section 106 of the Industrial Relations Act, the unfair contracts provision, could apply to the bailment relationship between the plate owner and the driver. I will give you my view and you can tell me whether I am right or wrong or you have a different view. Section 106 in its terms concerns a contract where a person performs work. Going back to my Kennards example, on one stretching of that business relationship I suppose you could say that was a contract by which a person performs work, but an arm's length contract of that kind is not usually one which you would attribute under the Industrial Relations Act to be a contract whereby a person performs work. My initial preliminary view is that a bailment arrangement which simply in law concerns a delivery of chattels to one party under terms and the return of those chattels at a point in time afterwards is not a contract where a person performs work under the Act. Do you have a similar view?

Ms KYRIACOU: Yes, that is right. In fact, that has been confirmed and it has been confirmed right back from the De Luxe case with the Privy Council and most recently in Voros when in fact that fundamental element of the performance of work does not exist because in fact as a joint venturer the taxi driver performs the work for his or her own benefit and gain. The court has consistently accepted that. What happens when a taxi driver has a complaint is that they rely on section 314 of the Industrial Relations Act. That is the section which allows a driver to seek redress if his or her contract has been terminated. Mr Lukabyo referred us to the difference between that and, for example, the Fair Work Act. There is no limitation on when somebody can bring a claim like that. There is no limitation on the type of party you could bring that claim against. But, like the Fair Work Act, you have a maximum of up to six months compensation but the first remedy you seek is reinstatement. So actually the way in which the cases go where a taxi driver is disgruntled is to rely on section 314 because the case law does not support a section 106 application.

The CHAIR: You have neatly segued into my next question, which was if industrial laws are to regulate the relationship between plate owner and taxi driver would you see it as being more beneficial for the Federal system to operate rather than Chapter 6? Would you rather have no Federal system or Chapter 6? What is your position?

Mr WAKELIN-KING: Our position as we have articulated in our submission is that we would prefer to see this as a Federal matter because of the anomalous arrangements we find ourselves in and the unique circumstances we find ourselves in within Sydney, not even just within the State. We think in that context we would prefer and our position is that we would be regulated in this context in the Federal arena.

The CHAIR: I am not an expert in industrial law but if the plate owner is a corporation, and given section 109 of the Federal Constitution, why is Chapter 6 of the industrial relations law not inconsistent with the Fair Work Act in any event?

Ms KYRIACOU: That is a good question, but it is because it does not deal with employees. The Fair Work Act is entirely around the concept of employees whereas, for example, the Work Health and Safety Act refers to the broader concept of worker. Indeed, in the second reading speech for the Work Health and Safety Act there was a reference to taxis being included because it has this broad concept, but the Fair Work Act only uses the concept of employee and so it cannot be inconsistent because they are not employees.

The CHAIR: It is the very anomaly that it is not an employment relationship which takes it outside the Fair Work Act, but it is being regulated as if it was an employment relationship?

Ms KYRIACOU: Yes. There is provision. From time to time taxi operators and employee taxi drivers do unusual things. There have been a few instances of that. If that occurs there is a Federal award that already has a classification for taxi drivers. As part of the modern award process that was included for the event when people stop operating in the bailee-bailor relationship. To that extent it would be regulated.

The CHAIR: How would you then get the bailment relationship under Federal law?

Ms KYRIACOU: That is a good question again. In each State and Territory in Australia at the moment, because there is not any industrial relations law that relates specifically to taxi drivers except in Sydney, those drivers make applications in the same way that any small business would. They have access to the usual things that a small business does when they are chasing debts or have a complaint about their contract. It may well be that in the case of Uber, although I am not an expert on this and I think it is up in the air, that the Independent Contractors Act might apply if Uber is able to characterise its drivers as independent contractors. That is a Federal piece of legislation.

Unlike the Industrial Relations Act or the Fair Work Act, it actually does not offer any rights to a driver after termination. So they have no rights to challenge that after termination, but you might be aware that from time to time truck drivers have brought claims during their engagement to say that the terms of that engagement are unfair. They do that pursuant to the provisions of the Independent Contractors Act. In relation to taxi drivers, the reality is that if Chapter 6 was amended then like all other small businesses they would have the same rights as those small businesses in the way they do in every other State and Territory to bring claims if there is some unconscionable contract, if there are unpaid debts and so on.

The CHAIR: I will ask the Taxi Drivers Association witnesses this next question but I just want to see whether you have a different view. Under the existing determination there is provision for annual leave. There is some evidence in the submissions that those annual leave rights are perhaps unlawfully bargained away, but just park that to the side for one minute. How is the wage determined at which the annual leave is to be paid?

Ms KYRIACOU: It is not a wage that is determined. There is a percentage. I will take you to the first annexure to our submission, which is in fact the contract determination. If you look at annual leave you will see that there is a method for calculating that leave. It depends upon the amount of shifts that a driver does and based on that amount of shifts they are given a certain amount of money. It is actually not based at all upon how much that driver in reality has earned from bailing a cab. It is a fixed amount.

The other point that is critical about annual leave—certainly from a lawyer's point of view—is that because the contract determination includes a very strict provision about no contracting out it means that when parties in reality do make arrangements whereby the driver says he or she will take a lower pay because they do not want to be paid annual leave and they would prefer to have more money in their pocket, they maintain that right to bring a claim against the operator for that annual leave at the end of their engagement or at the end of that bailment arrangement. That has meant over the years there have been some extraordinary claims for back pay which are made against often single operators with one taxi. Certainly our firm has acted on many occasions where the operator's position is usually always, "Hang on a minute, it was a handshake. We both agreed that he would pay far less than the minimum pay in exchange for not paying annual leave." That argument does not fly when you have a no contracting out provision.

It is a bit like provisions of the Long Service Leave Act where employees are never able to bargain away that right. It gives you a sense of the draconian nature of this arrangement because it affects two

commercial parties, not an employer and an employee, who make arrangements between themselves, but it gives an enormous power to the driver at the end of that arrangement.

Ms MELINDA PAVEY: If there was not documentary evidence otherwise in the contract?

Ms KYRIACOU: Exactly, but even if there was documentary evidence it does not matter. In fact it is unlawful. I could write down that you and I had agreed to something but the court disregards that because the provision is that there is no contracting out. That is the law.

The CHAIR: You cannot contract out minimum conditions. On the determination, my understanding is that you fall under the determination if you work at least five shifts of up to 12 hours a week in the Sydney transport district; is that right?

Mr WAKELIN-KING: You are under the determination if you are an authorised taxi driver in Sydney.

The CHAIR: What is the significance of working five shifts of up to 12 hours a week?

Mr WAKELIN-KING: Whether you are classified as permanent or casual bailee is dependent on how many shifts you work.

The CHAIR: If you are permanent you are entitled to annual leave provisions?

Mr WAKELIN-KING: There are certain provisions that you are entitled to if you are a permanent and different provisions if you are a casual bailee.

The CHAIR: On the permanent position, are you easily able to circumvent being a permanent driver simply by driving for different cab drivers so you do not for any single one meet that threshold of five shifts of 12 hours a week?

Mr WAKELIN-KING: It is important to understand the context in which taxi drivers and operators find themselves. Taxi drivers for the first time in quite some time have a high degree of choice and portability in terms of their engagement on a number of platforms. Taxi drivers, when you talk to them, like the high degree of independence and autonomy that the nature of the work affords them. There are circumstances where taxi drivers, as indicated earlier, are actually driving for one or more operators, they may be driving on multiple platforms. For example, a taxi driver on one shift may be driving for an operator who is affiliated with a network, let us take St George cabs.

That taxi driver may have a contract with GoCatch, an independent app booking provider. They may also have a separate contract with Uber driving Uber taxis or in increasing circumstances providing Uber X work albeit in a taxi. That is what would be commonly known as diversifying revenue and they operate on multiple platforms, trying to be fair, to generate the maximum revenue. That leads to behaviours such as picking and choosing jobs and therefore rejecting some jobs in favour of others. That portability and that casual nature of the ability to move rapidly between platforms gives them significant market power in their negotiations with the traditional taxi operator.

Mr LUKABYO: For clarification, even when somebody works five or six days per week those days may be for different taxi operators: for taxi operators on Monday and Tuesday, for somebody who supplies cars to Uber drivers on Wednesday, in their own vehicle on Thursday, and so on.

The CHAIR: I understand that as a matter of fact. I am trying to go back to the determination and understand. Accepting that somebody engages in driving on different platforms, is that a way of no longer being a permanent driver for the purposes of the determination?

Ms KYRIACOU: It would mean with that particular operator, to whom the determination applies, that they may not be a permanent driver. For example, if you only did a small number of shifts for me each week then you may not qualify, notwithstanding that if we counted all of your shifts over the week for all of the different people you bail from or, in the case of Uber, work for you might fit that criteria. It is not possible for any operator to know across the board what somebody does on other days.

The CHAIR: Let us say each of you has a plate and I work two for you, two for you and one for the other. In aggregate I would be a permanent driver if I did all of that for one of you, but the fact that I split it between three, does that mean I am a casual for each of you under the determination?

Ms KYRIACOU: Yes, it does.

Mr LUKABYO: Yes.

Mr WAKELIN-KING: The point I emphasise is the choice is with the driver. The choice is with the driver as to who he or she would work for. The nature of how it works practically is that the driver negotiates directly with the operator for the best possible commercial outcome. On average pay-in rates are 30 per cent below the statutory maximum and with the advent of the increased competitiveness arising from Uber that is placing significant downward pressure on those pay-in rates. The operator or the person who has the benefit of holding the licence is under significant pressure, from a commercial perspective, but irrespective of that commercial pressure, as we have outlined, is that they still have to meet the minimum statutory requirements if they are a driver.

The CHAIR: I understand that. It is a perverse incentive to have casual drivers if you are a plate owner because then you have no obligations of annual leave?

Mr WAKELIN-KING: The principle of a sound relationship between an operator and a taxi driver, the taxi operator is looking to get the vehicle out on a minimum of on or around 11 shifts per week. For them having good drivers continuing to bail their taxi is a proper and appropriate incentive in a highly competitive world. Hence the term of the co-venture between the two parties. The circumstances are that there are many operators who have permanent taxi drivers under the definition of the Bailment Act.

Ms JODI McKAY: Obviously I do not agree with the analogy with regard to plumbers because I think there are some incredibly vulnerable taxi drivers, as you have admitted. You mentioned that you want basic conditions or recognise that there should be basic conditions to protect vulnerable workers. What are they if Chapter 6 is not there?

Mr WAKELIN-KING: I will make a few comments and ask Ms Kyriacou to add to it. The vulnerability which you classify as an admission from me is one I emphasised around safety and the unique environment in which a taxi driver may find themselves. Hence, as an industry we place a lot of emphasis around that. The physical safety systems such as alarm systems, security cameras, vehicle tracking devices, which are fixed to the vehicle, are all things which go to dealing with that issue.

We believe in workers compensation cover for taxi drivers as well. These are the sort of basic provisions that must exist. We believe that you cannot outsource your contractual obligations to an international jurisdiction. We think they must be compelled to the law of this country and not actually leave the worker or driver vulnerable in that context. I think they would be some of the fundamental provisions we would like to see, from a regulatory perspective, for drivers in our industry. I said earlier that that should be a Federal space.

Ms JODI McKAY: Just to clarify, the minimum conditions are workers compensation, relate to off-shoring and safety, that is it?

Mr WAKELIN-KING: They would be the key areas that we think would align with an arrangement of one of co-venturers where the taxi driver is a bailee who is bailing the asset from the owner to actually carry out his or her trade.

Ms JODI McKAY: With regard to the anomaly around Sydney, what is the history with that?

Mr WAKELIN-KING: It would be significantly before my time, so I beg a little bit of indulgence here. There was a series of regulation. Leonie will correct me if I get this wrong, but there has been a series of regulations of the relationship between operators and drivers after a report in 1970, some 40-odd years ago. There was a review that ultimately led to the establishment of the contract determination under the then Industrial Relations Act 1984. It has been amended since that time. My personal view is perhaps it is a bit dated and does not reflect the modern world. If I may, Mr Chairman, this is why we believe, and from a personal perspective I believe that the workplace relations issue in the shared economy is not synonymous or peculiar to the taxi industry. This is a very broad issue for a modern economy and if you pardon the pun, we happen to be, in practical terms, the first cab off the rank to be dealing with this.

Ms KYRIACOU: If I might add to that, there is a very detailed description of the history of the changes to Chapter 6 and bailment as a second annexure to our submissions. It is lengthy because, in fact, there was an enormous amount of case law and things that led to the contract determination in 1984. The reasoning around why everywhere except for the Sydney metropolitan transport district was excluded was essentially that was the agreement of the parties at the time; it was what they could reach agreement on. There is a fundamental difference in many ways and certainly there was in the early eighties between the requirements, the passengers, the nature of taxi operations in regional areas compared to Sydney, and they were probably more extreme in the eighties than they are now. I understand the Transport Workers Union submission has suggested a broadening of Chapter 6 and the contract determination to cover all of New South Wales. If I put it very simply, the regional networks and certainly regional operators would not be able to deal with that. They do not pay for fares in the same way. It is only in Sydney where there is a maximum pay-in. Everywhere else essentially there is a fare

split. For Chapter 6 to work in Sydney, there is a reliance upon a maximum pay-in and they are not set up to deal with that. It is largely historical. We have as part of the submission, although it is boring, set out the full history of the way in which it came about.

Ms JODI McKAY: Mr Wakelin-King, you mentioned Uber moving more towards a professional-type fleet arrangement, which I know about and have seen, and you were talking about the removal of Chapter 6. What would then apply to organisations like Uber? What are you proposing? You are looking at a downgrading of the regulatory environment, so what are you proposing in regard to ride sharing services, or are you saying nothing should exist for anyone?

Mr WAKELIN-KING: I am certainly not saying that. I would respectfully re-characterise my submission as not being a downgrading but as being an adjustment to a regulatory framework that encourages workplace flexibility for a modern economy. I am not here to advocate for Uber; it has made its submissions. That is why, in all seriousness, this has got Federal implications not only because of the national nature but the global nature of what it does and the broader issue of workplace relations in the shared economy. Some of the principles I have identified about safety and ensuring that the driver has the ability of redress in this country as opposed to international jurisdictions is the minimal threshold. That would be the very least they need to consider.

Ms JODI McKAY: What do you mean by "safety"? What is your definition of safety? Is it physical safety? Is that how you are defining "safety"?

Mr WAKELIN-KING: For example, part of a workplace relation is the workplace environment. Therefore, we recognise the taxi is, in many respects, a workplace environment for the driver. We do not move away from the need to provide systems, leaving that aside, but also from a workplace perspective, as I have indicated, workers compensation. This is ultimately a contest of labour and in that respect we believe we provide a better offering to drivers to come and drive for us. It has been part of the basis of our submission previously to the Industrial Relations Commission. That is what I mean in respect of that matter. We talk about the inability to contract out of the bailment agreement. Respectfully, and I use the term advisedly, Uber is almost contracting out of any obligations by virtue of the fact that it offshores its ability to be litigated in overseas jurisdictions, which is incredibly problematic for a driver in this country, I would have thought.

Ms KYRIACOU: I do not want to labour the point, but, for example, the Work Health and Safety Act sets out a range of really important obligations for workers in New South Wales, and those obligations relate to primarily—that the person responsible for the workplace has a fundamental and strict liability in relation to the safety of everybody inside that workplace. Its application to the taxi industry is unquestionable. However, you would have seen this from some of the other submissions—primarily Suncorp's submission—whether or not it applies to Uber is questionable. You have to be able to define the Uber car as a workplace, but it has not been bailed. It was not even in the minds of legislators when the Work Health and Safety Act came in in New South Wales. That goes to safety, because the safety obligations in that Act are pretty serious. You can be charged with criminal prosecutions under that Act.

Mr WAKELIN-KING: Indeed.

Ms KYRIACOU: If you have bailed a taxi which is unsafe, you may find yourself effectively in a criminal prosecution, but Uber is not in the same set of circumstances and that is a critical protection for drivers, leaving aside the same arguments about workers comp. Suncorp also refers to that in its submission, but those are real differences in respect of legislation and legislative protections.

Mr RYAN PARK: Are there instances when driver X uses a St George cab, for argument's sake, and they are sitting there, not having had a fare for a while. It comes up that they can get an Uber spot. Are there instances where they are using that cab to do that?

Mr WAKELIN-KING: There is.

Mr RYAN PARK: Being your answer is yes, my next question is, if something was to happen to that driver, and you are saying that you do not think the workplace legislation is covering Uber, is that person outside of that legal arrangement for the period for which they are driving that Uber fare, even though they are in a cab that should be safe? I know it is complex. I imagine what is happening in the real world is that if there is a lot of activity through Uber and, Roy, you said there are multiple platforms, but if it is a quiet day in downtown X where they are normally taking fares, are they then using the cab they bailed in the morning to carry out Uber arrangements or services? I say Uber or ride sharing, whoever that is. I am not using any one in particular, just ridesharing services.

Mr WAKELIN-KING: Yes, or another platform.

Mr RYAN PARK: That is right, another platform.

Mr WAKELIN-KING: The short answer to your question is, yes, they are able to do that, and they do do that. The operator has an obligation under law to provide a taxi which—

Mr RYAN PARK: Is safe.

Mr WAKELIN-KING: —has all of those safety systems in place. It is a pertinent question, because where this will become quite significant is in the implementation of the new Act where the network—in this case the hypothetical scenario of St George cabs—has a primary duty of care and the chain of responsibility that goes with that. These are issues that we are giving consideration to. At the end of the day, the driver is in a vehicle bailed from an authorised taxi operator—

Mr RYAN PARK: Under those provisions.

Mr WAKELIN-KING: —under those provisions. There is a potential exposure here that we are seeking further advice on and how this will operate in the new environment. I think the market, in my personal view, will move quickly to identify and deal with those exposures accordingly.

Mr RYAN PARK: It was something I have been thinking about in my former life as a shadow Minister. I have talked to you and others in the ride sharing industry. This is not a fixed game where they bail something in the morning and only stay on that platform. I imagine, Fred, you are talking about them moving during the week on different platforms. I have taken the assumption they may move during the day on different platforms.

Mr LUKABYO: Indeed, but my comment was in fact about moving between different vehicles. If we consider a piece from the *Australian* two weeks ago, for \$159 per week, no lock-in contracts, UberX drivers can rent a car, kilometres per day, et cetera, et cetera, that is less than the price of just one of the insurance covers in the taxi. Our issue here is one of competitive neutrality, that is, a taxi industry and its viability depend on some of these outcomes when there are many, many years of claims by people who had previously sought to contract out of them, when there are insurances, requirements for authorisation, pressures on the vehicle owners under the new Act, or operators as they are known colloquially, which exist in one form of the point to point sector and not another. That is where we have issues about the long-term viability, in fact, near-term viability of the taxi industry which is why we seek that this be addressed as quickly as possible.

Mr WAKELIN-KING: I am very conscious of the time. Please do not take our view as one being anti-driver. It is in our joint commercial interests to ensure that our drivers actually have the best possible opportunities because through earnings per taxi being in a positive direction that yields positive outcomes for the industry as a whole. The practical realities are that if the regulatory framework is at such a disparity to the extent that it is now, owning and operating a taxi will become uneconomic. Therefore, there will be a shift to more ride sharing-type platforms which actually shifts drivers into a less protected environment and that is the brutal reality of where this may go if there is not a genuine level playing field. How we get to that level playing field in this context is very, very challenging and hence my earlier comments about the broader strategic nature of it. I want to be absolutely clear that it is in our fundamental interest that drivers who drive taxis have good, positive remuneration outcomes and the ability for their earnings when they bail a taxi to actually achieve that outcome.

Ms JODI McKAY: How do you guarantee that because it does sound like you are anti-driver?

Mr WAKELIN-KING: Respectfully, I do reject the notion that we are anti-driver. We cannot guarantee that. No-one can guarantee an earning where someone chooses to bail an asset for their own purpose of being an independent business to carry out that business. In many respects it is up to them. We have, and it will be subject to further discussions, where drivers reject jobs—on an average ratio, it is about 2½ jobs to one acceptance. If you were to say an average fare of \$25, drivers are rejecting upwards of \$75 before they take the \$25. So there is a lot of individual performance issues in terms of what the driver does, just as much as what the brand does, just as much as what the individual authorised operator does.

That is why I make the point that for this industry to be successful there must be a genuine level playing field and there must be a collegiate view within the industry to be more viable, more competitive and therefore for all participants in the industry to obtain a reasonable return. Therefore, that is why I reject any suggestion that we are anti-driver.

Ms KYRIACOU: If I may—I know that there is a time issue—but there is an additional submission we might make about the TWU suggestion that the easiest way in which to achieve a level playing field is to extend the contract determination to cover the entire industry. The difficulty with that is that the new legislation focuses on the relationship in terms of taxis between the network and the driver. The contract determination

does not deal with the network at all. The focus there is between the operator who bails the cab and the driver who is the bailee. It is not the case that there can be an easy transfer and, in fact, the Department of Industrial Relations in its own submission points out that it cannot see how it could be applied across the board because of the unique way in which the contract bailment works. Nothing in the contract bailment creates a minimum wage for taxi drivers; that is not how it works.

It may be possible if we are dealing with a large multinational like Uber to say, "Hey, you have got to pay each driver this amount of money", but in our case you are dealing with approximately 30,000 small businesses. There has never been any suggestion in the contract determination that you can set a minimum wage. I think some of the submissions that are before the inquiry seem to assume that that is the case. There is also an assumption that the contract determination works. It leads to contested litigation every year. It is not followed by taxi drivers as much as operators. Even the commission itself in various determinations has spoken of the fact that it is not easy to work it out.

The current litigation is heavily contested and has been ongoing now for 2½ years. So the suggestion that the determination works and is a good document is simply wrong on its face. I invite each of you to read the determination and try to understand how on earth that could possibly apply more broadly outside Sydney or across the State. Also, please turn your minds to why it has never been taken up in any other State or Territory in Australia, in fact, anywhere outside Sydney.

The CHAIR: I am conscious of the time for other important witnesses and we have had a good run at your time. The Committee may wish to send you additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within one week of any further questions?

Mr WAKELIN-KING: Yes, we would.

(The witnesses withdrew)

MICHAEL JOOLS, President Australian Taxi Drivers Association and NSW Point to Point Transport Association, sworn and examined

PETER LUBRANO, Member, Australian Taxi Drivers Association and NSW Point to Point Transport Association, sworn and examined

The CHAIR: Do you have any questions concerning the procedural information that was sent to you in relation to witnesses and the hearing process?

Mr JOOLS: No, sir.

Mr LUBRANO: I have not seen the information which is because I am a substitute speaker that was arranged on Friday. Unfortunately the gentleman that was going to speak felt because he was financially stressed and he did not have the confidence in addressing the Committee and that he would not become emotional, critical and do our cause a lack of satisfactory hearing. Therefore, I hope that the Committee will have a little latitude because I am not specifically addressing the terms of reference of the Committee today. I hope that you will hear me.

The CHAIR: We will hear you. The material that is usually sent to witnesses revolves around the fact that your evidence will be afforded parliamentary privilege and the like. It is really giving you an idea of your rights and protections in coming before the Committee. I will ask the Committee staff before you leave to give you that information and if you have any questions you should come back and seek clarification.

Mr LUBRANO: I do not propose to say anything contentious.

The CHAIR: You should feel as though you are free to say what you like and that whatever you say will be protected, including with regard to the laws of defamation. So you have a very free rein and you should feel very free and not constrained to say what you would like to say because it is very important that we hear your views in an uncensored form. Really it is to give you some satisfaction that you will be protected in that way.

Mr LUBRANO: I qualify that by saying that some of my things are going to be estimates.

The CHAIR: There is nothing wrong with estimates.

The CHAIR: Would either of you gentlemen like to make a brief opening statement?

Mr JOOLS: I have been a taxi driver for more than 20 years. For a good part of that time I have been very much involved in the activities of the industry and I have been actively involved in driver associations in particular for the last 15-odd years. There are a number of misconceptions that I think have been brought forward already this morning and I think we need to address some of those. The first point is that it is not that the taxi industry will become uneconomic if that which is in place is allowed to go forward unrestrained; it is that the taxi industry is already uneconomic. It is my position, and the position of my association, that we work in an unsustainable industry. An industry that cannot afford to pay community standard remuneration, wages to its workers—whether they be employees, bailees, independent contractors or whatever, including the owner-driver, the so-called proprietor of the asset of a taxi plate—if they cannot afford to pay those minimum standards the industry is unsustainable. Over a number of years we have had factors which have made that occur.

We live in an environment at the moment as taxi drivers in particular that our average revenue from a shift is about \$300 dollars. We are paying—if the NSW Taxi Council, the taxi industry association would have its way as they had a claim before the Industrial Relations Commission in 2014—a maximum pay-in which, with fuel and wash added, comes to about \$200 to \$180 a shift. That leaves the driver at the maximum pay-in, which so-called affords annual leave and all the other entitlements, with about \$4 per hour as his earnings. That is morally reprehensible.

The CHAIR: Can I just check your figures? Was the maximum pay-in up to \$280?

Mr RYAN PARK: He said \$180 to \$200.

The CHAIR: Was it \$180 to \$200 or \$180 to \$280?

Mr JOOLS: The figure \$150 is the average maximum pay-in under the claim made by the TIA in 2014. It varies from \$175 to \$266.

Mr RYAN PARK: How then do you get an average of \$150?

Mr JOOLS: Sorry, \$180.

Mr RYAN PARK: Can I just go back because this is important? Shift revenue you have down as an average of \$300.

Mr JOOLS: Yes.

Mr RYAN PARK: And a pay-in is an average—

Mr JOOLS: Sorry, \$250 is the average pay-in.

The CHAIR: So you are netting \$50 per shift on average?

Mr JOOLS: That is right. If we were paying the maximum pay-in we would be netting \$50 an hour—\$50 a shift.

The CHAIR: Is the average \$250?

Mr JOOLS: I will just refer to my notes. For the day driver it is \$180, for the night driver it is \$233.

Mr RYAN PARK: Pay-in?

Mr JOOLS: As pay-in, maximum pay-in.

The CHAIR: What was the night driver figure?

Mr JOOLS: Night driver \$233, so the average is probably around \$200. He has also got to pay fuel and wash, which comes up to about \$50. From his average total revenue of \$300 on average he is paying out \$250, so he is getting \$50 for a day's work. We have a little bit of historical stuff vis-à-vis before you and that was brought forward by the previous speaker. We have gone back to the contract determination of 1984, which is an outdated notion. We have gone back to the Beattie report of 50 years ago now, which brought forward the notion of a joint venture, but I would take this Committee back to the year 1902 and the Harvester case where for this country of Australia was established a basic wage. An amount that was intended to suffice, to enable a worker to bring up his family and to support his wife in reasonable comfort—a basic wage. That basic wage is now about \$18 per hour. The taxi driver because of all these manipulations that he carries on with, all these out-of-contract agreements with his bailor or employer, depending on what you classify him, has contracted out but back in 2014 he was earning \$10.60 an hour.

The Government of New South Wales, in fixing through the Department of Transport maximum fares, took into account the studies, surveys and recommendations of IPART and IPART nominated a figure of \$10.60 an hour as the average gross earnings of a taxi driver—half the minimum wage, particularly when you take into account entitlements. We have now dropped because a competitor who does not abide by any of the rules has come in and thrown money around the place. Last night I received in my mail—as probably did another 100,000 citizens of Sydney—a voucher from Uber offering a \$20 first ride rebate. We cannot as a taxi industry afford that. It is not fair. It is not competitive; it is anti-competitive. It is wrong.

When Uber first came out our Government said that Uber was acting unlawfully, or UberX drivers were acting unlawfully, and yet they are still permitted to operate on the streets. We as drivers happily accepted—or in some cases unhappily accepted—the December 2015 reforms, which included the permitting of ride sharing to become hire car vehicles but with a couple of provisions: that the driver had to have a hire car authority; that the car had to be properly registered with adequate insurance; and that the details of where it was garaged had to be provided. That is all under clause 26A, but there is another clause which our Government enacted: clause 189, which says that a hire car shall not ply for hire or stand on a public road or road-related area. Guess what? That is what they are doing. They are plying for hire because this little notion of pressing a button and getting a car to come is plying for hire.

The Government has brought in these new rules and regulations but it is not enforcing them. We as drivers are prepared to live with regulations but we want those regulations to be fairly enforced. We want that which was promised: a level playing field. We want to compete equally and fairly but we are not given that chance, we are offered—not within the particular province of this Committee—a CTP adjustment sometime next year, which may see a decrease in premiums of \$9,000 per taxi to something less than that, and Uber-type vehicles or hire cars may come up somewhat but the details are obscure. But for the 6,000 owner-drivers in Sydney, or owners of plates, and the 4,500 operators they are stuck with paying up to \$9,000 a plate for the next 12 months. Is that fair? Is that competitive? Is that a level playing field? No, it is not.

We are stuck with—and here we have some differences of opinion within our organisation—the issues of plate fees. Plate fees add on average \$25,000 a year to the cost of operating a taxi. Our association primarily believes that there should be no fees or nominal fees for plates. But we certainly think the people who own or

licence or have possession of taxi plates should be fairly recompensed. Recompense of \$25,000 a year to a maximum of two is not fair recompense. We also have an issue with the networks. At the moment we are still required to belong to a network at \$9,000 a year per car.

Ms JODI McKAY: Obviously that has been changed now.

Mr JOOLS: That is being changed. That will no longer be mandatory, but there is still a degree of confusion.

Ms JODI McKAY: I understand your issues with the reforms that have been brought in, but this inquiry is specifically looking at the workplace relations issues.

Mr JOOLS: These impact on workplace relations because in order to pay for those things the operator needs to recover costs from whoever. The only cost recovery is from the driver. The driver can only recover his costs from fares. There is a dispute, to be sure, as to whether the \$300 per shift figure I quoted is correct, but thus far in all the forums that are open to both us, the Transport Workers' Union [TWU] and the Taxi Council, the issue of the revenue of a taxi has not yet been established other than to accept what the Government has agreed to through the Independent Pricing and Regulatory Tribunal [IPART], which is an average of \$306 and whatever cents per shift. So we are stuck with that.

Where does the money come from? The problem is that the industry is unsustainable because we cannot afford to pay wages of any sort to drivers. Ten bucks an hour is not a wage; \$3.50 is certainly not a wage. The problem for workplace relationships is that even if we get rid of the taxi plate fees, the insurance fees and the network fees it is still unsustainable because we are not doing enough jobs per day. Ten years ago we were doing an average of about 20—

Ms JODI McKAY: Through you, Mr Chair, I refer to the comments made by the Taxi Council in regard to Chapter 6 of the Act. What was your impression or your view of what they were proposing?

Mr JOOLS: I think they are trying to chuck the baby out with the bathwater. I do not believe that Chapter 6 or the contract determination have afforded the taxi driver very much in the way of a fair workplace relationship over the years, but it is all we have got. I think some of the comments they have made are misleading. The Chair asked the question about the minimum of five shifts a week. It has to be five shifts a week with the one operator. But in so many of the multitude of cases that we have heard operators have tried to obstruct that by having two accreditations in a base employing the one driver. That means I am driving for a particular base with 20 or 30 cars. The operator of that base has two accreditations. Some days he gets me to drive this car; some days he gets me to drive that car.

About 10 years ago the question came up before Justice Marks in the Industrial Relations Commission. He determined that that was subterfuge by an operator to try to deceive the intent of the Act by claiming that the person had not driven for the same operator for five shifts a week, 220 shifts a year. He said in his view he would merge the operator into one entity. But that took a court case, several thousand dollars and the TWU's active involvement for three days to get to the point where the law of the land was applied by the then judge in the industrial commission.

I have been driving for 20 years. I have never been able to get a bailment arrangement of five shifts a week. I have always been limited by every operator—and I have worked with perhaps 15 different operators—to a maximum of four shifts, because they know I am a bolshie bastard and I would claim my entitlements if I were to drive five shifts a week. So I am limited to four shifts—to avoid and evade. There is the notion that is almost everywhere otherwise present that a casual employee—myself on a mere four shifts a week, on a mere 45 hours a week—has no entitlements. So does that mean I get a better deal? No. I get no offset in my pay-ins because I am a so-called casual. Sure, I have an arrangement to operate for less than the maximum pay-ins, but there is nothing in the award, Act, contract determination or anything else that says as a casual I am entitled to a better deal on my pay-in.

We also had a little misunderstanding about how annual leave is created and developed. I draw the attention of the Committee to the fact that the notion of that \$833 figure is actually derived from the down-time rate—which is now \$20.91—multiplied by 38 hours, because that is the maximum under the Annual Leave Act, multiplied by five weeks to give the figure of \$833. To get this mythical annual leave you first take the \$20.91 which is another form of calculation, multiply it by 38 hours, multiply that by five and you get the \$833. It is not plucked out of thin air. But what the previous speaker did not mention is that the annual leave of the person on method 1—and the sole driver that I know of in Sydney on method 1 is actually sitting in this room—is calculated on a percentage of the amount that he pays to the bailor on a 50-50 arrangement. So it is not quite as cut and dried as was presented to you earlier.

Ms JODI McKAY: How is it that you achieve parity in this disruptive environment?

Mr JOOLS: In the long term?

Ms JODI McKAY: Yes. How do you achieve parity in the point to point transport sector, particularly with ride sharing services, if that is the way they work with their drivers?

Mr JOOLS: I believe the system needs a huge overhaul. I believe we need to question whether taxi plates should have any value. I think we need to question, as we are questioning, the compulsory third party [CTP] insurances, and they will come down—fine. I believe that the need to no longer belong to a network will start making the networks that exist competitive because the only things that they are required to provide are the duress and alarm systems. But that can be done for an awful lot less. I think the fares could come down, but if they come down in any context that is actually going to reflect on the driver's income, so I would not like to see the fares come down.

Ms JODI McKAY: How would you regulate? Do you believe there should be any regulation in regard to workplace relations for organisations like Uber or are you focusing only on what is going on for the taxi industry?

Mr JOOLS: What we do not understand and cannot quite see is the nature of the Uber driver's industrial relationship. Is he an employee, an independent contractor or a worker? If he is an employee, who is he the employee of? As it stands, most of the Uber type drivers, as I understand it, are independent sole traders. They are not going to fall in the classification of employee or anything else. They are not going to have a workplace relationship because they are the workplace.

The CHAIR: The last witness said neither do cab drivers.

Mr JOOLS: I would draw the Committee's attention to the end of clause 25 which talks about dismissal or other victimisation of worker.

The CHAIR: This is in the determination, is it?

Mr JOOLS: It says that "worker" includes an employee, an individual who works as a contractor or subcontractor and an individual who is engaged as a bailee. So we are all workers. What we have to come to a fundamental understanding of is whether workers have rights. If we are to say that—

The CHAIR: Is an independent contractor a worker?

Mr JOOLS: Your clause 25 says yes.

The CHAIR: It says it is a bailee; it does not use the terminology of "employee"?

Mr JOOLS: It does. It says, "worker includes an employee, an individual who works as a contractor or subcontractor, an individual who is engaged as a bailee", so we are all workers.

The CHAIR: Under that determination.

Mr JOOLS: No, under clause 25 (6) of the new point to point transport Act we are all workers so there must be some equal treatment but is the person who has a contract with Rasier, this mysterious company in the Netherlands, as being the only person with whom a dispute can be raised—what is the relationship with him? Is the person who drives an Uber car, his own car or a hired car, what? Is he a subcontractor? Is he an employee? He is certainly a worker; he is certainly a workplace but what is it? We do not know. We would like to see him as a worker and we also think that all workers should have equal rights. The issues that Mr Wakelin-King raised, his minimal standards, we agree with. There must be safety, there must be understanding of the unusual nature of a lone worker—

Mr RYAN PARK: Workers compensation?

Mr JOOLS: Workers compensation and some adherence to the notion of the international minimum standards. Now those international minimum standards certainly prescribe adherence to the local custom of a minimum wage.

Ms JODI McKAY: I do not know that he said that. I think he said in terms of offshoring.

Mr JOOLS: He said compliance with the international standards.

Ms JODI McKAY: Yes.

Mr JOOLS: Of presumably the International Labour Organisation [ILO].

Ms JODI McKAY: Presumably. I do not know.

Mr JOOLS: But as a worker, and the Fair Work Act determines that a worker is entitled to the national employment standards.

Ms JODI McKAY: In terms of the picture you painted around the joint venture arrangement, how do you see that?

Mr JOOLS: When it came up in the Beattie report and when it came up in the 1984 contract determination it was about a joint venturer having an equitable share of what went on. At the time equitable was freely translated as equal. In 1984 for the first time ever the Taxi Industry Association [TIA] brought forward a set of average revenues for a taxi. Mr Callaghan, QC, brought that forward. On the basis of that the set pay-ins were determined and it was agreed that equal meant equitable and at the time the set pay-ins represented 50 per cent of the revenue. Now, that set pay-in is not. The maximum set pay-in claimed by the TIA leaves, as the driver's remuneration, something less than 10 per cent of the revenue. On the average pay-ins that we are paying, I am retaining about 40 per cent; certainly less than 50 per cent. Is equitable equal or is it something else that pleases those at the time?

The CHAIR: Section 25 that you drew our attention to is a section which deals with effectively whistleblower protection. It says that people are to be afforded whistleblower protection if they have given information to a public authority, made a complaint about breaches of the Act, et cetera, that that will extend to a bailee as a relevant worker who has been victimised?

Mr JOOLS: Yes.

The CHAIR: But that is the limit of that definition of worker and the context in which that definition of worker you have drawn our attention to applies. The Act does not say that a worker is more broadly considered than in that context.

Mr JOOLS: I am sorry, I have a copy of the bill. I do not believe that section was amended in the Act.

The CHAIR: My point is that the definition of a worker, which extends to a bailee, only applies in that very limited context in which the worker is being victimised for having been a whistleblower?

Mr JOOLS: No. Section 25 (2) (d)—has made an alleged breach of this Act.

The CHAIR: Yes. I am using that as a generic description for the conduct in subsection (2) of section 25, which is the only place in which a bailee is considered a worker. That is the only context in the Act. We do not need to waste time on it. I have put that on the transcript.

Mr JOOLS: I would like to have that clarified. One of the other things that is very unclear in the Act is whether—

The CHAIR: Sorry to interrupt you but you seem to be making a proposition that the Act generally considers a worker to be a bailee. What I am putting to you, I think fairly, is that it is limited to the circumstances in which a bailee is a whistleblower to give the bailee protection for making complaints or bringing to the attention of public authorities breaches of the Act under subsection (2)?

Mr JOOLS: No, it also provides under section (d), with respect, alleged breaches of this Act or the regulations, which are not in force, to a former employer or bailor, former fellow worker, union, public authority, or public official. So if somebody complains to me as a fellow worker about a breach, it is a breach.

The CHAIR: It is the context in which the complaint is made.

Ms JODI McKAY: Perhaps we can take it on notice.

The CHAIR: Yes, we will not waste any more time on that.

Mr JOOLS: We will move on from there.

Mr RYAN PARK: I was interested in a comment in your submission because I thought this would start to happen. I am interested in a bit more detail. You said individuals are changing their bailment practices to adjust to a reduction in patronage or revenue. Can you give us more detail on what they are doing?

Mr JOOLS: Their current bailment practices?

The CHAIR: How are they changing their practices? How are they changing the way in which they work?

Ms JODI McKAY: What are they settling for?

Mr JOOLS: Who is "they"?

Ms JODI McKAY: The drivers.

Mr RYAN PARK: The drivers, because you said in your submission along the lines—

Ms JODI McKAY: And the Taxi Council said as well.

Mr RYAN PARK: —they are changing their practices because there is reduced patronage or reduction in revenue, however you want to look at this, volume or dollars?

The CHAIR: Mr Park is asking what you have been told, as well as what you have observed and what you understand to be the position.

Mr JOOLS: I have not personally had any reductions in pay-ins. The people I have spoken to, as other drivers, the reductions in pay-ins were limited to between \$5 and \$10 per shift in the period from December to about April. Since then the average market pay-in has gone back up to that which was before.

Mr RYAN PARK: Why is that? Why has the market become distorted in that period of time?

Mr JOOLS: Very quickly, the admission to the industry of some 1,500-odd new drivers who went through the authorisation process without training, without whatever, and were suddenly put into the market meant that a whole lot of new drivers came on the scene. Once they came on the scene the reductions that the operators, the base operators in particular, gave to their existing bailees, which had gone down between \$5 and \$10, suddenly went back up because there was a whole new cohort of available drivers.

Mr RYAN PARK: They had more to choose from?

Mr JOOLS: They had more available drivers who the operator could choose from and determine that the pay-in was the former market price pay-in.

The CHAIR: So there had been a shortage of drivers for a period of time, which meant that the plate owners had to reduce the pay-in to attract drivers?

Mr JOOLS: Correct.

The CHAIR: Then a whole lot of new drivers came in, which meant there was not an undersupply of drivers, which allowed them to put it back up again, is that accurate?

Mr JOOLS: We are now in a net effect of the pay-ins are what they were before all this started, which are certainly below the maximum pay-ins but are as per that schedule which was submitted a little later.

The CHAIR: This is obviously a very difficult industry in its current state. I am very sympathetic to your situation, so I do not want this to sound overly like economic theory. The pure economic theory would suggest that if you could get equality between taxi drivers and Uber drivers in terms of their costs then a taxi would be a better proposition from a driver's point of view than an Uber because you also have the ability to rank and hail. All things being equal, the theory would suggest that you have something you can offer which they cannot.

Mr JOOLS: That would appear to be the case; however, the notion of rank and hail is now getting a little more obscure. Modern technology means that pressing a button gets you a taxi. Even if you were walking up towards the taxi rank or standing beside the road, pressing a button is booking and means that any vehicle, be it taxi or hire car, who is on that app sees you and stops. So the preservation that we thought we were getting of 70 per cent of the work is not so; we have probably got 50 per cent of the work.

The CHAIR: You still have old-fashioned people like me, I am happy to say, who prefer to hail a cab.

Mr LUBRANO: May I say something in answer to the Chairman's question? One of the differences I see is that the legitimisation of Uber has given a de facto authorisation because of the way they allocate jobs and the driver responds by texting while in the car, which for everybody else is illegal. When the button gets pressed and the Uber driver takes the job he gets a text message and texts back. He gets the passenger's or the booker's telephone number and then he texts back to the booker's telephone number, "I'm on the way." He is texting while driving.

The CHAIR: That is a safety consideration and an illegality.

Mr LUBRANO: It is something that seems to have been authorised.

The CHAIR: Unless they pull over to the side of the road.

Mr LUBRANO: Well, they do not and taxis cannot. But these guys, by sanctioning their system, it gives de facto authorisation.

The CHAIR: Ms Pavey just raised a fair point, which is that cab drivers are often pushing buttons on their console too when they are responding to jobs and all the rest of it.

Ms MELINDA PAVEY: One is illegal and one is not.

Mr LUBRANO: They are acknowledging, but they should not be texting.

The CHAIR: I have certainly had cab drivers over the years who were fiddling around with a lot of things.

Mr LUBRANO: I think their system does not require them to text. It is like pushing your radio button, changing the station. You push the button to turn it on or off and they push the button to say they accept the job.

Mr JOOLS: Pushing a button on a properly mounted device is not illegal. Texting is illegal, but simply pushing the particular button that causes a flow of text to then follow is okay.

The CHAIR: There are quite a lot of anomalies because you can play with your TomTom as well.

Ms JODI McKAY: It is probably outside the scope of this inquiry.

The CHAIR: We have gone a little bit over time but I do not want to cut you off if there is something that either of you would like to say.

Mr LUBRANO: I had hoped that I could be given a few minutes to speak. I have been the owner of an unrestricted metropolitan taxi for 21 years. I have owned taxicabs in the country, been an operator and have had a driver authority. I come from a different perspective to Mr Jools, being principally interested as a plate owner. However, I absolutely support him in thinking that the industry is in real trouble if it does not pay or until it pays the drivers a reasonable wage. I regard the taxi industry as a third arm of public transport after buses and trains. It is an essential arm. What is at risk is that this arm of transport will be lost. I do not have much to say about Uber because I think it has all been said. What I do say, however, is that the Government has legitimised what was illegal. It is incumbent to make the point to point transport industry a level playing field.

The CHAIR: I am sorry to interrupt you. This inquiry is about the industrial relations system in the point to point industry. I have given a lot of tolerance to general discussion about the changes outside that area that have taken place but, given that we are running over time, I wonder if you could focus on the industrial relations aspects, which is really the focus of this inquiry.

Mr LUBRANO: I was not prepared for that. Let me try to give you some observations along the lines of what you are saying. I say that you have left taxis with a surcharge of costs that penalise them and disadvantage the public. I think the fundamental question for the Committee is how do you get this third arm of public transport to function effectively and to service the needs of the public in a commercially viable way? What I wanted to tell you was how and why historically the taxi drivers are not making money. It sounds like you do not want to hear the details of that.

The CHAIR: We do.

Mr LUBRANO: I think you are likely to pull me up again but if you do I am happy to tell you. When Reg Kermode was the taxi king he was very well connected politically and with sections of the public service. As the controller of Cabcharge and credit cards—

The CHAIR: I do not think we want to go here, I am sorry, because this is a long history and it is a long way away from where we are going in this inquiry. We all generally have a bit of an idea of the matters you are about to go into. You should assume that we are not mushrooms; we bring quite a bit of knowledge to this inquiry. I do not know if you have had a chance to look at the terms of reference. I appreciate that you have been asked to give evidence at the last minute. We are particularly looking at Chapter 6 of the Industrial Relations Act, the effectiveness of the existing arrangements under that, the uneven application of those arrangements and so on.

Mr LUBRANO: Mr Chairman, I have not read that. Mr Jools has told you about the amount of take that is occurring and that it has not gone down for him. What we do not have are tradesmen taxi drivers. You have got apprentice taxi drivers who gravitate to the airport, sit with hundreds of others and wait because they do not know where to go. People like Mr Jools and others are the tradie taxi drivers. They know how to work their area. They go to where the concerts are, the pictures are coming out, the boats are berthing and to the sporting functions. They make a buck. The other guys do not make a buck. Really there are enough taxis out there for people to make a buck that are the tradies, but the quality of the driver has dropped off because they cannot earn the money. There are not enough fares. When there are not enough fares those guys have left the industry. Last week I spoke to a collection of drivers and operators. One of them said that he has a medium sized

fleet. About 15 cars, 25 per cent of his fleet, stayed in the garage during the non-prime shift periods because drivers would not take them out because they cannot earn the money to pay him, it is commercially unsuitable.

Ms MELINDA PAVEY: How many licences do you have?

Mr LUBRANO: I have one now.

Ms MELINDA PAVEY: What does your driver earn?

Mr LUBRANO: I have a management agreement with a network who manages my plate. They hire that out to an operator and that operator has multiple cabs that he operates under an agreement with the network. I get about \$450 a week on the plate that was worth, as you know, around \$400,000. The price now, if the industry continues, because of the pay-ins and the lease fees that Mr Jools told you about, would generate, as gross, exclusive of cost, about 9½ per cent on the \$200,000 market price of the plates today. My real fear is that because you are going to lose the competent people and nobody is making any money that this third arm of public transport is going to be unsustainable. The risk is that you are really going to lose it and it will not be there and it is essential.

The CHAIR: I think we understand that point.

Mr JOOLS: Could I make one final point. We will be shunted into the Federal sphere, which is either Fair Work Australia or the Independent Contractors Act covered by the Federal courts. I have taken a case in Victoria, *Dick v. Voros*, and we went to Fair Work Australia. As a bailee we were thrown out because he was not an employee. The Fair Work Australia commissioner ruled he was not an independent contractor. We are going to be thrown out of Chapter 6 but where will we go in a Federal sphere? We do not have a choice. We cannot go to the Federal Court or Fair Work Australia because we are bailees. I think we are workers and are entitled to be treated as workers.

The CHAIR: Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to give a written reply within one week to any questions?

Mr JOOLS: Yes.

Mr LUBRANO: Yes.

The CHAIR: I do appreciate your appearing before the Committee today and giving your evidence.

(The witnesses withdrew)

(Short adjournment)

JOHN BARTOLOTTA, Chairman, NSW Hire Car Association, sworn and examined

SIMON KALIPCIYAN, Director, NSW Hire Car Association, sworn and examined

The CHAIR: Would either of you like to make a brief opening statement?

Mr BARTOLOTTA: Yes. The NSW Hire Car Association was formed approximately 12 months ago. It is a fairly new organisation. The hire car industry was quite a fragmented industry and in the last 12 months, with some of the challenges we had coming our way, we formed the NSW Hire Car Association. In the past there was limited representation by the Motor Traders' Association, so that is the history of the association. That is the opening address from our side.

The CHAIR: Thank you. Can you please state what you consider to be the regulatory burden that is currently affecting the hire car sector of the point to point industry?

Mr BARTOLOTTA: From our point of view, what we would like to see, and the regulatory burden is that we do not see it as a level playing field across the whole three. At the end of the day, there is obviously taxis, hire cars and now ride sharing. Historically hire car industry mimicked what happened in the taxi industry, they worked for contracts of embailment, or a commission-based arrangement. That is the history, so that is very close to the taxi industry, and it mimicked those types of arrangements. Moving forward, the way we see it, is the nature of work conducted by a driver, be it a taxi drivers, a hire car driver or a ride sharing driver is fundamentally the same. From our point of view, we want all jurisdictions, all agencies, be it the Australian Tax Office, Fair Work, Office of State Revenue, to be equal, transparent and whatever rules are put in place be equally engaged across the whole three.

The CHAIR: In respect of the nature of your segment of the hire car industry, are most of the people in that industry owner-operators, or are there many employees? If there are employees, what is the industrial landscape that governs the employment arrangement?

Mr BARTOLOTTA: There is probably about 60 per cent to 70 per cent owner-operators who own their own cars and have their own plate arrangements—approximately. The others all work on contracts, be it contracts of embailment or commission-based contracts. None work as direct employees.

The CHAIR: My understanding of the way in which hire cars tend to operate is that there is a bit of a sharing arrangement between owner-operators, so that if you cannot do a particular job because you have got another job, you will give it to a friend and hopefully they will reciprocate if they are in a similar position.

Mr BARTOLOTTA: Where that basically comes from is that a lot of the hire car drivers we have today came from the taxi arena. They quickly saw in the early years that by moving to the hire car industry there was going to be a lesser burden of cost and by the use of technology they could easily share work and put it on networks or put it on chat lines. That is where it evolved to where the industry is today. There is a lot of sharing of work. If a particular operator gets a job, or a particular driver gets a job and cannot cover it, they put it out on a chat line and it goes out to a heap of other operators who get the particular job.

The CHAIR: One of the advantages I have found to using a hire car over the years is that in my particular area there are very few cabs that will drive around the streets and often if you book a cab, it may take up to three-quarters of an hour to an hour to get one, particularly in peak hour. A hire car can be booked well in advance, they are not getting a call-out 15 minutes before the booking time and they are reliable and guaranteed to arrive. That is really a big part of your market share, is it not?

Mr BARTOLOTTA: That is correct. Obviously our market is pre-booked. We do not do rank and hail. That is obviously the side of the taxi industry, so we do not do rank and hail and the majority is all pre-booked.

The CHAIR: One of my constituents who is a hire car driver told me that he had lost a good customer because they had a corporate policy that they were only going to use Uber. Do you find those sorts of problems?

Mr BARTOLOTTA: Yes, that is correct. There are a number of clients out there that obviously believe that Uber can deliver the service a lot cheaper and undertake it.

Mr KALIPCIYAN: It is not just that, we have found that some clients working for American companies, we have had the call, we had not heard from the client, and then he comes back two years later and says, "This is a personal trip. I want to book you guys because my work is now telling me to use Uber." The order is coming from the top.

The CHAIR: Is Chapter 6 of the Industrial Relations Act having much, if any, impact on the hire car segment of the industry?

Mr BARTOLOTTA: No, not really. I mean number one, I am not really au fait fully with Chapter 6 because as I said we are a voluntary organisation so we do not have legal teams in that space so we are not like the Taxi Council. In its basic terms we mimic what the taxi arenas have. So there is contracts seeking bailment and that is the majority of it. That is the way we run our operations.

Ms MELINDA PAVEY: That is market disruption with this other competitor. Can you give us an idea of what your licensed hire car owners are making? And in those circumstances where you have commissioned drivers, what your earnings were before that market disruption and now?

Mr KALIPCIYAN: I might be able to answer that question because I am closer to the drivers than what John might be. I am the guy that they ring. At the moment what has happened, as you all know, we have gone from a phase-out period at the end of this year, we were going to lose hire car plates. So we have now managed in the last six to eight months to negotiate a transition phase until July 2020. Thankfully, with volumes going down the Government was good enough to say, "We are going to waive your \$8,235 per annum lease cost."

Ms MELINDA PAVEY: Is that \$8,235 per annum?

Mr KALIPCIYAN: That is \$8,235 per plate, \$686 per month. I have got now drivers telling me, "I have got four hire cars but I am opening a restaurant with my brother because the hire cars are not costing anything; they are just sitting there—and I can use the bus lane when I go out—but there is just no work in hire cars." We all rejoiced but every driver I speak to is saying "Hey Bro, if I get a job that pays me \$1,500 per week, I'm gone." They are just there now because they have got no choice. They have got a free plate, that is great, but what is the use of a free plate when you cannot actually get a job? I have had stressed drivers call me to say, "I've got two hire cars and I've got one job tomorrow in my book for those two hire cars." These are like small operators.

There are challenges and like others have said if this industry ceases to exist because there is just no work left for it, what are we going to do when we win the Commonwealth Games or we have some big convention come to town? Are we going to put them all in ride sharing? In terms of answering your question, yes, the level of work has significantly dropped off and we can see that because people just call us all the time saying, "Do you have any extra work?" and so forth.

Ms MELINDA PAVEY: Do any of your hire cars do Uber work?

Mr KALIPCIYAN: I can't speak but for myself, but yes, I would say that there are a lot of drivers out there who are doing Uber work because they have no choice. They all hate it. They all say to me, "We just hate the type of work that it is but we are forced to do it because we have lost all of our clientele so we have got no choice but to do their work."

Ms MELINDA PAVEY: What is their work?

Mr BARTOLOTTA: Can I make a comment? Funnily enough, call it ride sharing—I would rather not call it Uber—I was involved with Uber at the outset. They came to see me in the very early days when they arrived in this country when they were setting up. They said they were going to set up—and I knew a bit of its history from the United States anyway. Uber started on the back of hire cars: so that is how it started. They basically came in. We had a lot of hire car guys that were very naïve, and they are naïve as they do not do their numbers and that is why they are in the position they are in, because basically Uber came in and said, "Listen, we are going to pay you \$50 or \$60 an hour and we do not care if you do not do anything. So you sign on here and you sign on there and we are paying you \$50 or \$60 an hour until you sign off."

These drivers thought "Mate, how good is this?" All jumped out and went and bought cars. Economics tells you at the same time they are offering fares to clients for \$5. The client is going "How good is this? I'm, getting fares for five bucks?" The hire car driver is happy because he is getting sixty bucks an hour for doing nothing, right? Staying there for hours and hours just waiting but gets \$60 an hour. That is how they evolved. So the actual hire car industry evolved Uber because Uber at the end of the day—they thought this was going to go on forever so they went and got more hire cars. They put it on and thought, "How good is this?" What do they say, there is no free lunch and someone has got to pay sooner or later so we know we are going to run out of money. In answer, I know in my particular company, we did not put cars on Uber but a whole heap of hire car companies did have them on Uber and now have them on Uber. As they moved out we are where we are today.

Ms JODI MCKAY: What do your drivers earn? You have those who own the plates and then you have got drivers?

Mr BARTOLOTTA: Yes.

Ms JODI McKAY: What do the drivers earn?

Mr BARTOLOTTA: Not many people own plates. I am one owning plates. Plates in our industry—

Ms JODI McKAY: You have about 200 I think, is that right?

Mr BARTOLOTTA: Yes, there is very little in regards to plates because they were deregulated back early 2000-02. We were lucky at the time that we could keep them or we could move them over to taxi plates on a shared basis with the Government. That is the history of it. The majority are not making a whole heap of money from the physical plate. It is not like the taxi industry because we went through this in early 2000. Drivers vary. The drivers who just work—and this is not an owner-driver—would probably average \$800 to \$1,000 per week.

Ms JODI McKAY: That is through the bailment arrangement?

Mr BARTOLOTTA: That is right, that is with the bailment arrangement.

Ms JODI McKAY: Or is that through a contract or both?

Mr BARTOLOTTA: Both, that is right. Not every company is on the bailment agreement, right?

Ms JODI McKAY: What is the percentage there?

Mr BARTOLOTTA: Call it a bailment agreement or call it a contract, the percentages are roughly the same, so in a 50:50, 40:60, depending on who pays for the fuel and who is in charge for tyres.

Ms JODI McKAY: But the contract arrangement does not replicate the bailment arrangement? How does that differ?

The CHAIR: A bailment is a contract.

Ms JODI McKAY: But if you are technically through the—

The CHAIR: Are you talking about the determination under the taxi—

Ms JODI McKAY: Sorry, under the determination. How many drivers do you have under the bailment arrangement in the determination?

The CHAIR: I do not think they are covered by it.

Mr BARTOLOTTA: I do not think we are.

The CHAIR: I believe that it is only if you are a licensed taxi that you fall under that determination. That is the whole point as to the unevenness of the way in which the industry is operating. Is that correct?

Mr BARTOLOTTA: That is right.

The CHAIR: Is it unregulated fees?

Mr BARTOLOTTA: Yes.

The CHAIR: You can set your fees?

Mr BARTOLOTTA: Yes. Totally unregulated fees.

Mr KALIPCIYAN: And lately what we have seen—and I can speak from a national perspective—is that when business dries up the first lever people press on is the price lever. That is putting a downward pressure on fares so if we have gone from, let us say, an \$80 transfer to the company where the driver was getting \$40, 50:50 let us say, and now some of the companies are doing \$42 transfers so what is the driver getting? Basically at the end of the day the driver's income is starting to get lower and lower and they just cannot make ends meet and that is why—

The CHAIR: Is that being driven by the customer? Is the customer saying to you: "You have got to reduce your fees otherwise I am going to use someone else"?

Mr KALIPCIYAN: No, it is not the customer. You have got clients who do not care about what they pay, it is because the pie has just gotten—let us say you had 1,500 operators in Sydney working on a piece of pie that was worth \$100 million, that piece of pie has now gone from \$100 million to \$30 million or \$40 million. So you have got the same 1,500 operators fighting on that same pie and the only way that they can compete is by going lower and lower on the fares to try and attract that client back or try to get clients in general. That sort of works its way down to the driver and the driver cannot make a living in the end.

The CHAIR: So it is a supply and demand issue.

Mr KALIPCIYAN: Yes.

Ms JODI McKAY: Just coming back to my question, is there a standard contract?

Mr BARTOLOTTA: The standard contract that is used is the bailment agreement that is in the taxi industry.

Ms JODI McKAY: So it is the standard contract but you are not subject to the bailment as it is under the determination?

Ms MELINDA PAVEY: As it applies to the taxi industry.

Ms JODI McKAY: As it applies to the taxi industry.

Mr BARTOLOTTA: I believe so; I am not 100 per cent sure.

Ms MELINDA PAVEY: You do not have to pay holiday leave?

Mr BARTOLOTTA: Sorry?

The CHAIR: Annual leave.

Mr BARTOLOTTA: No.

Mr RYAN PARK: I want to ask a quick question about workplace arrangements. Can you give me some specific examples between all three—I think you mentioned payroll tax—sectors where you think the workplace arrangements are skewed?

Mr BARTOLOTTA: From an ATO perspective I do not find them skewed at all and from our experience with Fair Work—whenever we have gone to Fair Work with contracts of bailment in our industry there has not been an issue. Where we do find it skew-whiff and it has only been of late—probably in the last two years and I have been in the industry for 27 years—the Office of State Revenue sees it different and they have only changed their mind in the last few years.

Mr RYAN PARK: About?

Mr BARTOLOTTA: About payroll tax. They are basically saying that all contractors, contracts of bailment, whatever contracts you call them, are subject to payroll tax.

Mr RYAN PARK: Are counted as part of the thresholds?

Mr BARTOLOTTA: Yes.

Mr RYAN PARK: And that is not the case for taxis?

Mr BARTOLOTTA: That is an interesting question when you ask them; they will not commit either way and they will not commit on ride sharing. They are just saying our industry is being targeted first. It started probably about two years ago, around the same time that Uber arrived, and they thought it was a good idea that we all pay payroll tax in our industry and they thought they would start with the hire car industry first.

Mr RYAN PARK: I know it is an employment law issue but it just seems usual.

The CHAIR: We will need to have a look at that.

Mr KALIPCIYAN: We are in constant dialogue with the Office of State Revenue and Minister Perrottet's office so that matter is still open. Would you agree on that?

Mr BARTOLOTTA: Yes.

Mr RYAN PARK: I notice that you raised this in your submission and I thought there was a subsequent determination that put you completely at odds to the taxi industry but you are saying they have not committed one way or another.

Mr BARTOLOTTA: Just to give you a quick history, everyone has reacted the same way you did—starting from Jason Falinski. He turned around and said to us, "What are you talking about? That was my area; you are not subject to payroll tax." We go, "That is not quite right." We showed him the documents and said, "This is wrong." Then we went to Minister Andrew Constance. He goes, "I was head of that portfolio. You are definitely wrong; it is not subject to payroll tax." I said, "I am sorry. Here is the document. Do you want to go and tell the Supreme Court and the companies that are going into liquidation as a result because they have got no chance?" Not only that, they are going retrospect. So what they are saying is four years plus one, plus two

ahead, so they try to get you for seven years. It is millions of dollars and companies are just going into liquidation because they have no—there is no way you have got the means to pay that type of money.

Subject to that, funnily enough we then met with Minister Perrottet, along with Minister Andrew Constance, and Minister Perrottet reacted the same way you just did and it is his portfolio. We have since had two meetings at OSR with the commissioner and his head people. We were in a room like this and I said, "You need to be able to articulate to us very clearly where"—they have a broad net that is called "relevant contract provision" and that broad net catches everybody and anybody, so when the suit fits. In answer to your question when we actually said, "So what about the taxi industry?" The answer was, "Oh no, we will get around to them and the same with ride sharing."

Mr RYAN PARK: I have got to be honest that is not helping us because it is creating a distortion in another area.

The CHAIR: That might be something we can take up with the government witnesses this afternoon. Thank you for raising that. Sorry if I am going back over earlier ground but you explained the drop-off in the amount of work for hire car operators. The Committee heard some earlier evidence that taxis are operating both as taxis and Uber drivers. Are hire car drivers doing the same?

Mr BARTOLOTTA: Yes, because at the end of the day, like Simon was saying, these are owner-operators, they have got a lease on their cars. This change came all at once. So you have got a change that all of a sudden, rightly or wrongly, the Government had things in place—you need to be an authorised hire car, you needed a hire car plate and if you did not you would get a \$5,000 fine, or you had a taxi plate and you operated within those terms—and as citizens they kept to the law. The problem is that they committed to leases or hire purchase when they bought cars. They had no idea that the Government would all of a sudden say, "Anyone can drive any car, don't worry about the licence because we think this is fantastic." It might be a fantastic idea but that does not help the finance company that wants its lease payment every month otherwise they are going to bankrupt you; they don't really care. You pay the lease on the car, you pay your expenses on your car and your ability to earn work then falls off and whoever you have got your mortgage and your living expenses with they don't care what is happening in the industry either, they just want their money. So the drivers have got no choice. They will log on to Uber, they will log on to whatever it takes to get the revenue. At the end of the day money speaks. Guess what? If a guy is going to offer you \$10 or \$20 then \$20 is better than no dollars and they will take it.

The CHAIR: In terms of the standard overhead of a hire car operator, let us say an owner-driver, they have got probably monthly lease payments?

Mr BARTOLOTTA: Correct.

The CHAIR: What would be an average monthly lease payment?

Mr BARTOLOTTA: About \$1,200 on a car, depending on the level of car. A Holden Caprice, say, is roughly \$1,200 a month.

The CHAIR: Other than that overhead, and taking into account petrol and wear and tear on the vehicle—

Mr BARTOLOTTA: Services and repairs.

The CHAIR: Maintenance and all the rest of it.

Mr BARTOLOTTA: Green slips are slightly higher than normal but they are not extraordinarily high. They are not in the realm of taxis. We used to have hire car plates. We do not have that cost anymore.

The CHAIR: Are there any other costs that I have missed?

Mr KALIPCIYAN: Just little incidentals that would be negligible. Getting back to my initial comment, it could be completely free, but what use would that be if the work has completely disappeared and dried up?

The CHAIR: I am not diminishing that; I am just trying to understand.

Mr KALIPCIYAN: But you are correct.

The CHAIR: When you said \$800 to about \$1,000 a week through bailment, was that before paying those expenses or after?

Mr BARTOLOTTA: That is after. That is what the driver is getting.

The CHAIR: So that is after the lease has been paid, the fuel, insurance and other odds and sods.

Mr BARTOLOTTA: That is correct. The key thing that was an issue when Uber—or ride sharing—arrived was the number of people that jumped in and applied for hire car licences because that was the way that Uber could get the stronghold. Drivers thought they would get in on it. They all ran out. One guy went and bought 10 cars and applied for 10 hire car plates because he thought, "How good is this?" It was a bit naïve.

Mr RYAN PARK: You cannot help some people.

Mr BARTOLOTTA: You cannot help some people, as much as I tried to tell a lot of them at the time. I said, "Let me tell you, they are not going to keep giving you free Gelato Messina and you will not get to pat a kitten every day. It needs to come to an end." It is Economics 101 here. Do you remember the promo to get an Uber and pat a kitten?

Mr KALIPCIYAN: I am not sure how we are going for time, but I would pose one question for you guys to ponder: Do you actually want a hire car industry? By that I mean I know that with the Sturgess report he talked about taxis and ride sharing and he left out hire cars. We were sort of shoved into the private hire vehicle bucket which was going to be the same as Uber. That is why we fought so hard in the last eight months to keep our HC plates and our identity so we can keep the bus lanes. If we lost the bus lane privileges we would all be decimated. We might as well just go and look for other things. So we have kept our bus lane privileges till 2020. Then we have gone from a phase-out period to a transition phase over the next four years, so we have a bit of work ahead of us. We need to plan ahead for July 2020. But I think it is a service that the public—

Mr BARTOLOTTA: It started with Jason Falinski. We had to get him to understand that everyone needs a choice. This is about a choice for the low end of society, but the high end needs a choice as well.

Ms MELINDA PAVEY: The business market.

Mr BARTOLOTTA: The business market, where people need to get around in a timely manner and for security reasons run on bus and taxi lanes and have access to airport areas and special events. How do you identify that and what is that licence going to look like? That really is the hire car market. We needed to keep the licence to be able to provide that service. The argument was basically that if you are a High Court judge and you live on the northern side and you need to get to work, which is a lot of our clients—corporates et cetera—ride sharing does not have the same privileges. I understand where they are going. They do not want 30,000 cars.

If you allowed every ride sharing vehicle in bus and taxi lanes you may as well not have a bus and taxi lane, because everybody would register their car as ride sharing so they could get access to those lanes. So how do you differentiate that? Would you expect those people to have no choice but to book a taxi? And he understood that argument. It pertains to guests of government, security areas and so on. Security is a major thing. How is it clearly identified to the public? With the identification of a hire car at least you can have certain areas of the airport. At special events you go out to Homebush and there is a certain strip that is only for hire cars. Again, they have access to that for that level of service. That is our niche, basically, and that is where the future needs to be carved out.

The CHAIR: It is. I have only ever used hire cars because of the reliability issue: I have to get to the airport, it is peak hour and I cannot rely on a cab coming in time. But I have found that the differential in price between a hire car and a cab is often not very great.

Mr BARTOLOTTA: That is correct.

Mr KALIPCIYAN: Especially if it is a longer journey you tend to find that.

Mr BARTOLOTTA: And in fact as the journeys get longer there is a point where the hire car gets cheaper than a taxi—for instance, see how much a taxi will cost you to Newcastle, Canberra or very long distances versus a hire car.

The CHAIR: I suppose there is a range of reasons why people might book a hire car. Some people may just think it is more snobby or something—I do not know.

Mr KALIPCIYAN: It is mainly the reliability and the bus lane.

Mr BARTOLOTTA: And the main thing is it is really prebooked.

Ms MELINDA PAVEY: It is reliable.

Mr BARTOLOTTA: The key differentiator in our market is that it is prebooked and it is really prebooked in the fact that it is allocated the night before or a substantial period beforehand. Even with Uber's

model under which they talk about the fact that they prebook, it is all through automation—my background is in IT rather than as a hire car operator. What they do is put that job out when there is 10 minutes to go as if you were pressing the button—that is their prebook model. It is not actually prebooked.

The CHAIR: That is Uber's, is it?

Mr BARTOLOTTA: That is right. They say they prebook—and they have launched it overseas.

Mr KALIPCIYAN: In Seattle.

Mr BARTOLOTTA: In Seattle. It is 10 minutes before and they put the booking out by automation. So you book it for nine o'clock tomorrow morning. At a quarter to nine they will rank—

The CHAIR: So that is not much different to what the taxis do.

Mr KALIPCIYAN: That is correct.

The CHAIR: My almost final question is this: Yes, it has had a disruptive effect on hire cars, but is the future of the hire car industry that it will be a combination of its traditional long-term booking loyal customers—admittedly they have dropped off, on your evidence, but there are still enough of them around—plus picking up—

Mr KALIPCIYAN: On demand.

The CHAIR: —Uber type on demand where you can and when you are otherwise free?

Mr KALIPCIYAN: That is the case. But ultimately what I would like to see is for our association to get a bit stronger and maybe create a local app. For instance there is now a competitor to Uber called GoCatch. We would like to perhaps have an option for our drivers to say, "Here is a local app." When you turn on the GoCatch app you might be requiring a taxi so you switch it to taxi and then on the left-hand side a little box pops up that says, "We have a GoCar four minutes away. Why don't you use that?" I am just using that analogy.

They basically shifted the customers from Uber BLACK to UberX. Those drivers that were relying on Uber BLACK have had their work drop off considerably—if a driver was doing maybe 30 jobs a week for Uber he maybe now does two jobs a week if he is lucky. The other reason is that Uber is now letting privately plated hire cars into its midst. One driver texted me: He got an Uber BLACK job from across the bridge and the client texted him to say, "I just want to check we can ride in the bus lane." That is another thing: You can book an Uber BLACK but you might not be able to go in the bus lane. They are allowing anybody in there now because there is such a churn and burn.

Mr BARTOLOTTA: As to the future of hire cars—basically the hire car industry probably needs to get back to where it was post where you got taxis and hire cars starting to mould. If you go historically back to what hire cars were, it was people who wanted a high level of service; they wanted a particular standard of vehicle. There was a consistency factor there. They liked the ability to request a certain driver so a lot of the goodwill is in the actual driver. Our industry, the traditional industry, is around the driver.

Ms MELINDA PAVEY: That is how I thought of it.

Mr BARTOLOTTA: Do you know what I mean? It is fundamentally like, "I want John to pick me up. I sit in the back seat. He knows when I don't want to talk. He knows where to put my laundry. He knows where to pick up the kids. He can read my notes." The driver builds up a lot of goodwill and people delegate towards it.

The CHAIR: And if John is busy, you trust that John will refer you to someone who is as good as John?

Mr BARTOLOTTA: Correct, and John will make sure that he rings that particular driver and says, "Listen, I can't pick up Mr Parker today but you need to. He likes to sit in the back seat. He wants this. If it looks like this, don't talk to him." I always give everyone the example when they send me to pick up because the first time I actually drove him I said, "What do I do?" and they said to me, "Well, when you pick him up—

Ms MELINDA PAVEY: He is from.

Mr BARTOLOTTA: And I was in picking him up—

The CHAIR: Can I just suggest you that you might be careful about this evidence.

Ms MELINDA PAVEY: No, it is nice evidence.

Mr BARTOLOTTA: It was proper business travel.

Mr KALIPCIYAN: In the days that John is referring to, I think there were 285 hire car plates in Sydney as opposed to the 1,500 now, so those were the days where there were 285 plates. I think that is what is going to happen. It is going to be survival of the fittest and it is going to be the last man standing syndrome, so whoever is going to last the longest, and all those other people I have spoken about who are going to leave the industry are probably just going to not drive so there will be fewer hire cars, less choice. You will only have five or six companies as opposed to maybe 100 to choose from.

The CHAIR: Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within one week of any further questions?

Mr BARTOLOTTA: Yes, of course.

The CHAIR: Thank you very much for your time today. We do very much appreciate it.

(The witnesses withdrew)

TROY LAKE, Treasurer, Ride Share Drivers Association of Australia, affirmed and examined

The CHAIR: Welcome, Mr Lake. Before we proceed do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr LAKE: No.

The CHAIR: We have a submission prepared by a Mr Manchester—

Mr LAKE: That is correct.

The CHAIR: —which we have had access to. Is there anything that you would like to say by way of a brief opening statement?

Mr LAKE: I do not have a lot. Basically we formed in April and that was just due to various pay cuts around the country and a large voice on social media from drivers about disapproval of the way they were treated. We just decided to create an association to have a voice, pretty much.

Ms MELINDA PAVEY: Via social media?

Mr LAKE: Yes, pretty much so. That is where it started. There are groups with thousands of Uber drivers in them and they all chat and give feedback on what is going on and help each other out, pretty much.

Mr RYAN PARK: Was it concern around workplace entitlement or was it purely payment, times of payment? What were some of the three or four prompts?

The CHAIR: Just before we go there, can we get some background information? Are you an Uber driver, a taxi driver or do you not work as a driver?

Mr LAKE: I used to work as a driver. I do not drive full time. I have always had a full-time job. It has always been a casual or part-time thing.

The CHAIR: What have you driven—taxis or Uber?

Mr LAKE: Uber. I started in Sydney when it was new and now I have moved to Queensland and up there I do not bother driving at all.

The CHAIR: So you drove Uber as a part-time driver?

Mr LAKE: Correct.

Ms MELINDA PAVEY: To put yourself through university or something?

Mr LAKE: To buy a house and things like that.

Ms MELINDA PAVEY: Good on you.

The CHAIR: To get some extra revenue. How many members do you have in your association?

Mr LAKE: Currently there is just over 100. We have a reach of about 3,500 via social media and things like that. Sorry, they are paying members.

The CHAIR: Of your 100 paying members, are they Uber drivers or taxi drivers?

Mr LAKE: All Uber drivers.

The CHAIR: All Uber drivers.

Mr LAKE: Every single one is a Uber driver—or ride share driver, I should say.

Mr RYAN PARK: Ride share, maybe not Uber because there might be another platform?

Mr LAKE: Yes, there are; there are other platforms. There is a new one called Limofied and there is GoCatch obviously.

The CHAIR: So they are not taxi drivers and they are not hire car drivers?

Mr LAKE: Correct.

The CHAIR: If you do not mind me asking, now that you are no longer driving Uber why are you still involved in the association?

Mr LAKE: I am still registered as a driver. If I ever do need anything extra, moneywise, I can always drive again. Also, there are a lot of people without any business experience driving Ubers; they have got absolutely none. They just own a car. They downloaded an app and started driving. I have probably got a little bit of smarts about me. I have got a degree in commerce so I have done postgraduate work. I am a business analyst now. The president wanted to put something together so that the drivers could have a voice and I am just being part of that.

The CHAIR: Okay, very good.

Ms JODI McKAY: Which you are entitled to.

The CHAIR: Yes, absolutely.

Ms MELINDA PAVEY: Social justice work.

The CHAIR: And thank you very much for coming along. Sorry, I hope that did not sound too prying?

Mr LAKE: No.

The CHAIR: Now we have that background Mr Park will ask that question again.

Mr RYAN PARK: What would you say were the top three or four things that prompted the association's formation that came out about some of the workplace issues that the drivers were having?

Mr LAKE: Number one was the pay cuts. Uber started off at a higher rate promising minimum fares per hour. The way it worked was if you did not make what they advertised, they would top the amount up and that was just for a brief period at the beginning to get drivers on board. They cut that pretty quickly. It does come in and out every now and again. If they cannot keep the supply drivers up, they will do another promotion like that to get them back again.

The CHAIR: When they do the promotion again, does it only apply to new drivers who have come back in or does it apply to everyone?

Mr LAKE: Everybody. It is purely to get people on the road. One of the main questions Uber always asks is how do we retain drivers? The point never goes through that a little bit more money would definitely help. I would probably still be driving just for the extra cash.

The CHAIR: What was the minimum fee per hour that they were offering?

Mr LAKE: It did depend on the times of day and the days. When it first came in it was \$30 an hour during peak periods. It was at first \$30 an hour flat and then it was \$30 an hour during peak periods in New South Wales.

The CHAIR: What was it in non-peak periods?

Mr LAKE: There wasn't one.

The CHAIR: So they just did not given anything?

Mr LAKE: That is right. Then there have been different promotions over time. Like between 12 and 3 on a Saturday it is \$45 an hour or after 10 at night it is \$50 an hour minimum, things like that. Over New Year's Eve to get people out last year and the year before they did a \$100 minimum after 12 for four hours.

Mr RYAN PARK: What is it now, no minimum?

Mr LAKE: I am actually not sure in New South Wales, sorry. I would say it would be fairly similar to Queensland. They have a \$30 minimum there, a \$35 minimum on Friday nights and a \$40 minimum on Saturday nights. There are also certain criteria you have to meet to get those. You have to accept a certain number of jobs in a certain area and sometimes maintain a decent rating, but that is not happening at the moment.

Ms JODI McKAY: Why is that not happening at the moment?

Mr LAKE: They have just taken the rating part out. I am not sure why.

The CHAIR: It sounds as though these are purely supply and demand issues and they are trying to even out the market. When there is a shortage they will offer more money and so on.

Mr LAKE: Correct. When they have got enough drivers they do not bother.

Ms JODI McKAY: What workplace protections do you think there need to be for a ride sharing industry?

Mr LAKE: Probably the main one that we focus on is not the minimum per hour or the money. It is more around the deactivation issues or getting fired by Uber. They call it deactivating a driver.

Ms JODI McKAY: They released a new policy recently.

Mr LAKE: They did. The policy came about probably because of the pressure that we have been putting on them but it pretty much just lists the ways you can get deactivated, which everyone knew about. It is not really a policy as such. There is no right of reply, and that is our major concern. They do say that they will look at a driver's case. We have not had one case in which they have allowed the driver back on the road. It is purely from a customer complaint.

Mr RYAN PARK: It is a natural justice issue, I suppose.

Mr LAKE: Yes.

Ms JODI McKAY: There is no review mechanism.

Mr LAKE: There is no review for a driver. Absolutely none. It is late Friday nights or Saturday nights and drunk people who type anything. If we do not want to go through a McDonald's drive through and they get angry or something like that they put something bad in there. If you get two or three of them all of a sudden you wake up the next day, go to work and the app does not work.

Mr RYAN PARK: You have been deactivated.

Ms JODI McKAY: They do not give you warning at all?

Mr LAKE: Zero.

Ms JODI McKAY: It is just that you cannot get onto the app. That is it?

Mr LAKE: Yes.

The CHAIR: Do they tell you that you have been deactivated?

Mr LAKE: By email.

The CHAIR: In your experience is it a number of complaints or a type of complaint that triggers the deactivation?

Mr LAKE: It is purely based on how Uber is feeling at the time is what we think, or who has dealt with it.

The CHAIR: Someone is sitting there in Amsterdam making the decision?

Mr LAKE: It is probably Sydney. It can be anything. You get three dangerous driving complaints and you can be deactivated.

Ms MELINDA PAVEY: So it is more than one?

Mr LAKE: Normally more than one, unless it is a serious complaint. I mean, if it is a serious complaint and the complaint is real then, yes, we do not want those people on the platform at all.

Ms MELINDA PAVEY: But you want a process.

Ms JODI McKAY: A transparent process.

Mr LAKE: Correct. Because they just say they investigated. They use their privacy clause as the reason that they cannot give any details on what happened.

Ms JODI McKAY: Are there any workplace protections at all?

Mr LAKE: Zero. There are a fair few people that have hired cars, that are hiring cars on contract, and they can just wake up the next day and they do not have a job.

Ms JODI McKAY: Does Uber encourage that?

Mr LAKE: Absolutely. They have got Uber Marketplace, which is a website you can go on and there is a range of different companies that you can hire or lease purchase cars from.

The CHAIR: You worked part-time. Did you own the vehicle or were you using someone else's vehicle?

Mr LAKE: I would say 99 per cent of drivers own their own vehicle or lease or rent their own vehicle.

The CHAIR: Were you using your own vehicle?

Mr LAKE: Yes.

The CHAIR: You had to go to Uber and show them the vehicle, presumably?

Mr LAKE: At that time, no. You have to now, but at that time no.

The CHAIR: You just said, "I'm Troy Lake, I've got a car and I want to work as an Uber driver"?

Mr LAKE: Pretty much. They did a police check.

Ms JODI McKAY: They have tightened up on all of that. They have their vehicle inspections.

Mr LAKE: They have. They are very good with all of that at the moment.

Ms JODI McKAY: You are welcome to come to my electorate and have a look. That is where they are based.

The CHAIR: Can you run through the remuneration arrangement between you and Uber in terms of what proportion of your fare you get to keep and so on and how that is billed?

Mr LAKE: In Sydney it is \$1.45 a kilometre plus 40¢ a minute. It is unlike taxis where it is under so many kilometres an hour then the minute starts. It is a \$1.45 and 40¢ a minute in Sydney. In Newcastle it is \$1.10 and 30¢ a minute. There is a minimum of \$8 in Sydney and minimum of \$6 in Newcastle.

The CHAIR: Are you given a meter by them?

Mr LAKE: No, it is all done in the app.

The CHAIR: They use GPS in terms of time and distance?

Mr LAKE: Yes. You swipe on when you get there and swipe off when you leave and the fare calculates from there. The rider's credit card is charged straightaway, it gets held by Uber and Uber pays every Tuesday night.

The CHAIR: They pay you once a week?

Mr LAKE: Correct, after they take out the 20 to 25 per cent for UberX drivers.

Ms JODI McKAY: Are you familiar with cChapter 6 of the Industrial Relations Act?

Mr LAKE: I have had a quick read.

Ms JODI McKAY: Is any of that relevant to you?

Mr LAKE: I am not 100 per cent sure. We do have a policy manager. He is actually really crook. He would have been the best person. He is really good at this.

Ms JODI McKAY: That is okay. Perhaps you could take that on notice because it is what our inquiry is about. It is not dealt with specifically within your submission but if you could take that on notice and come back to us that would be helpful.

Mr LAKE: Sure.

The CHAIR: Your arrangement with Uber is simply there is now some pre-vetting, you then operate under their app platform which calculates distance and time, there is a fee charged back to Uber and once a week they pay you between 75 and 80 per cent of the fee charged?

Mr LAKE: Correct.

The CHAIR: Do they give you a proper itemisation of the bill?

Mr LAKE: They do, yes.

The CHAIR: Is there any other way that you can record what you are doing on your own device as a double check against what they are remunerating you for?

Mr LAKE: There are apps out there that do it, definitely.

The CHAIR: Have there been instances where people have thought that Uber has not remunerated them for drives that they have done?

Mr LAKE: The fare time thing is pretty correct. It is fine. The only issues really are when a rider complains about something. Uber will automatically deduct that amount if they say you went the wrong way or something like that. Without letting you know they will automatically deduct that amount from that ride. There is no way you will ever know unless you are keeping track of it.

The CHAIR: Between the deactivation that you have told us about and the reduction of fees on complaints it would seem as though the customer is king and the driver does not have very many rights.

Mr LAKE: Absolutely.

The CHAIR: Is that a fair summary of your evidence so far?

Mr LAKE: That is right. There is also the star rating as well. Drivers do get deactivated if they get below a certain star rating. They have a training program if you go below that star rating, which you have to pay for yourself, to get put back on the platform. That is the only time that there is some kind of leeway there.

The CHAIR: How much does it cost to do the retraining?

Mr LAKE: I think \$80.

Ms JODI McKAY: What do you want to happen?

Mr LAKE: Transparency in the process of deactivating drivers.

Mr RYAN PARK: And a process.

Mr LAKE: Yes, a process. They do have their policy but it is rubbish, it is just information telling a driver what they can be deactivated for basically, and everyone knows that—you would have to be extremely rude to riders all the time. Without basic customer service skills you are not going to last long, which is fair enough because as drivers you do not want those type of people on the platform because they are giving Uber drivers a bad name.

Ms JODI McKAY: You state, "As the industry develops we anticipate that initially competition will erode pay and conditions further and stronger protections will be needed." What are you referring to there?

Mr LAKE: It is the fact that there are between 20,000 and 30,000 Uber drivers on the road. I would say the majority of them are part-time. Full-time drivers that hire cars will increase and there will be more people purchasing cars and paying interest on cars so they can Uber.

Ms JODI McKAY: Is that about disclosure as well?

Mr LAKE: I would say so.

Ms JODI McKAY: Is there an issue around disclosure of the risks?

Mr LAKE: There is no disclosure. People are stunned when they get deactivated. They did not know that could happen and that there is no right of reply. The silent process is very basic. We do not get to negotiate a contract, it is take it or leave it. That is the same with all the ride share providers.

The CHAIR: I must say that generally speaking on commercial agreements there is very little negotiation. You go to Kennards Hire to get plant and equipment, you do not have negotiation over the terms and conditions.

Ms JODI McKAY: But generally there is a workplace agreement.

The CHAIR: Commercial arrangements with regard to things in general.

Ms JODI McKAY: It comes to the heart of this inquiry.

The CHAIR: There are 2,000 terms and conditions in small lettering in most commercial arrangements these days.

Mr LAKE: They change the contract fairly often and the only time you get to know is when you go to log on and it will say you need to accept this contract. No-one can read that contract before they go to work, it is huge.

Ms JODI McKAY: Dense.

Mr LAKE: Yes. It is four in the morning you want to get on and go.

Ms JODI McKAY: There is no explanation of what has changed in the contract? They do not spell it out? It says, "Here is a new contract and you need to sign it before you can log on to the app"?

Mr LAKE: Correct.

Ms JODI McKAY: It does not say, "We have changed this clause and this is what it means"?

Mr LAKE: No, it does not.

The CHAIR: Did you say you have financial qualifications?

Mr LAKE: I have a degree in commerce.

Ms MELINDA PAVEY: Postgraduate.

The CHAIR: Have you worked out the hourly rate you are earning as an Uber driver and can you give us an idea of what hours you were working?

Mr LAKE: It is good for part-timers, it is rubbish for full-timers, and they are the people that lease the cars. If you have a car anyway depreciation increases obviously because you are using the car a lot more if it is done on a kilometre basis not a time basis. Other costs increase such as maintenance, tyre servicing, that kind of stuff. I have made a fairly in-depth spreadsheet to help people out based on NRMA and RACQ values of the cost of driving a car or you can stick with the Australian Taxation Office's value of 66 cents per kilometre. An average Uber driver is probably earning, after costs, about \$8 to \$10 an hour. With full-time it is like anything, there is peak periods. With full-timers, if they drive during the day they are not going to earn anywhere near that, they pretty much go backwards. You can drive smart during the peak hours and there is definitely a lot of peak hours in the week.

The CHAIR: If you do what you say, which is drive smart in the peak hours, would you increase that \$8 to \$10 an hour?

Mr LAKE: Yes, you could.

The CHAIR: Just going back to your personal experience; did you ever work out what per hour you were earning net of your costs and when were you working?

Mr LAKE: I used to be able to earn probably about \$23 an hour in Sydney.

Mr RYAN PARK: Net?

Mr LAKE: Yes, after costs. When it first came out it was fantastic. Making money relies on surge pricing. If there is no surge pricing you will make the \$8 to \$10 a hour, that is fact. When there is surge pricing, which there was a lot of, then you are making easily \$60 an hour gross easily in the peak periods: \$50 to \$60 an hour, which then you need to pay goods and services tax on and penalties.

The CHAIR: When did you work those hours?

Mr LAKE: A few days a week. I would finish work at 3.30 and I would jump straight on and do until 7.30 at night. Saturdays you can work all day. There are good days, there is just not a lot of them any more.

Ms MELINDA PAVEY: From your observation with the members of the association and social media feedback has the shine come off? Are they having more difficulty finding drivers?

Mr LAKE: Absolutely. They recruit all the time. It is nonstop recruiting and nonstop incentives. There is a running joke that whenever they send out an email saying "refer your friends" so many people reply, "Why would I do that to my friends?" They give incentives. I am not sure how much it is here. It was \$500 to refer a friend. After they have completed 20 trips they will give you \$500.

Ms JODI McKAY: They have to complete 20 trips first?

Mr LAKE: Yes, absolutely. Other places it is \$200 or \$250. It depends on how much they want drivers. In Sydney it was \$1,000 at one stage. When I signed up they gave me \$1,000 just for completing 50 trips. It was not a referral bonus, it was getting drivers on the road.

Ms JODI McKAY: Everything is at the whim of Uber?

Mr LAKE: Yes, and the riders.

Ms JODI McKAY: Do you class your experience with Uber as a good one, whether contracted or employee or whatever you are, do you class it as a good experience?

Mr LAKE: I used to love Uber in the early days. They were friendly back then. They used to do things like small training courses and info nights and lots of things like that. They are very few and far between now. They call us partners but no one feels they are a part of the business. The drivers almost feel like a burden on Uber and with the introduction of autonomous cars they will not be needed much longer.

The CHAIR: Can you explain what you mean by autonomous cars?

Mr LAKE: Driverless cars when they come in. It is a known fact that Uber—it is not known—it is a deal between car manufacturers and Uber.

Ms JODI McKAY: It is building on the Uber pool model.

Mr LAKE: Correct. And Uber pool is another problem altogether. It impacts on public transport and it is a totally different topic.

The CHAIR: As a student you have other options for part-time work, you can wait, you can work in a supermarket or do something else. How did your Uber experience compare to the other options available to you, in retrospect?

Mr LAKE: If I was to join up now, it is not a good option.

The CHAIR: What are better options, do you think?

Mr LAKE: Anything that you just said. I do wish it was around when I was at uni and it was the early days, because that would have been easy, but now absolutely not.

The CHAIR: You think you rode the best crest of the wave, so to speak?

Mr LAKE: Definitely. Absolutely, 100 per cent did. That has been their model all over the world. That is how they can get into the market. That is what they do. You can see it coming. It happened in the United States. The US Uber drivers are earning gross \$6 an hour and then they have to pay their expenses. Hopefully that does not happen here.

Ms JODI McKAY: Coming back to your comments on the deactivation policy, if you had a transparency and a review mechanism, where do you see that sitting? Is that something the new Commissioner for Point to Point Transport could do; does it flow through a normal review tribunal?

Mr LAKE: Just a normal review tribunal would probably be what we are after. It is at the whim of Uber. People from GoCatch are willing to talk to us. It is an Australian company, obviously. They are fairly decent when it comes to chatting with drivers and their issues and we have no complaints about deactivations or anything like that. If something has happened and it is warranted, they are not allowed on the program. It is very hard to talk to anyone from Uber. You can go into the office. Sydney is different; you can actually talk to somebody who works for Uber. In Newcastle and a lot of the other States they are all contractors; they do not work for Uber at all. They have no say in what goes on.

Ms JODI McKAY: Sorry, what do you mean a contractor?

Mr LAKE: They work for a different company and they are contracted to Uber to run their offices.

Ms JODI McKAY: So Uber does not run an office in Newcastle. What is the company in Newcastle?

Mr LAKE: I cannot remember the name of the company.

The CHAIR: It provides human resource services or something of that kind, does it?

Mr LAKE: That is right.

Ms JODI McKAY: I do not know if that would be able to operate under the new Act.

The CHAIR: I do not know. I could not express an opinion one way or another. It is like having subcontract staff.

Ms JODI McKAY: I do not think you can subcontract out your responsibilities under the new Act. I could be wrong.

The CHAIR: That would be the issue. We can have a look at that.

Ms JODI McKAY: We can talk to Uber about that.

Mr LAKE: There are employees there—sometimes. I think there are about six or eight employees in Queensland. All the rest of the staff are contract staff.

The CHAIR: Going back to a question from Ms McKay a few minutes ago where she said there should be a tribunal involved, you would be happy, would you not, if some natural justice was shown before they terminate someone or deactivate them, that at least they are given an opportunity to respond to the complaints?

Mr LAKE: Correct. I do agree with suspending accounts if there has been a serious allegation, but there should be a right of reply. You go into the office, you do not speak to an employee of Uber. Sometimes you will get a phone call if you make enough noise.

Mr RYAN PARK: And other times you do not?

Mr LAKE: Other times you do not. Otherwise it is mostly email-based.

Ms JODI McKAY: You have done very well on your own.

The CHAIR: Yes. Thank you for appearing before the Committee today. The Committee may wish to send you additional questions in writing, the replies to which will form part of your evidence and be made public. Either you or Mr Lindsay can provide the response. Would you be happy to provide a written reply within one week to any further questions?

Mr LAKE: Sure.

Ms JODI McKAY: We asked for a response relating to Chapter 6. Is that something we request now?

The CHAIR: We will request it in due course. It will certainly be part of the request we will send you. If it is easier for you to commence working on it now, it will give you more time.

Mr LAKE: I know you have gone through all of that, but I had one more thing. The other thing that is major is chain of responsibility. Uber have zero chain of responsibility.

Ms MELINDA PAVEY: The trucking industry has it.

Mr LAKE: Absolutely, that is the business I work in at the moment; I work for a logistics company. Uber will let you drive and they will let you drive. In the trucking industry a normal day is 12 hours, unless you have basic fatigue management, which is 13 hours, including your breaks, and then there is advanced fatigue management after that, which is 14 hours plus, including breaks. There is absolutely no chain of responsibility. Uber let drivers drive tired and drive longer because they are not earning enough at the moment.

The CHAIR: Is that something they can monitor under the app?

Mr LAKE: Absolutely. There are cases—they will kick you off the app, but in most cases you can get back on.

Ms MELINDA PAVEY: They will kick you off the app if you have been on there for too many hours?

Mr LAKE: Yes, but we are talking 18 hours. You should not be driving for 18 hours.

Ms JODI McKAY: Do you know people who have driven for 18 hours?

Mr LAKE: Yes.

Ms JODI McKAY: And finally they may kick them off?

Mr LAKE: Yes.

Ms JODI McKAY: But they do not say how long you can drive for?

Mr LAKE: That is correct.

The CHAIR: We did not ask Mr Jools that question. Do you know how that compares to the taxi industry?

Mr LAKE: I do not know. The trucking industry is different; you can only drive for five hours before taking a break. I think that is a little bit different.

Ms MELINDA PAVEY: Because you are driving the entire time.

Mr LAKE: Yes.

The CHAIR: We can ask that of Mr Jools in a written question.

Ms MELINDA PAVEY: We can ask him now.

The CHAIR: I know he is there, but not without swearing him again. That is very helpful. Thank you very much for giving us your time today. We appreciate it.

(The witness withdrew)

(Luncheon adjournment)

MATT KAYROOZ, Head of Accident and Trauma, Suncorp Group, sworn and examined

PAUL LAWTON, Executive Manager, Workers Compensation, Suncorp Group, sworn and examined

EVA URBAN, Policy and Regulation Adviser, Suncorp Group, affirmed and examined

The CHAIR: Do you want to make a brief opening statement?

Mr KAYROOZ: Okay, I will just open up. You are aware Suncorp is an insurance company, bank and life insurance company? We are here on behalf of the personal injury portfolio. We are one of Australia's largest personal injury insurers covering workers compensation, compulsory third party [CTP] and life insurance. Over the past four or five years we have had key positions on the design of schemes and the need of statutory schemes that provide a safety net for people using the roads and also whilst they are earning incomes. We have had that position in the public space at regular times, and with this Committee here we believe that it is important we put our position forward that people are not falling through the gaps as, we acknowledge at the moment, the community is looking at different working relationships and there are gaps appearing. It is a challenge for regulators and we need to make sure it is covered so that, as I said before, there are no gaps.

In particular, I think there needs to be clarity around the working relationships as we move forward as it is really important to ensure that there is appropriate coverage for people. It reflects risk and ensures competitive neutrality for businesses as they go about their work. For the current specific cases of point to point transport in New South Wales at the moment we think in the short term there is reform in the CTP sector. We have been big advocates of no-fault cover. In the short term that reform takes on no-fault cover, there is an immediate response that over the next 12 months will resolve some of these issues for people on the roads using point to point transport. We think that is very important. Again in the longer term the challenge for regulators is to start to get clarity around further working relationships. I am happy to answer any questions regarding our submission.

The CHAIR: We will park CTP insurance to one side, if we can, because that is not really within the Committee's terms of reference. I will ask questions about the relationship between a driver and the vehicle owner, if I can put it that way. Will you tell me whether the position is any different on your view as between the different segments of the point to point industry? The view was expressed by the Taxi Council this morning that there is no relationship of employer and employee between the owner of the taxi and the driver and that the relationship is one of bailment and so, therefore, the usual indicia of a contract of employment does not apply. Do you agree with that? If so, why would workers compensation insurance be necessary in this environment as opposed to, for example, income protection insurance or other like insurances that individual contractors enter into?

Ms URBAN: First of all, we do not have a position as to whether you could categorise that situation that you are saying is an employment relation or not. At the end of the day we think that is a matter for the community and government to determine. We are happy to go with the flow. We are more interested in the even application of insurance outcomes. The second part of the question was?

Mr KAYROOZ: Should it be workers compensation or—

The CHAIR: Yes, income protection insurance.

Ms URBAN: That is a very good question and it can be an either/or. The only thing that I would ask you to consider is under workers compensation there are a lot of regulations in terms of reporting accidents. By reporting accidents you can then identify emerging risks and attend to them. Under income protection I do not think the reporting requirements are as strict as that. We would be keen in any kind of system where we can have a reporting requirement be it workers, be it CTP, be it life insurance of any description that there be reporting requirements so that we can see where the risks are emerging and then the community can respond to those as they are identified.

Mr KAYROOZ: I think the only other addition to that is that if we go on the income protection line, how do we make it compulsory? Again it is really important we do not have gaps for people when they are making earnings in these new relationships and are left stranded without cover.

The CHAIR: Are there instances in other industries now where there is a relationship of independent contractor that there is an obligation on one of the contracting parties to take out workers compensation insurance for the other?

Mr LAWTON: Under a principal contactor arrangement that would be the case. So where you would have a principal contractor as a proprietary limited entity and a contractor that would in those circumstances not be a proprietary limited, and therefore there is no requirement on that contractor to have their own policy, under that sort of arrangement it is likely that the principal contractor would be deemed to be the employer from a workers compensation perspective.

The CHAIR: But that is a situation of deemed employment as opposed to one of true independent contracting parties. Can you think of any other industry where there is a relationship of independent contractors and there is an obligation for one of the contracting parties to have workers compensation insurance for the other?

Mr KAYROOZ: Not at the moment.

Ms URBAN: Not at the moment, but that will be a challenge going forward. I can think of, for instance, the NDIS that is being implemented. The service delivery under that model is going to create a casualisation of the workforce, so the question then is how do you deal with insurances in those circumstances? It is not something that we have a position or we know what the answer is but it is a challenge going forward. That is NDIS and then you have got your various digital platforms, which are redefining the markets in work relationships.

The CHAIR: Under your standard home building policy I think there is a form of insurance cover for accidents that tradesman may have on your premises. I am not sure if it is called workers compensation—you can tell me if I am wrong—or maybe it just comes under the public liability cover.

Mr KAYROOZ: It is under public liability.

Ms URBAN: And I think it might be subject to a wage turnover for a small business in workers compensation before you actually have to—I am sorry, I might be confusing it. For a small business, for instance, there is a wage threshold before there is a need to buy workers compensation in New South Wales.

The CHAIR: I think that is right. Going back to the deemed employee issue, which you raised a while ago, the deeming test for when someone is an employee, at least for tax purposes, is a certain amount or percentage of exclusive employment with that one party. This was to pick-up the situation where people were not really independent contractors but just working effectively full-time for only one party. I think when the GST legislation came in there were deeming provisions around that.

Ms URBAN: Yes.

The CHAIR: Are there any other relevant deeming provisions that would relate to current workers compensation legislation and what are they? What is the test?

Ms JODI McKAY: You can take that question on notice.

The CHAIR: It is fine if you want to take that question on notice. You addressed workers compensation in your submission so that got me thinking about it.

Mr RYAN PARK: You might also like to take this question on notice. In your submission you have talked about the need for the Government to create certainty around work, health and safety and the workers compensation arrangement in point to point transport. I am interested in how that uncertainty exists, but probably more importantly for the Committee, what would you recommend as a way to try and create that certainty? This is not the first time this issue has been mentioned by various stakeholders who have given evidence to this Committee.

The CHAIR: To put it directly, I think the NSW Taxi Council conceded that a taxi is a workplace for the purposes of occupational health and safety laws.

Mr RYAN PARK: They did. This has come up during today's hearing and it has also come up in some of the submissions to this Committee.

Ms URBAN: I think there are some general propositions that you can say certain work relationships are going to be found to be an employer and not an employer, but the uncertainty is through the challenges that are happening in America and as a result of that there may be some challenges in Australia. Given that the GST is treating the issue in a certain way, and Uber is actually challenging the guidelines to the GST, whatever that decision is someone may make a challenge here in Australia.

Mr RYAN PARK: A challenge as to what the relationship is?

Ms URBAN: As to what the relationship is. We have got all the jurisdictions with workers compensation in them but what we are saying is that we would prefer to have certainty and national consistency in the approach in this because we may end up in one State giving a legal precedent about what the nature of that relationship is and it might change from State to State. We are just talking about the future, we are talking about using money within the workers compensation system to test a case where that money could be better spent elsewhere if we can create further certainty. Now I do not know how we are going to create that certainty, I am not suggesting we have got the answers within workers compensation itself, other than one potential is perhaps mandating sole traders to incorporate and have to have workers compensation. But there are a lot of practical problems with that and there would probably be a lot of resistance to it.

Mr RYAN PARK: Legitimately too.

Ms URBAN: That is one way. Another way would be to mandate personal accident insurance, particularly where the CTP scheme design in a jurisdiction is a fault-based one because the gap here is the driver who is at fault who is injured.

The CHAIR: Third party insurance will not cover them.

Ms URBAN: It will not cover them and if they do not have their own insurance, they are thrown on to the health system.

The CHAIR: The third party policy does not insure the driver at fault.

Mr RYAN PARK: Of a point to point?

The CHAIR: Of any vehicle, including point to point under New South Wales law.

Mr KAYROOZ: Currently in New South Wales and several other States.

The CHAIR: That is one of the issues in the CTP reforms that is being discussed.

Ms URBAN: Yes.

Mr KAYROOZ: But it has a direct effect on this issue whilst we work out these long term relationships. For the point to point transport at the moment for which people are driving their cars, one of the big gaps we find is this—

The CHAIR: Yes, but I am saying under the CTP reforms it may be plugged up regardless of what we recommend.

Ms JODI McKAY: So do you have people calling you and asking what they should do? Do people actually contact you—drivers that are thinking of driving for Uber?

Mr KAYROOZ: We have had some questions, but they mainly ask us whether they are covered or not, particularly for their property and their CTP insurance. The answer is that they are covered under the existing policies we have. The current scheme being fault based in New South Wales means the at-fault driver gets a no-fault benefit up to \$5,000 and then there is catastrophic cover under the lifetime care on the no-fault basis. But there is a huge gap. Basically the at-fault driver is not covered.

The CHAIR: At the beginning of that answer where did you say they were covered? At the moment the Uber drivers in New South Wales are covered if they are not at fault?

Mr KAYROOZ: Yes. If they have an accident—

Ms JODI McKAY: That is just through CTP, is it?

Mr KAYROOZ: Yes. If they are on the road and have a motor accident and they are injured, they have the right to claim against the green slip of the at-fault car.

The CHAIR: As a private driver I can take out insurance that will cover me if I am at fault in addition to the CTP cover—is that right?

Mr KAYROOZ: For property damage.

The CHAIR: But not personal?

Mr KAYROOZ: We can get additional personal injury cover, but you are already covered by CTP.

The CHAIR: But only if I am not at fault.

Mr KAYROOZ: That is right.

The CHAIR: If I am the at-fault driver, can I now get insurance that will cover me for my fault?

Mr KAYROOZ: You would have to buy an individual personal accident policy, whether it was a travel accident policy or just normal income protection. There are several accident policies you can buy. It is a personal responsibility.

The CHAIR: Exactly. And if you have a comprehensive property insurance over your vehicle it does not give you that cover, does it?

Mr KAYROOZ: No.

The CHAIR: So there is actually a gap in the insurance cover under our fault system whether or not you are an Uber driver.

Ms URBAN: That is correct.

Mr KAYROOZ: And that is part of the process of these schemes being based in tort law and compensation schemes and the move across Australia towards them being more of a safety net and "get back to work"—covering for health and accidents rather than compensation.

The CHAIR: And I think the idea that the tort law deters people from being negligent and therefore to insure people you are rewarding them for their negligence is the old-fashioned theory around why they are not covered.

Mr KAYROOZ: If you look on the roads, people have accidents.

The CHAIR: Yes.

Mr KAYROOZ: It is not negligence anymore.

The CHAIR: I am not saying it is right; I am just explaining the historical reasoning behind it.

Mr KAYROOZ: It is historical. Looking at the history of workers and CTP coming in, in the 1930s there was a changing workforce, there were more cars on the road and there were changes to how we worked. That saw the introduction of compulsory workers and compulsory third party insurance. I think we are at a stage now, as we said earlier, where for the first time we are having a change in the worker relationship. We are moving towards more casualisation of the workforce and having different relationships that do not fit into the square boxes of "workers". That is the challenge governments are facing.

The CHAIR: In a number of areas.

Ms JODI McKAY: The challenge is around workers compensation.

Mr KAYROOZ: Yes.

Ms JODI McKAY: It is the issue that we are—

Mr KAYROOZ: Yes, and the clarity around that relationship.

Ms URBAN: Whatever is done in the point to point industry you need to have a broader policy consideration for the general workforce to have a consistent approach in application.

The CHAIR: I was self-employed for 23 years. I took out income protection insurance because there is no cover.

Ms JODI McKAY: He was a barrister though.

Ms MELINDA PAVEY: It sends you broke if you have gone under.

The CHAIR: It does not mean I do not still get injured.

Mr KAYROOZ: What Ms Urban said was right: It is this relationship. We are seeing the first part in Uber, but the National Disability Insurance Scheme [NDIS] example for the care is really good. If someone has a package from NDIS and says, "I will pay the neighbour to mow my lawn, take the garbage in and do four or five hours a week for me," how does the neighbour position himself work-wise to get that money? How does a workers comp scheme cover that person? It does not cover that person. They are some of the gaps. That is going to happen in three or four years time. We were just expounding as to this relationship. This is the first one that is really hitting the point to point and the introduction of people facilitating work rather than that traditional employer-employee relationship.

The CHAIR: I said earlier that the Taxi Council had conceded that a car was a workplace. They did that because obligations under work safety laws are not confined only to people with whom you have an

employment relationship. If you control a workplace then you have obligations to anyone that works within that workplace. I think that was why they said that the work safety laws applied in the taxi industry. You made a point a moment ago about the unevenness of laws across Australia, which for you as insurers is a commercial problem because of the different jurisdictions and complexities. You cannot necessarily pool funds to give efficient premiums et cetera. There are numerous problems with the lack of uniformity. Does that equate to you preferring to see the employment relationships in the point to point industry go into the Federal Fair Work system rather than the individual State systems?

Ms URBAN: We do not mind how it happens. We just prefer to see certainty, consistent application or consistent outcomes of insurance arrangements.

The CHAIR: If it did that, that would certainly provide some greater consistency, would it not?

Ms URBAN: Yes.

Mr KAYROOZ: And all the jurisdictions are struggling with this issue at the moment.

Ms JODI McKAY: Are you working with other insurers on this?

Mr KAYROOZ: Yes. In considering it we have put papers together with the opinion of the Insurance Council of Australia [ICA]. As I said before, Suncorp has very strong opinions regarding safety nets. We are moving away from a compensation culture. We have a series of schemes that cover accidents in work and motor. Being compulsory, to make them affordable there needs to be scheme design. So we speak out on it.

Ms JODI McKAY: Obviously innovation is part of the principle of ride sharing, point to point or whatever is happening. Does this also present an opportunity for you to innovate or is the key barrier there the definitional issue? Or are you just looking at the same products you have and applying them?

Mr KAYROOZ: No, and I think that is a good point. From an insurer point of view we need to be able to say if there is a safety net here of basic cover that is not tort. People have different income streams and different needs in the point to point industry. We have to be flexible and start to come up with new and innovative options for people. Obviously if we get clarity in saying a third party compulsory insurance is needed, we have to come up with something innovative to make it efficient, fair and risk based.

Ms JODI McKAY: But you are waiting for leadership from—

Mr KAYROOZ: We could go several ways. We do not want to be in a position where we have court challenges. There are two ways of doing it. We could have a series of court challenges, like in America, where we finally get to a stage of clarity, or we can get on the front foot. The biggest problem with waiting for that clarity is that people—injured workers or injured motorists—end up getting caught in that, waiting to see whether they get paid or not paid. These people are caught in the middle of policy owners' legal disputes. So I suppose we are not here today arguing which way is best but encouraging—saying it is a challenge but we are here to help.

The CHAIR: But in one sense you currently do provide a non-compulsory product—income protection insurance—that would protect Uber drivers from injury through their own fault.

Ms URBAN: Yes, but it is not a mandatory policy. Once again, it is the issue of reporting of accidents and whether they are adequately reported. As a personal injury insurer we like to see reporting of accidents no matter what type of accidents they are so we can see emerging risks and create a safer society.

The CHAIR: You are aware of your own claims history. Do you share your own claims history with other insurers? I do not know whether that goes on.

Mr KAYROOZ: In the compulsory schemes what we actually do is the regulators pool that information together so it remains confidential. The group information is pooled together so they can look at improvements.

The CHAIR: What about under your income protection policies? Without giving names, do you share any data?

Mr KAYROOZ: Not on that basis.

The CHAIR: So you could do that if you wanted to commercially; you do not need government to mandate that?

Mr KAYROOZ: We would have to be very careful under the privacy agreements.

The CHAIR: Assuming you can get around the privacy, in terms of your statistical data your actuaries could talk to the other insurers' actuaries and give each other the information?

Mr KAYROOZ: We could explore it; it is just very careful under the privacy and collusion type arguments that come out with large companies working together to set premiums using that information and have reduction in competition and what is seen as collusion.

The CHAIR: So it would be safer to have government mandating a sharing of that information?

Mr KAYROOZ: If you could give it to an industry body—much better. I think with the liability crisis in the mid-nineties where liability claims were going out of control the Government then stepped in and I know in New South Wales it was, "How do we collect that liability information on an industry basis to see what the actual problem was?" and it was actually done through a government body pulling together there rather than letting insurers do it themselves.

The CHAIR: You are a large insurer; in fact, you are the former GIO in New South Wales plus a Queensland insurer and now you operate all around Australia and probably beyond Australia for all I know?

Mr KAYROOZ: No, Australia and New Zealand.

The CHAIR: You are a large insurer. Do you really need to share the data for your actuaries to be able to get claims history of how many people with income protection policies make claims as Uber drivers or point to point drivers?

Ms URBAN: As an insurer you would only get an insurer snapshot of the type of accidents. You would probably need all-of-industry snapshot of accidents to see where the real trends are going. It would depend on the risk profile of each insurer on their books.

Mr KAYROOZ: So from income protection at the moment from a worker's point of view, we have that workers and CTP information. We have a small life insurance company, Asteron—it is not one of the bigger ones so our information in that area is a lot smaller.

The CHAIR: I can imagine that as an insurer information is always valuable but you are not advocating we would mandate legislation that you have got to publicly report all your life policy claims, temporary and permanent disability claims and all the rest of it. What is so special about the point to point industry that you say it is so important we have exposure of claims histories?

Mr KAYROOZ: It is just part of the solution. If you go to compulsory third party insurance it would be good to know—if it is compulsory there needs to be a system of how do you make it compulsory and as part of that process you would most probably have a regulator that oversees it and make sure that it is community related, reflects risk wherever it can and that information is gathered to make sure that it is running well. That was only a thought in that solution if you make it compulsory.

Ms URBAN: In addition, if you are taking income protection to protect yourself as the driver of a vehicle for a pay faring service, at the moment under CTP there is a collection of data in terms of types of accidents and of course there are a whole lot of initiatives across Australia about keeping everyone safe on the roads. In income protection, one component of that will be accidents and we will be missing that type if we are not able to collect that data in terms of how that accident occurs, so that is a part of the picture that will be missing from the overall road accidents.

The CHAIR: But if no change to the point to point industry had ever happened you would also be missing that data, as you are for every driver who does not have any insurance at the moment?

Ms URBAN: This is probably true.

The CHAIR: Thank you very much for appearing before the Committee today. The Committee may wish to send you some additional questions in writing the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within a week of any further questions?

Mr KAYROOZ: Yes.

The CHAIR: Thank you very much for coming along and thank you very much for the time taken to prepare your paper. It has been very helpful.

(The witnesses withdrew)

MICHAEL JOHN HATRICK, Taxi driver, sworn and examined

RICHARD OLSEN, Acting Secretary, Transport Workers Union of NSW, sworn and examined

TOBY WARNES, Head of Legal and Governance, Transport Workers Union of NSW, affirmed and examined

The CHAIR: Thank you for appearing before the Committee today. Before we proceed do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Mr OLSEN: I do not.

The CHAIR: Would any or all of you like to make a brief opening statement?

Mr OLSEN: Yes, I would. The TWU was formed in 1888 and represents around 90,000 transport workers nationally. TWU NSW represents the interests of taxi drivers. It has done since its inception and will do so forever into the future. The TWU has a proud history of standing up for the rights of taxi drivers who are undoubtedly some of the lowest paid and exploited workers in this State. The TWU fought for a system of regulation in the 1970s which led to the system now known as Chapter 6 of the Industrial Relations Act. Then in the early 1980s the TWU fought for a contract determination that would protect the fundamental rights of these drivers.

In 2014 the TWU made an application in an attempt to address the gross exploitation of drivers earning as little as \$7 per hour in one of the world's leading cities. The TWU will continue to fight for the right of taxi drivers and other contract drivers in today's changing landscape. The TWU's fundamental position remains that the current system of industrial regulation is appropriate and fair and serves the needs of the entire taxi industry, not just the selected few. That is why the TWU is calling on the inquiry to recommend the extension of Chapter 6 to the entire point to point transport industry in order to level the playing field and at the same time ensure that vulnerables are not ruthlessly exploited. The TWU welcomes this opportunity today though. Much-needed reform is called for. We, therefore, call for the introduction of portable entitlements schemes for the point to point transport industry as well as a well-resourced and properly funded enforcement agency. We urge this inquiry to carefully consider the submissions of the TWU. Thank you.

The CHAIR: Thank you, Mr Olsen. Can I ask you initially how many New South Wales taxi drivers are members of your union?

Mr OLSEN: I cannot give you a definite answer on that.

Mr WARNES: We would have to take that on notice. We would have to have reference to our membership databases. On my understanding there were about 10,000 taxi drivers in Sydney but we would have to take that on notice.

The CHAIR: How often has your union brought proceedings in the industrial commission on behalf of taxi drivers for them being paid money which was not in accordance with the determination and less than they should have been paid under Chapter 6?

Mr WARNES: With respect, that is not how the contract determination works. In Sydney there are two methods of payment. There is the 50-50 split method and the pay-in method. The pay-in method is essentially a lease arrangement. The bailee pays the bailor a certain amount of money, takes the cab out and then whatever is left over at the end of the night after the pay-in is paid is paid to the taxi driver. It is not so much not being paid the right amount under the contract determination, so it is sort of hard to answer that question. Normally, proceedings relate to unpaid entitlements such as annual leave, sick leave and long service leave.

The CHAIR: But those leave requirements are under the determination, are they not?

Mr WARNES: They are, yes.

The CHAIR: For any non-performance of the determination in the last 10 years how many cases has your union brought to the industrial commission on behalf of taxi drivers for them not being paid in accordance with the determination?

Mr WARNES: I have been with the union for five years in the legal department. I have probably seen between 10 and 15 cases come through in that respect.

The CHAIR: That is cases that the union has taken on behalf of workers or in support of workers?

Mr WARNES: Yes, on behalf of individual workers in relation to their entitlements.

The CHAIR: Are they cases that have gone all the way to a hearing or have you represented the worker with the taxi owner or licence owner to negotiate money for them short of a proceeding?

Mr WARNES: The majority of cases settle before it comes to a formal arbitration. There have been a couple of instances where the bailor simply does not show up and so orders are made in their absence. But there have been one or two instances where it has gone all the way to an arbitration hearing.

The CHAIR: Because we have been told it is absolutely rife that people are not paid annual leave, for example, as they are entitled to under the determination.

Mr WARNES: We agree with that.

Mr OLSEN: We agree with that, absolutely.

The CHAIR: But you have only assisted a handful of drivers in respect to asserting their rights in the last five years. Is that the position?

Mr WARNES: I do not think that is incorrect.

Ms JODI McKAY: Most drivers would not want to speak out about it though, would they?

Mr WARNES: That is the problem. We have addressed that in our submission. One of the biggest problems is awareness out there. I think the vast majority of the industry would not even know that the determination exists.

The CHAIR: So the determination is not working very well at the moment to protect the rights given by it in respect of the existing taxi drivers. Is that the position?

Mr WARNES: There are enforcement issues, yes.

The CHAIR: That has been the case for at least the five years that you have worked for the union, correct?

Mr WARNES: Yes.

The CHAIR: Mr Olsen, how long have you been with the union?

Mr OLSEN: Eighteen years.

The CHAIR: Has the rate of cases been any different over the last 18 years from the last five years that have just been described by your colleague?

Mr WARNES: I think there has been more awareness by us that there is a need for us to be in that industry in the last five years. We have a taxi industry official now that does as much as he can, although I do not say and do not propose to say that it is our job to enforce a contract determination. It is the bailor or the principal who has an obligation to pay correctly. That would be the first point.

The CHAIR: You are right. I am not suggesting other than that. I am just trying to get an idea of the number of instances of enforcement. If I understand your evidence, in the 13 years before Mr Warnes joined the union there were in fact fewer cases than the handful in the last five years. Is that the position?

Mr OLSEN: I would not say—

The CHAIR: You have been following it up more diligently in the last five years, I think you just said.

Mr OLSEN: We did have awareness within the industry since the past five years or before that, but I think the current official within that industry has made many representations that were not done before as we attempted to get a better understanding of the industry and move the union within the industry, which is obviously not borne greatly by the employers within the industry who do everything to keep us out. It is not easy.

The CHAIR: Your union position is that Chapter 6, which seems to be operating particularly badly in respect of the existing people that are covered by it, should be extended to more people?

Mr RYAN PARK: It is the enforcement.

Mr OLSEN: No, I think you are wrong.

Mr RYAN PARK: What you are saying is that there is not enough awareness and enforcement of Chapter 6. I am not putting words in your mouth.

Ms JODI McKAY: You also have vulnerable workers who are not aware of it.

Mr RYAN PARK: Is that right, Mr Olsen, or not?

Mr OLSEN: Yes.

Ms JODI McKAY: And the determination is being breached as well.

Mr OLSEN: Totally breached. We think within that industry English is very much a second or third language, not so necessarily by the principals within it. They are fully aware of the obligations and belong to the Taxi Council yet we see the majority of people within the industry totally exploited. There is a huge enforcement gap that is not being addressed by government and through the Industrial Relations Act and its inspectors.

Mr RYAN PARK: That will not go away if you get rid of it.

Mr OLSEN: No, it would only be worse.

Ms JODI McKAY: One proposition we have heard is the Taxi Council wants significant amendments to Chapter 6 if not the abolition of it. What would be the ramifications of that for vulnerable workers?

Mr OLSEN: It can only be worse than what our position is currently. More people will get less and less work, less and less pay on an hourly basis or shift basis.

The CHAIR: Why would they get less work? Isn't the work governed by the demand of customers?

Mr OLSEN: I think that the shift and the supply of shift to bailees under this agreement can be subject to modification by the principals if they do not give work out and allocated drivers can be left at home. I have a case here before you if you would like to hear from him about how that is achieved by the principals so work is not readily available even though you may be engaged by them. They do other things to keep you sitting at home while other people pick up the work. I think on that basis there could be less work available to these people when you are not seen in an appropriate light by the employer—if I can call it that—in this industry. I also think it is demonstrated where outside of New South Wales the majority of rates of pay and conditions for these types of people and contractors, owner-drivers in particular, are much less than what they earn in New South Wales because they do not have the availability of Chapter 6 to protect them.

The CHAIR: Mr Hatrick, can you follow up on what Mr Olsen said and tell us a little bit about how you have not been given work?

Mr HATRICK: What I would like to say in relation to that is the denial of work to me has taken this form: I am the only taxi driver in Sydney that I am aware of who works to the commission of earnings based method of the bailment system within the contract determination. That is method one. Since I started with my present bailor, who inherited the business from another bailor around the year 2000, denial of work has been a major issue.

The CHAIR: Just before you explain that, there are the two methods you can agree to with regard to remuneration under the determination. Is that a consensual arrangement—that is, does both the bailor and bailee have to agree to whether it is method one or method two, or can the driver select whether they want method one or method two?

Mr HATRICK: The driver theoretically has it within his power to select and not be denied the method that he wants to work on. The way it works is most drivers entering the industry in the last 10 to 15 years that I am aware of are not aware of there being two methods. If they are aware and have been to one of the taxi training schools—very few of them do this—they are educated as to the existence of both methods. Even if they are aware of that they are faced with Hobson's choice when it goes to starting out as bailee driver for a particular bailor because the bailor calls the shots. He is the one offering the taxicab for bailment. It is a take it or leave it situation. The only reason I am in the position I am is way back in 1997 Commissioner Connor of the Industrial Relations Commission heard evidence from various taxi drivers that nobody was being given this choice and he said, "If that is the case I am horrified."

He prescribed a period of time, I think it was a 10 week period, where drivers all across the industry in Sydney could re-elect as to whether they wanted to be on method one or method two. I was one of 10 drivers who made the election to be on method one. The other nine drivers were back on method two within a few months of that. I stuck by what I had elected to be on. After a short period of time I moved to another bailor because I had an industrial dispute with that bailor I am referring to. I made it a condition that if I were to work

for that bailor I would only work on the commission-based method, method one. The bailor was happy with it. Then that bailor went out of business and somebody else took over that business. I have been with them from the year 2000. That bailor has sacked me or threatened to sack me on numerous occasions in that period of time. When you say denied work I refer you to being sacked as defining denied work.

The CHAIR: Threatening the sack but has he allowed you to drive your shifts?

Mr HATRICK: On most occasions, yes, he has allowed me to drive. But on some occasions the only reason he has not denied me work is because the Transport Workers Union have taken it to the commission and arrived at a solution whereby I have a continuance of work with that particular bailor.

The CHAIR: Can you remind me of the difference between method one and method two in terms of how you are remunerated and the plate owner is remunerated?

Mr HATRICK: Yes. The main day-to-day difference is that I submit 50 per cent of the metered takings, less what I spend on fuel, to the bailor. On a more rare occasion it comes down to the way holiday pay and sick pay and long service is allocated. When driving to method one holiday pay, sick pay and long service leave are pro rata to what I earn as per metered takings over a 12 month period.

The CHAIR: Are you doing five shifts of up to 12 hours a week to be a permanent driver under the determination?

Mr HATRICK: I meet the qualifying number of shifts per week. By the way, method two is a rental basis—a basis that President Beattie of the Industrial Relations Commission back in 1968, colloquially known as the Beattie report, expressly forbade in the taxi industry. Yet I am the only one that is going along with what he and the full bench of the commission prescribed in 1968.

The CHAIR: Could you tell us about method two, how people are paid under method two? They pay an amount to the owner and a rental?

Mr RYAN PARK: Or lease.

The CHAIR: They have to wash it, clean it, pay for the petrol, and whatever the taking is after that is theirs?

Mr WARNES: It is known as a pay-in.

The CHAIR: Mr Hatrick, how long have you been working as a driver?

Mr HATRICK: I started driving in December 1979.

The CHAIR: Many years. At the moment what sort of money are you taking home per week? If you do not want to tell me that that is fine.

Mr HATRICK: I am happy to tell you that.

The CHAIR: If you are comfortable to tell us that.

Mr HATRICK: I am comfortable. At the moment it is roughly \$700 a week for a six day 12 hour week. Prior to the advent of Uber and the release of taxi plates on a rental basis, let us call it, back in 2010 I was taking home over \$1,000, well over \$1,000, throughout the summer months and just over \$1,000 in the winter months. Since the advent of Uber the income has dropped off considerably. Having taken 2½ months for long service leave I was astonished how much further income had dropped off.

The CHAIR: When you said prior to Uber in 2010 you were taking well over \$1,000 in summer and over \$1,000 in winter that was with method one?

Mr HATRICK: Method one.

Mr RYAN PARK: You have been on method one for a long time?

Mr HATRICK: Yes.

Mr RYAN PARK: This has come up in our neck of the woods in the Illawarra: I understand that provisions of Chapter 6 only apply to Sydney?

Mr WARNES: That is not right, Chapter 6 applies to the entire State. The contract determination and Chapter 6 are two distinct things. The contract determination applies to metropolitan Sydney.

Mr RYAN PARK: Are there problems with protections for regional and rural drivers and are those problems consistent with Sydney-based drivers? Does that make sense?

Mr WARNES: It does.

Mr RYAN PARK: I am trying to reflect some concerns from my neck of the woods. Are they covered in the same way as a Sydney-based driver-bailee is? Has Mr Hatrick the same provisions as a Wollongong-based driver?

Mr WARNES: It is yes and no I am afraid. A Wollongong or Wagga Wagga based driver, where we have quite a few members, is protected by the provisions of Chapter 6. They get protection from unfair terminations, victimisation and they are able to make applications to the Industrial Relations Commission to establish a new contract determination. That can be a broad award-based contract determination or it can be on specific issues; the commission has broad powers in that respect. In respect of the 1984 contract determination that applies in Sydney, the terms and conditions in that document do not apply to drivers in Wollongong or Wagga Wagga, or anywhere outside of Sydney.

Mr RYAN PARK: Is that a problem?

Mr WARNES: It has been a problem, yes. We went into this in our submissions. It is not a problem with the system per se. The system allows for that to be remedied, but at the current time there are no contract determinations that extend outside the Sydney metropolitan area. I suppose it is not a problem with the system, it is an industrial problem. So in Wagga Wagga, as I said, we have a collection of drivers who work for a cooperative. They have their own unique issues. They seem, at the moment, to be relatively happy with their remuneration standards and things like that, but they have had some industrial unrest recently where there were several terminations due to various factors. For example, one taxi driver was caught not wearing shoes, another was discovered to be a member of the union. The protections that stem from Chapter 6 of the Industrial Relations Act assisted those drivers in that respect. My understanding of pretty much everywhere outside the Sydney metropolitan area, they are all on the method that Michael works under, in that the pay-in method is unique to the area covered by this contract determination.

The CHAIR: How are they remunerated in the country areas if it is not pay-in?

Mr RYAN PARK: They are under the Michael system, option one, commission-based, I think you call it.

Mr WARNES: Yes, just a split.

Mr RYAN PARK: You do a split. Bailor pays for fuel and then you take—

The CHAIR: It is more like a joint venture.

Mr HATRICK: If I can add to that, a lot of that depends on where outside the metropolitan area you are looking at. I will just make it up. Say in Armidale they might have a 50:50 based system, but the driver pays for fuel. Down the road in Gunnedah they might have another variation of that thing except the onus of the fuel is on the other party. It is all over the place in country New South Wales, as I understand it.

The CHAIR: You would have to agree with me that under the current system the taxi licensee outside of Sydney, where it less regulated, has an interest in the taxi drivers earning enough money so that they at least want to keep driving, otherwise he or she does not get any revenue from the taxi.

Mr WARNES: In theory.

The CHAIR: Presumably, whatever these variances are, they are taking into account the local economics of the situation?

Mr OLSEN: That may well be the case in certain circumstances. We would have to say that there is quite a bit of unrest in the taxi industry in regional NSW. I can recall only last year a number of taxi drivers joined us from Port Stephens, up past Newcastle somewhere, because they were having issues with their co-op. Wollongong is the same. We have had issues with the co-op down there. We have had taxi drivers from Albury and Wagga join us. The only reason they ever join us and take the chance of being known to the employer as being union is because they have issues.

The CHAIR: Are these issues in part driven by the fact that people are wanting to make changes because Uber is coming?

Mr OLSEN: Terms and conditions.

The CHAIR: Are they trying to make changes so that they can compete if and when different kinds of competition come in?

Mr OLSEN: Overall I would say taxi drivers are very concerned about Uber coming in.

Ms MELINDA PAVEY: It is not the issue in the country that it has been in Sydney?

Mr WARNES: I do not think Uber has extended to the country.

Ms JODI McKAY: Only in Newcastle.

Mr WARNES: Has it gone to Newcastle?

Mr RYAN PARK: It has gone to Newcastle. It is not in Wollongong yet.

Ms MELINDA PAVEY: This issue is not ridesharing related, it is industrial relations related.

Ms JODI McKAY: Michael, obviously in the work we did with the Point To Point Transport (Taxis and Hire Vehicles) Bill we have heard about the impact it has had on the taxi industry. Have taxi drivers been particularly hit hard?

Mr HATRICK: It has been devastating. To go out on a Friday, Saturday, Thursday night for most bailee taxi drivers is reward—under the way things used to be—for working the quiet nights, Sundays, Mondays, Tuesdays, and Wednesdays to an extent. Now the way the situation is, very few Uber drivers go out on the quiet nights, Sundays, Mondays and Tuesdays. What happens is they all pile out on the good nights, Thursdays, Fridays and Saturdays. Now those good nights are—I exaggerate not—as bad as the starting nights in the week, Sundays, Mondays and Tuesdays. The whole week has been devastated by Uber in respect of takings, in respect of entertainment centres, particularly, like Oxford Street, Kings Cross, Double Bay where normally you would get a lot of street hails at closing time of various hotels and clubs and things. Now it is so disheartening. You see people standing on the side of the road looking at their smart phones communicating with their Uber provider.

Ms JODI McKAY: If this Committee was to make a recommendation to amend Chapter 6, and the objective of that was to water it down, which is what the NSW Taxi Council wants—it sees the relationship as being one of—what did they call it?

The CHAIR: It is an unequal playing field.

Ms JODI McKAY: No, they saw it as being a joint venture type arrangement, but basically Chapter 6 would not be there; you would not have those protections. What would happen to drivers?

Mr HATRICK: Without the protections offered by Chapter 6, you would have to say you would be devoid of the protections offered by the contract determination. That would mean under the current situation you would be working very, very hard for very, very little money all year around without any paid holiday, without any sick pay. Under those circumstances, it would lead to situations where drivers' mental health would start to deteriorate much more than it already is. I believe there are huge mental health issues in the industry now because of overwork. It would mean that drivers living on meagre wages do not live well, do not eat healthy food because of long hours. They become sick and unwell. They would then be driving their taxis while they are sick and unwell. It is bad enough that drivers are working 12-hour shifts. It is really bad that they be inclined to work 18-hour shifts, what we call colloquially in the industry semis, which means semi-doubles. Doubles are 24-hour shifts. You would have drivers working sick. When they should be at home in bed recovering from an illness they would be out driving because they would not have any access to sick pay. The situation is already bad enough, it would just compound a really bad situation.

The CHAIR: Is it the case now though that under Chapter 6 and the determination there is no limit on the number of hours you can work?

Mr HATRICK: The limitation to the number of hours a driver can work is not itemised in the Industrial Relations Act anywhere. It is mentioned in the Passenger Transport Act—at least it was the last time I looked, which was quite a few years ago and it might have changed now.

The CHAIR: What is your understanding that that legislation prescribes?

Mr HATRICK: That you cannot work longer than nine hours without a break and I am not sure about whether it limits you to a 12 hour shift but the determination speaks of two shifts in a 24 hour cycle, so you would think that that would infer that a shift is a 12 hour shift if they are talking of a 12 hour cycle.

Mr WARNES: If I may on that point too, and I would like to correct Mr Hatrick, the Act actually does empower the commission to set maximum hours of shifts and section 312 subsection (1) (d)—

The CHAIR: Is that the Industrial Relations Act?

Mr WARNES: Industrial Relations Act.

The CHAIR: Have they set—

Mr WARNES: No, there is no minimum, maximum hours in the contract determination as it stands currently.

The CHAIR: Mr Olsen, you have given some evidence that there is industrial unrest in a number of different areas in the cooperatives in regional New South Wales. Do I take it that the taxi industry in regional New South Wales is struggling financially as an industry?

Mr OLSEN: I am not aware of that. I do not know.

The CHAIR: You do not know?

Mr OLSEN: No.

The CHAIR: But you do accept that anything that would add to the cost of running a taxi in regional New South Wales will potentially be harmful to the industry?

Mr OLSEN: I do not know. I would have thought that if there is any additional cost being passed on in the industry, it would be passed on to the consumer through the regulatory monitoring process every year through IPART.

The CHAIR: Is that not the problem, the fares are actually capped at any one point in time, so if you add to the cost base of the operator then if the operator cannot get a proper return for their investment on their vehicle the alternative is to go out of business, is it not?

Mr OLSEN: I do not know. It is a likely scenario I would guess. I am not aware that we may propose that.

Mr WARNES: It makes business sense.

The CHAIR: Have you done a financial analysis?

Mr OLSEN: No.

The CHAIR: Your union has not done any financial analysis of the impact of making Chapter 6 apply throughout the State as you have suggested?

Mr OLSEN: Chapter 6 applies across New South Wales now.

The CHAIR: Sorry, the determination that you want—

Mr WARNES: No, it is Chapter 6. We are not proposing to extend operation of the determination to ride sharing or the entire point to point industry. We say in our submissions we are proposing that Chapter 6 be extended, and Chapter 6 provides a mechanism in which the Industrial Relations Commission can make contract determinations.

The CHAIR: As soon as Chapter 6 does apply throughout the industry your union will then apply for a determination, will it not?

Mr WARNES: I cannot predict the future but that would be our regular MO.

The CHAIR: Would there be about a 99.9 per cent chance that that would happen or is it higher than that?

Mr WARNES: Sam next to me is probably the person to ask.

Mr OLSEN: I would sit here and say it would be much, much lower than that but we will obviously look at what would be in the best interests of the membership et cetera to explore as to what is available. At the present time, as we know, there is a low membership base in the taxi industry in regional New South Wales. For us our main game is to look after our membership. So we do not have membership out there. That will be one point, that is one area that we would look at. But we also have responsibilities to look after potential new membership and see where that takes us. There is quite a bit on our plate at the moment. It would certainly be there for our consideration but where that sits on the scale from one to 10, I do not propose it would be number nine or number 10.

Ms JODI McKAY: If you were to extend Chapter 6 across the point to point industry do you foresee any problems or challenges?

Mr WARNES: At the current time, no. Obviously you have got the challenge of the new technology which drives Uber and GoCatch but those problems are currently being, I suppose for want of a better term,

thrashed out between the Taxi Council and the TWU in the Industrial Relations Commission as we speak. We have, annexed to our submission, made an application to the Industrial Relations Commission to alter the contract determination and a lot of that case involves changing technologies in the industry, the increased amount of control that bailors exert over their bailees. We do not see the new part of the industry, the point to point transport industry, as being too far removed from the current taxi industry. In fact, we see it becoming closer and closer to that industry.

You read in the papers, and I think our friends at the Uber Drivers Transport Association came out in the paper maybe a month ago about Uber drivers having their contracts or their services cancelled without any recourse. I believe that was in Queensland but I am sure it happens in New South Wales.

Ms JODI McKAY: We have heard evidence of that today with deactivation and the issues with that.

Mr WARNES: That does not differentiate terribly from circumstances like Michael has suffered where his job is at the whim of his bailor and he is terminated because he wants to take some annual leave to go and see his mother in New Zealand or his family in New Zealand. I think if Uber drivers drop below four stars, or maybe 4½ stars, their service is cancelled. We see Chapter 6 as something that can protect the entire industry. We see the industrial interests of both groups as being very closely aligned. Of course, there are going to be issues but there are issues of enforcement as Mr Park raised earlier as it currently stands. So they will continue to be issues but they can be worked through by us and the taxi industry. The most important thing about this Act is it does allow broad industry consultation; it allows the entire industry to get together in front of an independent umpire and figure out what those issues are and how to fix them.

The CHAIR: Mr Olsen, in fairness to the union, I think I should put a proposition that I put to the Taxi Council for your response so that you have got an opportunity to deal with it. The Taxi Council says that Chapter 6 is quite an extraordinary piece of legislation. In fact, it says that it is only present in New South Wales and in no other jurisdiction in the world are provisions like Chapter 6. The example I gave them, agreeing with their proposition was this, that if I engage a plumber, a plumber may go to Kennards to buy trenching equipment and the like and hire the plant to perform the services for them and nobody suggests that Kennards is employing the plumber or that there should be some industrial arrangement in the Industrial Relations Act governing the relationship between Kennards, the plant supplier, and the plumber who provides the services to my home. But in the taxi industry under Chapter 6 you have got an owner of a vehicle, which is effectively a plant supplier, being regulated as to its relationship with the service provider, which is the driver. That is a very unusual situation. I cannot think of any other contractual relationship where a provider of plant has legislation regulating the terms and conditions upon which they provide their plant to a supplier. You can agree or disagree that that is an unusual situation, but not only is it an historical aberration in the taxi industry but you are also advocating that that provision be extended to ride sharing, hire cars and other parts of the point to point industry. How do you respond to those propositions.

Mr OLSEN: I would say that I do not think we can draw an analogy between a plumber going to a store to hire some equipment and taking the owner-driver or the bailee and bailor relationship. They are very two very distinct, different ends of the spectrum; there is no correlation between the two.

The CHAIR: Why do you say that?

Mr OLSEN: The plumber can go anywhere and hire the plant.

The CHAIR: A driver can go to Uber, they can go to taxi licensees, and they can buy their own car. A driver can do a whole lot of different things too.

Mr OLSEN: There are two things he can do. He can work for either of the two conglomerates within Sydney, get engaged and go through a system of training before they get to that, where the Taxi Council and others go, they go through that induction program; the plumber does none of this.

The CHAIR: No-one would ever suggest that the plumber should be paid annual leave by Kennards, no-one would suggest that they should be given long service leave or any of the entitlements that Chapter 6 is giving drivers under the determination.

Mr OLSEN: And so it does to all contract determinations within the confines of New South Wales.

The CHAIR: But it is a highly unusual situation, is it not?

Mr OLSEN: It is getting much more common throughout the world we would be hopeful. There have been significant steps to move to a safe rates tribunal environment such as Chapter 6 throughout the work in Geneva and it seems as though through conventions that it is on foot that what we have got, which may be unusual—it is true that it is not in any other State but there are all forms of arrangements between owner-drivers

et cetera in all other States. They work under their own arrangements with the principal contractor and they get those terms and conditions that we talked about and whether they take them off in sick leave or annual leave or they are paid for them within their rates.

The CHAIR: We will give you an opportunity in writing to point out other jurisdictions where you say there are like arrangements to Chapter 6 and the determination in New South Wales because I would be interested to look at that.

Mr OLSEN: My submissions were, if I did not cast them correctly, that the union is taking it up through the ILO and other places within Geneva at the present time to establish the Chapter 6 safe rates tribunal environment throughout Europe.

The CHAIR: But currently it is not anywhere in the world.

Mr OLSEN: That is correct but there is in all facets of owner-drivers, bailees inclusive, in New South Wales. This is not unusual to the taxi industry within itself.

The CHAIR: When the plumber goes to Kennards that is a bailment arrangement. What other bailment arrangements do you say that Chapter 6 applies outside the taxi industry?

Mr OLSEN: I don't, I said owner-driver and bailment. I refer to owner-drivers within the concrete industry, within the quarry industry, within the waste industry. There are all forms. There would be a dozen or so contract determinations, including the general carriage contract determination that is currently before the courts in New South Wales—and that covers all forms of truck driving, owner-drivers within the State of New South Wales. It is not unusual that these people are paid annual leave, sick leave and long service leave. It is the case that either they get it when they take it, as they do in a bailee arrangement, or they get paid for it within the rate at which they are paid. Therefore they do not get it when they take four weeks annual leave but they get paid for it in each hour they work.

The CHAIR: Are there bailment arrangements in the trucking industry?

Mr OLSEN: No.

Mr WARNES: There are pockets of it. I have personal experience of a courier company down in Wollongong where they operate under a bailment arrangement.

The CHAIR: Chapter 6 does not apply to them, does it?

Mr WARNES: It does.

The CHAIR: I assume that your union supported the introduction of the Federal Fair Work Act when the Rudd Government introduced the legislation?

Mr OLSEN: The Fair Work Act?

The CHAIR: Yes.

Mr OLSEN: As against WorkChoices, yes.

The CHAIR: Do you have any opposition to the relationship of drivers being governed by the Fair Work Act in New South Wales in place of Chapter 6?

Mr OLSEN: If they are employees then obviously they would be going to the Fair Work Act, that is where they are all applied. I do not believe the Fair Work Act allows for bailees or owner-drivers to be inclusive within that system.

The CHAIR: What about the Independent Contractors Act?

Mr OLSEN: A very poor Act.

The CHAIR: Who introduced that.

Mr WARNES: John Howard.

The CHAIR: And the Rudd Government did not change it.

Mr OLSEN: No, unfortunately.

Mr WARNES: The Independent Contractors Act has a specific exclusion of Chapter 6. So anyone who Chapter 6 applies to is not covered by the Independent Contractors Act.

Mr OLSEN: Kevin Andrews was the one who saw the merits of Chapter 6 and left us alone.

The CHAIR: That would have been the last time you would have agreed with him, would it not?

Mr OLSEN: And first.

Mr WARNES: First and last.

Mr HATRICK: Can I just say something about the analogy with Kennards Hire and the plumber?

The CHAIR: Yes.

Mr HATRICK: This was a question that came before President Beattie of the commission back in 1968. He was searching around for a definition in industrial law of bailee taxi drivers. He was the first person to confer the term "bailee" to taxi drivers but he stipulated that it is not an ordinary bailment. Taxi drivers work according to a regulated meter—the taxi meter—so they have no way of determining what their income is going to be. He said, "Okay, we will call them bailees but they are bailees with a difference." I think he used the term, "limited, restricted bailees". I do not understand how the language converts to it but it does; it means that we are bailees that have certain rights that employees get—the main ones are entitlements and protections against termination. So that is the difference between the plumber and us. The plumber can determine how much he works for, where he wants to work and all that kind of thing; we are regulated and we cannot determine those things.

The CHAIR: Except that just as Kennards does not supervise the work of the plumber, the owner of the taxi plate does not supervise the performance of the work by the driver. Do you agree with that?

Mr HATRICK: Back in 1968 far less so than now, but in this day and age there are all kinds of ways that the taxi owner can check on the activities of the driver.

He can monitor it through GPS, the various data from the radio network the drivers are working under and things like that. He can determine, especially under the rental system.

The CHAIR: He can do some limited monitoring, but—

Ms JODI McKAY: Were you going to say something, Mr Warnes?

Mr WARNES: I just wanted to pick up on the point about Kennards. Something that has been missing from our answer so far is the issue of vulnerability. As Mr Hatrick has been referring to the whole time, that is why the Beattie report came down and said the taxi industry and the lorry owner-driver sphere of the transport industry were ripe for regulation because there were people who were extremely vulnerable, at the same level of vulnerability as employees, so they deemed it fit to essentially treat these people as vulnerable people and regulate them under Chapter 6.

The CHAIR: But plenty of plumbers, builders and others go bust because they do not make any money.

Mr WARNES: Absolutely.

The CHAIR: Are they not just as vulnerable as a driver? There is no way of guaranteeing their economic income. There is no-one prescribing that they have a minimum wage or anything like that.

Ms JODI McKAY: Yes, but I think on balance there would be far more vulnerable people within the taxi industry than in the plumbing sector. I do not think we see many taxi drivers earning \$200,000 a year as with plumbing.

The CHAIR: I have been in taxis where the driver is a foreign qualified veterinarian or doctor—all sorts of people.

Ms JODI McKAY: Yes, because they cannot get a job doing what they are actually qualified to do.

The CHAIR: I do not think they are inherently vulnerable.

Mr OLSEN: They are earning less than \$7 an hour. I think they are pretty vulnerable.

The CHAIR: This is my point: Builders go bust because they do not earn anything. Plumbers go bust because they do not earn anything.

Ms MELINDA PAVEY: Or people do not pay them.

The CHAIR: They are not the only vulnerable people, and no-one is guaranteeing. We do not have an economy which guarantees them an income.

Mr WARNES: That is more so because of the availability of work rather than the rate they get for the work.

The CHAIR: It could be bad business management; it could be a whole—

Mr WARNES: That is exactly right.

The CHAIR: That could be reflected in their rate of work.

Ms JODI McKAY: They are also small business operators.

The CHAIR: They are independent contractors.

Ms MELINDA PAVEY: The bailee-bailor relationship is a small business operation, really.

Ms JODI McKAY: This is the whole argument—this is why we are here.

Ms MELINDA PAVEY: It is the foundation.

The CHAIR: It is. We could probably go on like this forever. Thank you for appearing before the Committee today. The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply with one week to any further questions?

Mr OLSEN: Absolutely.

The CHAIR: Thank you very much, gentlemen, for your time today. It has been very helpful to the Committee.

(The witnesses withdrew)

(Short adjournment)

VICKI TELFER, Executive Director, NSW Industrial Relations, affirmed and examined

BARBARA WISE, Director, Point to Point Implementation, Freight, Strategy and Planning, Transport for NSW, affirmed and examined

The CHAIR: Thank you for appearing before the Committee to give evidence today. Before we proceed do you have any questions concerning the procedural information sent to you in relation to witnesses and the hearing process?

Ms TELFER: I do not, no.

Ms WISE: No.

The CHAIR: Would either of you or both of you like to make a brief opening statement?

Ms TELFER: I do not have an opening statement.

Ms WISE: Not particularly.

Ms JODI McKAY: That would be a no.

Ms WISE: Yes.

The CHAIR: Can I ask you an assortment of questions off the bat—just issues that have come up during the course of the day. The first is: it was suggested to us in evidence by the Hire Car Association that they are being charged payroll tax as hire car operators as some sort of thin end of the wedge that is then going to move into other parts of the point to point industry but they are concerned that that is operating differentially compared to their competitors. Do you have any knowledge of that?

Ms WISE: Not in the slightest.

The CHAIR: Is that something we could put on notice?

Ms TELFER: We would need to take that on notice. I have no knowledge of that at all. It is not an area for which I am responsible.

Ms MELINDA PAVEY: You said there was a lot of confusion in government around that particular issue?

Ms WISE: Yes, Treasury and/or the Office of State Revenue might need to provide some advice.

The CHAIR: The next thing I want to ask you about was the concern that section 106 of the Industrial Relations Act could apply to the bailment arrangements in the point to point transport industry. We kindly received a letter from Ian Peters on this issue.

Ms TELFER: Yes.

The CHAIR: It rather seems to me that the bailment arrangement between a taxi driver and a plate owner is not a contract whereby a person performs work within the meaning of section 106 of the Industrial Relations Act. The reason I say that is because it is a contract of bailment; it is not a contract whereby a person performs work any more than under a Kennards Hire arrangement, which I keep using as my example. In one sense you could say that getting the plant to enable you to perform services is a contract whereby a person performs work but it is really a contract incidental or facilitative of someone performing work rather than a contract whereby the person performs work. Do you wish to comment on that view of section 106?

Ms TELFER: Chapter 6 of the New South Wales Industrial Relations Act was specifically established because it is an unusual relationship between the owner of the vehicle and the person who is driving that vehicle, so it is quite unique, though I note that there have been some recent developments in Victoria that are setting up a similar arrangement. So people who are driving plated vehicles are not employees in the true sense of the term. They might be characterised as individual contractors. I think there are some slight differences of emphasis in that the drivers—that is, the bailees—are often required to conform to the owner's expectations. They might need to wear a uniform or work particular shifts or operate in particular areas and therefore they are not free to contract in the true sense of the term "independent contract", but I think it would be mostly true to say that they are not employees in the true sense of the term. New South Wales until recently has had a unique jurisdiction but everything will depend on the facts in front of it.

The CHAIR: The evidence this morning from the Taxi Council and their lawyer that it had given evidence was that it is very clear on legal authority that there is not an employment relationship between a driver and a taxi owner; that they are co-venturers at law; that all they are doing is bailing the asset under a bailment arrangement. They did not seem to have any doubt about it. Are you expressing a different view?

Ms TELFER: Not necessarily. It will turn on the facts of a particular matter. I would not want to say categorically that they are never going to be an employee because there might be particular indicia that come to light that would say that person is in fact an employee. I think it is more likely that they are not; I think it is much more likely that they are not but there might be particular circumstances where someone is performing work that is more akin to that of being an employee than not.

The CHAIR: In the deep recesses of my memory I seem to recall a High Court decision in about the late 1990s or early 2000s involving bicycle riding couriers?

Ms TELFER: I remember that one very well. I was at WorkCover and we were looking at workers compensation coverage.

The CHAIR: The conclusion of the High Court there was that they were not employees; that they were independent contractors, and you are right that you have to look at all the circumstances of the case and the nature of the relationship. But the level of control, which is quite an important aspect of the decision by a taxi plate owner over a driver, would seem to be quite limited?

Ms TELFER: That may well be, yes.

The CHAIR: They are driving around; they have quite a degree of autonomy?

Ms TELFER: Yes.

The CHAIR: Your position is that you are not as emphatic as the Taxi Council. They seemed to suggest that there were Federal Court decisions in the taxi industry particularly on point.

Ms TELFER: I would need to have a look at those particular matters that they have raised and provide some additional commentary to this Committee about that. But I think the overall summary that I would say is it was recognised back in the 1970s that there was an unusual situation with regard to people driving taxis and the owners of those taxis and a unique jurisdiction was set up in New South Wales to cover those particular circumstances. That is where we are at the moment.

Ms JODI McKAY: The Taxi Council obviously wants to see the removal of Chapter 6. Do you have a view on that?

Ms TELFER: I have no view on that. That is a matter for government policy.

Ms JODI McKAY: Were the arrangements in the 1970s specifically around some of the vulnerabilities of the people within the industry?

Ms TELFER: I understand that there was commentary about that at the time, though what we also know is in the last 30 to 40 years the nature of employment and the nature of work has changed quite considerably. One of the reasons why I am always cautious about coming out in a black-and-white way about these types of things is that as circumstances change and evolve we need to make sure that we are keeping regulation up to date and contemporary.

Ms JODI McKAY: Another issue raised by the Transport Workers Union [TWU] was in regard to enforcement. They see that there are major issues with enforcement of the determination. Whose role is it to carry out that enforcement and are you comfortable that is happening?

Ms TELFER: I am comfortable that is happening. I am quite surprised to hear from the TWU those comments. NSW Industrial Relations is the regulator and does do enforcement activities. They have never contacted me to say that more needs to be done. In fact, we have pursued a number of strategies over the years to educate taxi owners and operators about their legal entitlements and obligations. The education campaigns include direct engagement with peak industry stakeholders, information sessions, webinars, facts sheets and other resource materials.

In the last six years we have done two proactive targeted campaigns in the taxi industry. There was a very significant one in 2009 and in 2010 about record keeping and annual leave entitlements. We commenced another campaign around about 18 months ago where we have been out to Sydney Airport and done a significant amount of work. We have also undertaken some prosecutions in this regard. I would be interested to know what more the union would be saying needs to be done because we have been working with both the Taxi Council and the TWU and the Taxi Drivers Association to do enforcement activities in the taxi industry.

Ms JODI McKAY: This inquiry is looking at equity across the point to point sector in relation to workplace relations and some of those issues particularly for people working in the sector. There is pretty much nothing there at the moment for ridesharing services. Do you have a view on what should be there and whether not having anything currently poses any difficulties or risks?

Ms TELFER: That is a matter for government policy. It is not my role to make government policy. Once the policy is made or Parliament has decided on a particular course of events—

Ms JODI McKAY: I am just asking you as executive director.

Ms TELFER: I am sorry, that would be really inappropriate for me to comment on government policy.

Ms JODI McKAY: I am not asking you to formulate policy. I am just saying in the point to point sector we have one area that is not regulated at all. From your expertise does that pose any particular problem?

Ms TELFER: Sorry, I am going to keep on harping back that it is not my role to say what government policy should be.

Ms JODI McKAY: It is not a policy question, I am sorry. I am not asking you to formulate policy.

Ms TELFER: I am not going to comment on policy and what the regulation should or should not be.

Ms JODI McKAY: Honestly, I am not asking you that. I am saying to you in your position as executive director, does having an industry which is unregulated, whether it is ridesharing or any other industry, pose particular problems? These are some of the challenges and changes that with a disrupted economy we are going to have to be able to deal with. I reiterate my question. Are you refusing to answer that?

Ms TELFER: I am not refusing to answer your question. I am a public servant. It is not my job to say what the government policy should be or not be. That is a matter for government and it is a matter for Parliament.

Ms JODI McKAY: I come back to my point that I was not asking you that.

Ms TELFER: I am terribly sorry but I am just not in a position to answer.

Ms JODI McKAY: Perhaps we can put something in writing to you.

Ms TELFER: I would be happy to take something in writing.

The CHAIR: The determination pursuant to Chapter 6 does put a cost burden on a certain segment of the point to point industry which is not borne elsewhere. Is that right?

Ms TELFER: It does regulate an industry that would not otherwise be regulated because of its particular nature. There would be costs associated with that.

The CHAIR: If, as the TWU submission says, that burden is spread to more sectors of the industry it will increase the cost of those sectors of the industry too, I imagine?

Ms TELFER: If there are costs associated with regulating one part of an industry at the moment and another similar, parallel part of that industry is then also regulated it would be a logical conclusion to think that there would be some additional costs. But there might also be benefits.

The CHAIR: If we just stick with the costs for a minute, the cost then will be reflected in one of two ways: either a reduction in profit—and if that sector of the economy that is not currently subject to those regulations is not making a profit or only marginally making a profit it could mean that people go out of business—or it will have to be reflected in higher prices.

Ms TELFER: Costs are normally passed on but benefits are also passed on.

The CHAIR: Unless the price is regulated and the costs cannot be passed on.

Ms TELFER: That would be correct.

Ms MELINDA PAVEY: The new Point to Point Transport Act provides that providers of a booking service must ensure the health and safety of their drivers and ensure their services are safe. How do you intend on enforcing such obligations with ridesharing companies?

Ms WISE: Yes, you are correct there is a general duty of care on booking service providers and taxi service providers in the legislation. The Government decided to establish a new regulator in order to put some focus on this new regime and on the industry in adapting to the new regime. Once the Point to Point Transport

Commissioner is appointed and the new regulator is up and running along with the regulations that will sit under the Act there will be audits and all those kinds of things about record keeping and about the systems that booking service providers and taxi services have in place in order to satisfy themselves that they are mitigating risks.

The CHAIR: Under the Taxi Drivers Contract Determination the most onerous provisions apply where the driver is determined to be a permanent driver as opposed to a casual driver. The threshold for whether somebody is a permanent driver is that they get at least five shifts of up to 12 hours a week. We have heard evidence from one driver that plate owners are very careful never to give a driver five shifts of up to 12 hours a week because that will mean that they are a permanent driver, and annual leave and other provisions will kick in. It seems to me that if those benefits are reasonably easily avoided by the vehicle owner, in the case of a taxi, it rather diminishes from the proposition that there would be much benefit in extending those rights beyond the taxi industry to other parts of the point to point industry, do you agree with that?

Ms TELFER: I think you are asking me to traverse Government policy and I am uncomfortable doing that. Perhaps if there is a specific question to take on notice I will answer that.

The CHAIR: It is a contract determination. You said that there can be benefits and I suppose I am saying if the benefits are easily avoided by the party that would have to pay them it is not much of a benefit, is it?

Ms TELFER: There might be other intangible benefits, for example passengers who know that they are getting a taxi driver who is going to operate in a safe manner or that the taxi will be maintained in a particular condition. There might be other kinds of benefits as well for people who are not going from working a number of shifts for a number of different owners and therefore are driving a number of hours that would make them unsafe as drivers.

The CHAIR: There is no prescription of the maximum number of hours?

Ms TELFER: There is not.

The CHAIR: The determination, as it currently stands, is an incentive to casualise the workforce rather than give drivers permanent employment because when they are given permanent employment the owner is financially penalised. It incentivises the practice that Mr Jools, in his evidence, explained, which is that the plate owners are careful never to give enough shifts and hours to make their drivers permanent?

Ms TELFER: We see all kinds of stories when we are looking at particular circumstances.

The CHAIR: If it is seen to be desirable to give people permanent employment you would not want to have a structural impediment or disincentive to doing that, would you?

Ms TELFER: That is the way the determination is at the moment.

The CHAIR: Has any investigation been made of the financial impact of expanding Chapter 6 more broadly, as the Transport Workers Union has suggested?

Ms TELFER: Not as far as I am aware. It certainly has not been while I have been in the chair as the executive director. It is not something we have been asked to look at or, I understand, is being done. There was a report done in 2002 for the national competition principles around Chapter 6 of the New South Wales Industrial Relations Act and that goes through various provisions but, as I understand it, that is the last time there has been examination.

The CHAIR: That was an examination of potential anti-competitive legislative provisions that would be inconsistent with the competition principles?

Ms TELFER: Yes, that is right.

The CHAIR: Federal funding was tied to breaking down any anti-competitive legislative provisions?

Ms TELFER: That is correct. A very lengthy report was undertaken and they concluded there are a number of regulations for independent contractors but there was some costs and benefits of Chapter 6 and there are some roles to be played by Chapter 6. Apparently at that time all the interviewees were adamant that Chapter 6 did little to reduce the intensity of competition in the industry. In having a look at this there was a large emphasis on the trucking and courier industry because Chapter 6 is a broad jurisdiction, as you would be aware. They argued that unrestrained market forces would not yield longer term price levels and they were capable of competing fiercely. At that point the Chapter 6 was not considered to be an impediment to the Federal jurisdiction.

The CHAIR: At that point there was no Uber?

Ms TELFER: That is correct.

The CHAIR: And at that point the hire car segment of the point to point industry was very small?

Ms WISE: Yes. I would add it was more regulated than prior to Uber's arrival. There was some work done in the early 2000s to remove some of the regulation from the hire car industry as well.

The CHAIR: That regulation kept the hire car industry as a separate and different market from the taxi market so there was not competition between them?

Ms WISE: Potentially. What the changes in the early 2000s did was lower the licence price in Sydney and it enabled more single owner operators to provide service.

Ms MELINDA PAVEY: Owner operators?

Ms WISE: Yes, smaller players. There was previously larger fleet operators that had a larger share of the hire car market. There were far fewer hire cars as well.

The CHAIR: Do either of you have a view on whether the current legal relationship between car owner and driver could come under the Federal Fair Work Act?

Ms TELFER: Our advice is that, depending on the particular facts, generally, no, it is not something that would come under the Fair Work Act because these are not generally contracts of employment, which is what the Fair Work Act is interested in. There is a carve-out under the Federal Independent Contractors Act, but if that carve-out did not exist it might but it also might not. Those individual drivers might have access to the independent contractor's provisions, so the Federal Court. But it would depend on the facts. There is no certainty at this stage with that. It is not something that has been tested as far as we are aware.

The CHAIR: Has anyone looked at this question: The fact that the Commonwealth legislates in a particular area where there is State legislation means that if there is State legislation on a matter within that area of Federal legislation then the State legislation is inconsistent with the Federal legislation. What I am saying is the Federal Government passes an Act with regard to independent contractors and it makes a decision that it will not make any pronouncements about independent contractors in the taxi industry. I am not sure how Chapter 6 works under the Act but there are instances where if the Federal Government legislates in an area, even if they legislate in an area but do not touch upon the particular circumstance, that is an inconsistent piece of legislation under section 109 of the Constitution with any State Act. There are a number of cases about that, particularly in the industrial relations area. Has anyone looked at whether the Federal Independent Contractors Act makes constitutionally invalid Chapter 6 of the Industrial Relations Act?

Ms TELFER: I would need to take that on notice to give you a more comprehensive answer, but my understanding, and this precedes my time in the chair, is that when NSW industrial relations powers were being ceded to the Federal Government in 2009, that there was an agreement reached that Chapter 6 would be subject to a carve-out, and that was agreed between all the parties and, on that basis, I understand it is constitutionally valid, but I can get some further advice on that and provide some details to the Committee.

The CHAIR: It might be interesting because if the taxi plate is owned by a corporation, then it would fall within the Commonwealth jurisdiction and it would not be a question of some agreement between New South Wales and the Commonwealth as to whether it was or was not covered by the Federal legislation. There may be an issue, at least insofar as corporations own taxi plates and perhaps others that would fall within Commonwealth legislative power in some way that Chapter 6 is somewhat unconstitutional.

Ms TELFER: We do not think it is unconstitutional. I am sure that when the referral of powers happened it was thoroughly checked and, of course, the Fair Work Act concerns employment and, as we have talked about in this Committee, and I am sure you have heard lots of discussion today, these are generally not contracts of employment.

The CHAIR: I agree. I am talking more about the independent contractors legislation, the Federal—

Ms TELFER: We can have a look at that. I would hazard a guess to say when the referral of powers was happening, this was thoroughly looked at and it was found to be constitutionally valid. I cannot imagine the Commonwealth would agree to a carve-out that was not, but we could have a look and provide some further advice to the Committee.

The CHAIR: I think I am right in saying that the legislative history is that Chapter 6 was introduced in the NSW Industrial Relations Act then there was the Work Choices legislation, which confirmed that the

corporations power extended to industrial relations and, therefore, the Commonwealth had constitutional authority to legislate with regard to industrial relations.

Ms TELFER: Yes. Around 2006, yes.

The CHAIR: That is right. Then we have the Fair Work Act after that. I am not sure where the Independent Contractors Act fits within that, but there may have been at the time that Chapter 6 was introduced into the New South Wales Parliament some doubt about whether that was the exclusive constitutional purview of the New South Wales Parliament.

Ms TELFER: As I said, we can check and we can provide some further advice to the Committee.

Ms MELINDA PAVEY: In relation to the Australian Capital Territory [ACT] legislation and the entitlements in relation to workers comp, have we looked at that and how it compares with our legislation?

Ms WISE: Sorry, entitlements for workers compensation for whom?

Ms MELINDA PAVEY: Ride share legislation introduced into the ACT.

Ms WISE: Workers compensation is not my area. I would have to get some advice from SafeWork NSW.

Ms TELFER: We would need talk to people from the Department of Finance, Services and Innovation about that.

The CHAIR: The issue that has been brought to light by Suncorp is that, generally speaking, at-fault drivers, whether they are driving in the point to point transport industry or even just privately, are not covered by third party insurance. The consequence of that is when an Uber driver, taxi driver or whoever has an accident, they are not covered by any insurance unless they have their own personal income protection insurance or somebody else takes out insurance on their behalf, such as the plate owner or so on—this is for their personal injury as opposed to property damage. That is a particular feature of our fault system. I know that Minister Dominello is looking at comprehensive third party reforms and this may all be washed up with that, but Suncorp was saying that it would be desirable to have national consistency on that issue and that some workers compensation type protection for drivers in the point to point transport industry ought to be provided in some way. I think the proposition was that it should not be just in the taxi industry but that it should be throughout the industry. Is that something that you have looked at or considered?

Ms WISE: To the extent that it was touched on, there is mention of it in the Point to Point Transport Task Force Report, but beyond that, no, it has not been considered to date. I would have to refer it to the State Insurance Regulatory Authority.

The CHAIR: It does not seem to be an example of unequal treatment because the treatment is equal through all the segments of the point to point transport industry on that issue. Is it fair to say that in respect of Chapter 6 there is unequal application of Chapter 6 throughout the point to point transport industry in that it applies to taxi drivers, it does not apply to Uber drivers, it does not apply to hire car drivers?

Ms TELFER: I think it is a matter of fact it does apply to taxi drivers, it does not apply to others.

The CHAIR: To that extent, there is an uneven treatment across the industry?

Ms TELFER: I think that would be a fair conclusion.

The CHAIR: We have heard completely anecdotal stories today about wage levels and the like by hire car drivers, taxi drivers, Uber drivers and so on. I imagine it is a pretty difficult job to try to get any definitive reliable verifiable statistics on what drivers are earning in the different segments of the industry. Is that fair?

Ms TELFER: I think that also would be a fair conclusion. In the last few years we have had a look at 50 industrial complaints and for 40 per cent of those for the complaints no further action could be taken by us because there was either no further response received from the taxi driver or the owner-operator had ceased to trade or the allegation, in fact, fell outside our jurisdiction; it was ACT, Queensland, or whatever, and 8 per cent found no breaches of the determination. Here I am talking about only taxi drivers, but 45 per cent did establish some breaches. I know it is a fairly hard arduous job for my inspectors to trace back exactly the facts of the matter and the number of shifts, what the pay-in was, what method was being used because there are two methods under the contract determination, and it applies only in Sydney, it does not apply in rural and regional New South Wales, so it is a long arduous process to get the particular facts before there can, in fact, be any further action taken to try to pursue what might be seem to be underpayments. We find people disappear, complainants disappear, and it is quite difficult to get all the facts. I think it would be a very brave person and

maybe a person with a lot of time on their hands who would be able to do the research to find out the inconsistencies in pay for people.

Ms WISE: I am only aware of survey work that is done on behalf of the Independent Pricing and Regulatory Tribunal, which reviews on behalf of Transport for NSW what fare level, maximum fares and licence numbers should be. They do survey work of taxi operators and taxi drivers. They get the Centre for Independent Economics to do that for them on a regular basis and they have some reports on its web site but it is only about taxi driver incomes. I am not aware of anything relating to other income of other kinds of drivers.

The CHAIR: There is a fair bit of cash in the taxi industry which makes proper verification and auditing of income difficult.

Ms WISE: Yes. Different industry stakeholders take different views about the accuracy of the information that IPART uses as well.

The CHAIR: We are told that method one under the determination is very unusual with possibly one or two people in Sydney who operate under method one.

Ms WISE: Yes.

The CHAIR: I suppose one of the problems with method one, if you were a plate owner, would be the possibility that there was income not being disclosed by the driver and, therefore, the 50:50 split was not a true 50:50 split. I suppose that is a risk. I do not say that wishing to cast aspersions on anyone, I am just saying that in any cash business that is always a risk and that may well be why method two is the overwhelmingly preferred method of operating.

Ms TELFER: Yes, our understanding is method two provides some certainty about what the pay-in is going to be for the owner of the taxi vehicle itself and that also provides some certainty for the driver about what the take-home is going to be.

Ms MELINDA PAVEY: And it is an incentive.

Ms TELFER: Yes. Method one which is generally the 50:50 is, I think, a bit more uncertain for both sides of the equation so for both sets of parties. Interestingly we are told, even though the determination only goes for the Sydney metropolitan area and not in rural and regional New South Wales, that generally in rural and regional New South Wales people generally use method one. That might be because they have got long-term established relationships in communities and therefore it suits them because they then know what is going on, et cetera, et cetera. But in Sydney method two is the one that is used and we think it is because it provides for greater certainty for both the bailee and the bailor.

The CHAIR: Do you want to raise any issues arising out of the Committee members' questions?

Ms WISE: I would just like to add because I heard when I arrived commentary around the fact that the income is regulated because fares are regulated. Part of the reforms announced by government will deregulate booked fares for taxis as well, so that will change that dynamic. While rank and hail fares are thought to be 60 per cent in the middle of Sydney certainly it is less out of Sydney and almost non-existent in some rural areas. So booked fares will be deregulated.

The CHAIR: When the Taxi Council says that applying the Sydney determination throughout the State would have a devastating effect on country operators and be a burden that they could not possibly bear I suppose you cannot really respond to that one way or the other? It may be right or it may not be.

Ms TELFER: Exactly.

The CHAIR: The Committee may wish to send you some additional questions in writing, the replies to which will form part of your evidence and be made public. Are you happy to provide a written reply within one week of any further questions?

Ms TELFER: We would certainly be happy to do that. There might be some matters that we say that we need to get some additional advice on but we do not wish to hold up the Committee.

(The witnesses retired)

DAVID ROHRSHEIM, General Manager, Uber ANZ, sworn and examined

The CHAIR: Do you have any questions concerning the procedural information sent to you in relation to the witnesses and the hearing processes?

Mr ROHRSHEIM: I do not.

The CHAIR: Do you want to make a brief opening statement?

Mr ROHRSHEIM: I will. Thank you for having me. I will take five minutes of your time to share a bit of the history on ride sharing and some of the important facets. I will start by saying we have welcomed the New South Wales Government's reform in the point to point transport industry which we found a very thorough process and people in this room have been involved in making that a success. The Parliament should be commended for leading this change nationally as the first State Parliament to pass primary legislation. This came about in a very bipartisan way and the Parliament has reflected the need to bring legislation into the twenty-first century with the new technology available. I know a couple in the Committee are familiar with the app but I will still take a moment to take you through what ride sharing is and how it came to Australia.

My hometown is Adelaide but I was studying abroad for an MBA at Stanford and I came across a group of people in the United States who had developed this app where you could press a button and get a ride: it was as simple as that. I was fascinated by the simplicity and after some conversations with them I asked if I could bring it to Sydney and four years ago we did. It was originally for hire car drivers and many of them had an hour or two to kill between their regularly booked private clients and the app was a great means of boosting their earnings, fill in some empty time and make a bit of extra money. It took off with plenty of passengers looking for the fancy rides.

In April 2014 we launched the UberX ride sharing option, which was a big game changer and precipitated some regulatory reform. That meant that rather than a hire car driver boosting his or her income it was bringing those same benefits to the masses—to the everyday drivers, to mums, dads, students, retirees, including parents who would drop their kids off at school who can now pop on the app for a couple of hours and make some extra income. I note some of the best drivers are seniors, they often have great cars, they are good drivers and find great relief in being able to log on at their convenience for a few hours if they want to. We have partnered with the New South Wales Government in Seniors Week to highlight that positive impact both for the drivers and for the mobility benefits for the passengers as well. So now, as long as you have a full driver's licence, an exemplary driving record, a clean criminal history and a vehicle that has been inspected, and there are many of them, you can be a ride sharing driver in New South Wales. The ease and simplicity of the work means the benefits can be realised by many, both riders and drivers. The benefits for riders are being able to get safe, reliable rides when they need them; for drivers, it means access to flexible income at the press of a button. We think this is pretty new, pretty unique. We have expanded to Newcastle. I understand there was some discussion of regional areas here as well. We are in Newcastle and we are looking at other areas—probably Wollongong and Coffs Harbour would be top of the list.

Half a million people in New South Wales are booking rides through the Uber platform and 13,500 drivers are providing those rides. You will hear me refer to them as our "partners", so let me explain what that is about. They are partnering with our platform to find riders. They have full control over when, how often and for how long they drive. They are able to log on and off the app whenever they choose. There is no minimum time they need to be online. They can use as many different ridesharing platforms as they want at the same time, such as GoCatch and OnTap here in Australia. They can take one ride, they can take a few months off and they can be doing a mix of different days of the week, different nights—whatever suits their circumstances. Flexibility is the defining characteristic of ridesharing. It ensures that they can fit it around their own personal commitments. It also ensures that the service matches the peaks and troughs in supply and demand.

I also heard earlier about some arrangements where folks are required to do one busy shift in return for doing one quiet shift. There is no such thing on our ridesharing platform. This means that people can come out when their rides are needed most. We firmly believe any regulations should acknowledge this flexibility and preserve that as part of the reform process. We are just at the beginning of seeing how this reform can benefit New South Wales. We are excited to be part of the journey. I look forward to any questions.

Ms MELINDA PAVEY: What is the break-up of what the driver gets and what Uber gets?

Mr ROHRSCHEIM: Our business model is that we are providing an app for the drivers to use. They get 100 per cent of the fare and then our fee is typically between 20 per cent or 25 per cent on each trip. There is no fee to join, there is no weekly fee, there is no set amount—

Ms MELINDA PAVEY: Is it 20 per cent or 25 per cent?

Mr ROHRSCHEIM: The individual circumstances are different for each driver. Some of them joined at a time when it was 20 per cent; some of them joined at a time when it was 25 per cent. Each driver knows what it is. It is a set amount for each driver.

Ms MELINDA PAVEY: And you provide a platform?

Mr ROHRSCHEIM: Yes, we provide some software for them to use to help them make money.

Ms MELINDA PAVEY: Do you know the percentage of the other providers: GoCatch—what was the other one?

Mr ROHRSCHEIM: In Australia you have got at least two that I know of: GoCatch and OnTap. I believe another one launched in Albury-Wodonga today—it got covered in the *Border Mail*—a homegrown alternative. I should not speak to what their commercial arrangements are. I have heard things but I should not speak for them. Certainly the only model I have heard of is a service fee per trip.

The CHAIR: Earlier today there were some problems with the live streaming so I will give your company an opportunity to deal with some of the things that have come up in evidence today. One of the witnesses, a former Uber driver, said that people who drive for Uber are deactivated upon a certain number of complaints being made about them without them being given the opportunity of natural justice to respond to those complaints. Is that evidence correct or would you like the opportunity to explain what your deactivation policy is and how it operates?

Mr ROHRSCHEIM: It would be difficult to comment specifically on someone's personal circumstances but I can speak generally about the policies that are in place. Firstly, there is a published deactivation policy online that lists all of what is important and all of the reasons why a partner might lose access to the platform.

Ms MELINDA PAVEY: Would that include things like breaking the law?

Mr ROHRSCHEIM: Some of them might go without saying, but some of the top features are—remembering that there are two groups using this software, riders and drivers—that we want to come up with something that works, grows the industry and works for riders and drivers. Obviously quality and safety are top issues. At the end of every trip riders rate their journey from one to five stars and over a time that turns into an average score, an average rating for the driver. There is a minimum threshold that they must remain above. They have got that number in real time—they can see it in their app—and on a weekly basis they will get written feedback on how they are travelling. If they drop below that number then they will lose access to the platform. That ensures that quality is delivered, which I know is a priority for the industry.

There are other more serious incidents that can result in an immediate deactivation. If we hear allegations of drink driving or of an assault or what have you we will immediately, at the very least, waitlist that partner so they cannot log in and then we can start investigating. We certainly do investigate whether a sequence of minor complaints or one major complaint and in all of those cases we are going to want to get in touch with both the rider and the driver. We will reach out. We have got a 24/7—

Ms MELINDA PAVEY: It was put to the Committee today that there is a growing feeling of insecurity and uncertainty on behalf of your drivers that there is no process that complaints can be made through and that they are not interviewed or made aware of what those complaints are.

Mr ROHRSCHEIM: That certainly does not describe the way we do business. In the event of a complaint, we will reach out. We have got a 24/7 support service that is going to contact both the rider and the driver.

Ms MELINDA PAVEY: Reach out to the rider or to the driver?

Mr ROHRSCHEIM: Both the rider and the driver.

Ms MELINDA PAVEY: So it is your policy that if a complaint is made by a customer, or a series of complaints, you will interview the driver?

Mr ROHRSCHEIM: Absolutely.

Ms JODI McKAY: The evidence we have received is quite definitive about your deactivation policy. Do you have an internal document that you could share with the Committee that details the policy that you would follow if there were, say, three complaints made against a driver? We have heard evidence that is absolutely to the contrary from someone else.

Mr ROHRSCHEIM: I would be happy to furnish a copy of the deactivation policy.

Ms JODI McKAY: This comes back to the working conditions of those who work in the industry.

Mr ROHRSCHEIM: We have worked very hard to come up with a system that the drivers want to use. Some 13,500 drivers have started using this platform—that figure was zero not too long ago. It has got to be something that works for them and makes them recommend it to their friends, family and others. We think we have built that. To be completely candid, we have always had a deactivation policy but only in recent months based on some feedback from drivers and the community—even partners who are super happy are saying, "I don't actually know what is in and what is out." They are not necessarily questioning whether or not we are making good or bad decisions but just, "Can you let me know what I need to keep in mind?" So that was published a few months ago. We are happy to furnish a copy of that to the Committee. It details the major reasons why someone might be deactivated.

The CHAIR: I think I am correct in saying that the witness who gave that evidence was not giving evidence of his own personal experience but of what he had been told by others. He explained a process whereby people had a number of complaints against them—Uber drivers—where the driver was not given the opportunity to respond to a complaint and if a sufficient number of complaints were made they were deactivated, with an email informing them that they were no longer part of the family.

Ms JODI McKAY: But most of the time they found out when they could not log on.

The CHAIR: I think he did say there was an email. There was also a suggestion that some people may have bought cars and entered into lease agreements in the belief that they would have an income stream as an Uber driver and those people were effectively being summarily terminated from the ability to earn an income stream to service those lease agreements.

Ms MELINDA PAVEY: And it was not for bad driving. It was for perhaps not being accommodating to some late night passengers that had been imbibing for quite some time—the driver deciding not to go through McDonald's drive through and things like that. You will read the evidence, but that was clearly the testimony from the witness who was not sacked or deactivated.

The CHAIR: He was not deactivated. Have your recently put in procedures come about because of complaints of that kind?

Mr ROHRSCHEIM: Yes and no. To be very clear, the policy has always existed. We just had not published it on the internet for all and sundry to comment on and poke holes in. But we did publish that document in response to people expressing uncertainty. Every partner I have spoken to is delighted that we have such a policy. It ensures that troublesome and unsafe drivers do not stay on the platform. That means the platform remains trusted and people continue to use it.

The CHAIR: If the things occurred as told to us—that is, complaints were made without the driver having an opportunity to respond to them resulting in a termination of their access to the Uber app—first of all, would that behaviour be contrary to the published policy?

Mr ROHRSCHEIM: Yes. I am being very clear. With partners, any time we have got something to look into, we are going to try to make contact via phone call and email with the driver. They also have the opportunity to walk into a support centre. They know where they are and they can make their case.

The CHAIR: You could not only try to contact them. Before you accept the complaint as authentic do you ensure that you always consult the driver to get their side of the story?

Mr ROHRSCHEIM: It will depend on the nature of the allegation. If there is something that seems life threatening or illegal such as a claim of drink driving or an assault, our first response will be to waitlist that driver so they cannot log in. If it is a more minor complaint about something such as taking a long route—

Ms JODI McKAY: Is there a review mechanism? Can a driver make an appeal for a review of that decision where they can participate in that, perhaps even an independent review of it?

Mr ROHRSCHEIM: One thing I have seen is that if they are not happy with the dialogue over email or phone call they will walk into the office and maybe a second chance—

Ms JODI McKAY: We also heard evidence about that. In Newcastle—and perhaps in Queensland—you have a contractor, so you are not running it yourself.

Mr ROHRSCHEIM: I am not sure what you mean.

The CHAIR: I think the suggestion in terms of your manager in Newcastle is that he or she may not be a direct employee—

Mr ROHRSCHEIM: Maybe a part-timer.

The CHAIR: —but a subcontractor of Uber.

Mr ROHRSCHEIM: That could be true.

The CHAIR: I did not think there was any problem with that.

Ms JODI McKAY: I think his evidence was more that that prevents a dialogue when that person is not able to make a decision. You can walk in and talk to someone, but is there someone assigned to manage these issues in a proper transparent process through which a driver feels that they have actually been heard and is there a review mechanism? Because, as you know, if you are a taxi driver there is a whole process that you have to go through if a complaint is made against you and you can appeal against a decision or have it reviewed.

Mr ROHRSCHEIM: As I mentioned, we have a process. I guess you are asking where they go if they are not happy with what they get out of Uber. Of course there are all sorts of administrative tribunals that people can go to if they are unhappy with the contract between us and them.

Ms JODI McKAY: Has anyone ever done that?

Mr ROHRSCHEIM: Across Australia, yes.

Ms JODI McKAY: And what happened?

Mr ROHRSCHEIM: I am not sure I can comment on each and every one of them.

Ms MELINDA PAVEY: Have they been reactivated?

Mr ROHRSCHEIM: I should not comment on each case. I can assure you that there are people who have taken advantage of all the different—

Ms JODI McKAY: But has anyone been reactivated?

Mr ROHRSCHEIM: I do not know. I suppose I could check.

Ms JODI McKAY: You can take it on notice.

The CHAIR: Yes—take it on notice. Just so we are clear on it, does the deactivation policy which has now been published form part of the terms and conditions under which a driver operates so that if Uber does not comply with that deactivation policy the driver can sue Uber for breach of contract?

Mr ROHRSCHEIM: I guess I would need a lawyer to comment on that. I am sure someone always has the right to sue Uber if they wish. It articulates the partnership we have.

The CHAIR: You have a partnership—so-called. It is actually a contractual arrangement. I think as the head of Australia and New Zealand you should be able to answer the question as to whether that deactivation policy and the processes that are set out in it form part of the contractual arrangement you have with your drivers such that if it is not complied with the driver can sue for breach of contract. I do not think we should be flippant about this. It is a very straight and straightforward question.

Mr ROHRSCHEIM: The straightforward answer I can give you is that we operate according to that policy. That is what we do. That is what we commit to do when the partners sign up to the platform. I do not know what that means beyond that.

The CHAIR: So when they become a driver you promise to comply with that policy. Do you have a formal written contract with the drivers?

Mr ROHRSCHEIM: Yes. When they join the platform I believe there is both a partner contract and a privacy policy.

The CHAIR: Do you know whether that written contract incorporates the deactivation policy?

Mr ROHRSCHEIM: It is my expectation that it does. I can clearly get back to you in writing. We can furnish you with a copy of that part of the contract and the deactivation policy.

The CHAIR: In terms of some of the evidence we heard it is important to get your side of the story. There was some evidence given about it.

Mr ROHRSCHEIM: I would reiterate that there are many steps before people start looking at contracts. We are trying to provide a service that both the riders and drivers like. I emphasise that they can walk in any time—they can contact us 24/7—and we resolve most disputes within an hour. That is how we like to run our business.

Ms JODI MCKAY: One of the other things we heard was that a driver can log on in the morning and a message pops up that says there has been a change to the contract and the driver has to accept that to continue, but it does not say what the change to the contract is—

The CHAIR: No, I think the evidence was that the contract was so voluminous—

Ms JODI MCKAY: Dense.

The CHAIR: —that at four o'clock in the morning when you are about to go off and do your shift it was not very practical to read the contract before you started working.

Ms JODI MCKAY: And that is the first you know about it when it comes up on the app. Is that right?

The CHAIR: Is that the process?

Mr ROHRSCHEIM: Yes. If someone did log on at 4 a.m. that would be when they would read the contract.

The CHAIR: I must say that is no different to when I log on to NetBank from time to time and I get a message saying that the terms and conditions of my bank policy have changed. I do not think there is anything particularly unusual about it.

Ms MELINDA PAVEY: You are not working for NetBank.

Ms JODI MCKAY: Good point, Mel.

Mr ROHRSCHEIM: I would be open to—

Ms MELINDA PAVEY: They are not your employer. Well—

The CHAIR: Most people are working for the bank, one way or another.

Mr ROHRSCHEIM: I would be open to suggestions on a better way to distribute a new contract.

The CHAIR: I suppose the only way would be to say, "If you have not okayed it within five days or something you will be taken off the system." Giving people a period of time to read it and consider it rather than it popping up next time they want to work is one way you could improve it—that might be a reasonable thing. Given it is people's livelihood and their ability to earn income it is a rather unequal bargaining position in those circumstances.

Mr ROHRSCHEIM: And, practically, if there are any questions, emails come in and we answer them.

The CHAIR: Do these issues we raise come as a surprise to you? Are these things you have never heard of before that your drivers have been raising?

Mr ROHRSCHEIM: Recognising that some it presented here was hearsay, there are 36,000 partners across Australia using the platform right now.

Ms MELINDA PAVEY: And I think 10 per cent have signed up on the social network to the Ride Share Drivers Association so that is not insignificant?

Mr ROHRSCHEIM: Ten per cent?

Ms MELINDA PAVEY: Yes, about 3,500 I think I heard in the evidence earlier that are on social media as part of the Ride Share Drivers Association.

The CHAIR: I think the evidence was 100 members and a reach of 4,000 or something like that.

Mr ROHRSCHEIM: It is not impossible there are a few people who have disputes with Uber and they potentially disagree with deactivation. That is going to happen.

The CHAIR: If you ran a business with 33,000 people and you had no complaints I would not believe you.

Mr ROHRSCHEIM: Correct. But in my view it must be working if more and more people are joining every week. I would emphasise that tonight no-one is rostered or scheduled to be driving on the Uber platform. They are only going to come on if they think it is a good deal.

Ms MELINDA PAVEY: Tell us about the deal? What are they earning on average—the hourly rate?

Mr ROHRSCHEIM: It is going to be different for every driver. I am sure you heard from some people today that different people are using it in different ways at different times of the day. You have the option in the app to enter your destination and say, "Hey, I have already got a job in the CBD, Parramatta or wherever but I am going to use this Uber app to pick up passengers to and from" and we will filter the requests such that you only get matched to people headed in the same direction. There are people doing that and if they get a passenger, they are happy. If they don't, it is no big deal as well. To look at that as any sort of set hourly target is not how those drivers are thinking about using the platform.

The CHAIR: Those people may be using it to contribute towards the toll fees that they are bearing between their home and their place of employment each day?

Mr ROHRSCHEIM: Yes, and maybe get access to some high occupancy lanes, et cetera. Another complication is that because of the independence these partners have, they can be logged on to multiple platforms at once and they could be receiving one request from Uber and another request from GoCatch in that one hour. Some drivers are doing that, some drivers are not. They could also be undertaking other activities during that hour.

Ms MELINDA PAVEY: With the incredible algorithms that have created Uber and the technology around that, it is pretty amazing because you know at the end of the week how much that driver has earned and you keep 20 per cent and 25 per cent of it. Does the platform have the ability to work out for those drivers—your obviously cannot talk about GoCatch—but for your drivers who are logged on and are picking up and for the amount that they have earned, are you able to work out what that is on an hourly rate?

The CHAIR: Can I ask a different question that will cover the same question?

Ms MELINDA PAVEY: Well try that one and then you go ahead.

The CHAIR: Do you make any representations to the drivers as to what you expect they can earn by being an Uber driver when you try and sign them up?

Mr ROHRSCHEIM: We emphasise the flexibility. We emphasise, "Hey, make some extra money on the side" and certainly these days we no longer make specific recommendations around how much they should expect to earn.

The CHAIR: You do not or you do?

Mr ROHRSCHEIM: Not any more, no.

The CHAIR: But you have in the past?

Mr ROHRSCHEIM: Yes. In the past, in the early days when we were trying to get people excited about using this, this was an unknown idea. We had seen it work in other parts of the world and we obviously needed to get both riders and drivers excited about using it. From time to time we would put guarantees in place that "if you do log on in these places at these times we will guarantee you at least this much in fares and if it is more, happy days for you". That is partly about education. For many of these drivers, they have never been a professional driver before so they would not be familiar with the peaks and troughs of point to point transport so that makes a statement—these are the good times to log on, and it gives them confidence that this is worth trying. Over time I think the industry is now functioning quite well and people know from their friends and family what the opportunities are and when to work, so those guarantees we found—

The CHAIR: The only way to pay Uber is through Paypal, is that right, or through an electronic means?

Ms MELINDA PAVEY: And credit card.

Mr ROHRSCHEIM: Generally a credit card, but you certainly have to pay through the app.

The CHAIR: No cash changes hands?

Mr ROHRSCHEIM: No cash changes hands in Australia.

The CHAIR: So every transaction actually goes through your head office in Amsterdam, Singapore or wherever it is?

Ms MELINDA PAVEY: Or San Francisco.

The CHAIR: Or San Francisco.

Ms MELINDA PAVEY: Which one does it go through?

Mr ROHRSCHEIM: The actual collection of the money would go through Visa and Amex and what have you and then our headquarters are in the Netherlands but all of the partners, eventually that money will go into their Australian bank accounts, so every Monday morning they are going to get an email which says, "Here are all the trips you did. Here's how much you earned" and so that individual driver could calculate for himself how much money he earned.

The CHAIR: But the money goes from customer to financial institution which is broking to Uber and then you hang on to your 20 per cent to 25 per cent and remit the balance to the driver, is that right?

Mr ROHRSCHEIM: We are collecting the money on behalf of the partner.

The CHAIR: What I am saying is you actually have the most reliable data as opposed to the taxi industry where people get cash. Every dollar in this business actually comes through you?

Mr ROHRSCHEIM: Every dollar on the Uber platform, yes. I cannot speak for every other platform.

The CHAIR: No, I am talking about Uber. So you actually have 100 per cent verifiable records as to what an average driver is earning per hour of working as an Uber driver; you would actually be able to give us those figures with absolute certainty?

Mr ROHRSCHEIM: No, because I do not know what else that driver is doing within that hour. They could be on another platform and receive requests from another platform.

The CHAIR: Well, you can say that at least there is a minimum; they have earned a certain amount of money from Uber, without saying that it is the maximum?

Mr ROHRSCHEIM: That is fair.

The CHAIR: You would have those figures?

Mr ROHRSCHEIM: The situation for the Committee to consider—

Ms MELINDA PAVEY: You know when they are logging on and logging off, don't you?

Mr ROHRSCHEIM: We do, but here is a situation to consider particularly relevant in regional areas. It is not unusual for some of the ride sharing drivers to just log on, sitting in their own home. This is particularly true in regional areas—

Ms MELINDA PAVEY: Regional areas being Newcastle?

Mr ROHRSCHEIM: Newcastle, the Gold Coast, Geelong, Mornington Peninsula.

Ms MELINDA PAVEY: I do not regard them as regional because I am from the country.

Mr ROHRSCHEIM: Okay, sorry.

The CHAIR: You have a Nationals member here.

Mr ROHRSCHEIM: These are areas where you can be sitting in your house and within a 10 or 15minute radius you can pick up quite a lot of people.

Ms MELINDA PAVEY: You are in densely populated areas.

Mr ROHRSCHEIM: Sure.

Ms MELINDA PAVEY: That is how it is based.

The CHAIR: As a Newcastle boy I can understand exactly what he is saying. You could sit there at home with your Uber on, waiting for someone and you are probably about 10 minutes away from a lot of them.

Ms MELINDA PAVEY: And you are working.

Mr ROHRSCHEIM: Well, you are sitting in your house watching television and if a trip request comes up, it is your decision whether you accept it or not; it is your decision whether you pick them up or not. They could be logged on for three hours and accept one of the requests. I am not sure how you would turn that into an hourly something.

The CHAIR: But presumably through GPS you would be able to tell whether people were doing that too?

Ms MELINDA PAVEY: That is a very good question.

The CHAIR: Is that a basis to get deactivated, if you are not driving around and actively looking for customers?

Ms MELINDA PAVEY: Because you track the route, don't you?

The CHAIR: If you are just sitting at home watching TV, watching the cricket, waiting for someone to make a request—is that what a good Uber driver does?

Mr ROHRSHHEIM: That is not a problem at all. What is a problem is obviously riders want a reliable experience. They want to be able to press a button and get a ride. If a partner is logged on and routinely ignoring requests, that does not contribute to the network and does not contribute to a good rider experience. That could mean they are asleep; it could mean they are not paying attention anymore.

Ms MELINDA PAVEY: Or it is a good TV show.

The CHAIR: I thought the great thing about your app was that you can actually see the little bees buzzing around the streets and you know someone is nearby. Therefore, you know you can get someone to you within two minutes, isn't that the whole shtick of Uber? Isn't that its great benefit?

Mr ROHRSHHEIM: There is a lot of that happening in the centre of Sydney where people are getting picked up in three or four minutes but in these—what shall we call them?

Ms MELINDA PAVEY: Regional cities.

Mr ROHRSHHEIM: Regional cities, densely populated regional cities, we found people are happy to wait 10 minutes so it is actually fully acceptable for someone to go jump in their car and pick them up. That is superior to their alternatives and a real benefit to those communities. For people whose alternative would have been to not go out or to drive their own car when maybe they should not, coming up with a network where we can tap into the cars that already exist in that town and have responsible drivers occasionally sharing rides actually provides the point to point transport that a lot of towns do not have

The CHAIR: The suggestion that some people have made that a driver should be given a minimum hourly rate for driving and that some regulatory environment should be introduced to do that, I would imagine you would say that is completely contradictory to your business model?

Mr ROHRSHHEIM: Yes. People are using Uber and the other ridesharing platforms on a trip-by-trip basis. They accept or reject requests and that is how they earn their money.

The CHAIR: That would be an inflexible cost burden on an industry that is geared towards flexibility and the agile economy?

Mr ROHRSHHEIM: My view is that this is a new and unique opportunity. The people that are signing up for this platform were not typically happy with the other ways of working. Their nine-to-five job was not working for them, or as a carer or a parent they could only log on in some odd hours. That flexibility is one of the most exciting parts of the on-demand economy, which includes not just ridesharing but a whole bunch of other activities. It is a defining characteristic of what is making ridesharing work. We would not want to see that go away.

Ms MELINDA PAVEY: How many of your vehicles are able to collect people with disabilities and in wheelchairs?

Mr ROHRSHHEIM: There are different answers depending on what disability and what type of wheelchair you are talking about. I will not have the exact numbers on hand but I can follow up on that.

Ms MELINDA PAVEY: We will take an answer to that on notice.

Mr ROHRSHHEIM: There is quite a large number in what we call the Uber Assist program. These are larger vehicles which are easy to get in and out of. Those drivers, our partners, have volunteered to go through some additional training on how to help people with different needs and then how to use their equipment. They have a car that is big enough to put in a folding wheelchair or certain types of equipment. Something that we are very keen to do in New South Wales, in particular now that there is some regulatory certainty around ridesharing, is to tap into also those wheelchair-accessible vehicles where you can drive a motorised scooter or motorised wheelchair in. There are many of those around; we would like to log them on to the platform as well. They can drive around during their spare time as well.

Ms JODI McKAY: This Committee is specifically looking, in very simple terms, at the pay and conditions for drivers and how the industry works in regard to workplace relations more generally. Can you tell us that with absolute certainty that you are confident you are meeting the community's expectations in regard to the pay and conditions of drivers, keeping in mind that we are a community that expects a minimum pay, we understand that there are protections around the vulnerable and that there are regulations within the workplace environment to ensure that people are protected? Do you believe that you have all those conditions in place to ensure that you meet the community's expectations in that regard?

Mr ROHRSCHEIM: Absolutely. I am genuinely proud of what we have built in just a few years here. I believe this is not the first time Parliament has investigated this industry, clearly highlighting that there has been some unsatisfactory experiences and the community expectations have not been met in the past. We have come up with something that has proven to be a success around the world. It is not just us, there are others who are doing it. There are 13,500 that have signed up and are using it, and that number is growing. As I mentioned, no-one will log on tomorrow if they are not happy with the arrangement. They can come and go as they please. They have complete freedom to pick between being a ridesharing driver and other jobs. Clearly one of those groups is some taxi drivers. Taxi drivers have not had, as I understand it, a whole lot of choice in the deal that has been offered to them in the past. We have shown up and both riders and drivers have got an interesting new choice. I think that tension is going to be raising standards for everybody.

The CHAIR: What proportion of your drivers own their own vehicles? Do you keep those records or those statistics?

Mr ROHRSCHEIM: The vast majority. That is the main reason people come to the platform; they have already got a car and they are looking for ways to make better use of it. There are some drivers who prior to joining Uber did not own their own car and this is actually a means of doing so. They think "Okay, I have done the maths." They have said, "A lease on a vehicle is going to cost me this. I have now got a family car. I only need to do X number of hours per week to make sure I cover the lease payments." This has given them an opportunity to actually be able to afford their own car. There are some in that category, but the vast majority have brought a car they already had. Some have used it as a reason to go get a new one, upgrade or maybe buy a more fuel-efficient option.

The CHAIR: Given that you can through the app know how long people are on the road driving, do you have any safety standards for maximum periods of time within a 24-hour period that people can be driving for Uber?

Mr ROHRSCHEIM: There are a few different pieces to this. I assume you are looking at the question of fatigue and safe driving. Again, some complications are the situation of the person sitting at home watching TV. They may be logged on to the app but that does not necessarily mean they are driving from A to B. I will say fatigue is a big part of safety, so it is a top concern for us. Yes, we will keep a record of how many hours somebody is logged on to the platform. It has been a while since I have looked into this but I believe we have a system whereby once a week or fortnight if a driver has been logged on for an excessive time we will actually send them a summary of that and also maybe some links. I think the trucking industry has some best practices around this and some safety recommendations. We will say, "Hey, this is what you did. This is what other people recommend. Please consider."

The CHAIR: Do you have an automatic, computer-generated prompt if people exceed the safe number of hours in, say, the trucking industry where you immediately make an inquiry, or is it just if someone is looking? How does that system work?

Mr ROHRSCHEIM: It is certainly not an automated system as you have described. If you look at all of those recommendations in the trucking industry you might say every four hours you must take a 15-minute break, et cetera. I am not sure what the exact numbers are. All we know is that you were logged on for four hours. It is very likely that for at least 15 minutes of that time you were taking a rest, having a break. So we do not have the full picture. The person who knows that best is the driver so the best thing we can do is educate on them safe driving practices. Another thing that complicates this is in my reading one of the biggest issues in fatigued driving is not people doing a long period on the road but it might actually be their condition before they got into the car. Shift workers in particular who might work until midnight or so and then get in the car might be at risk more than anybody. The person who knows that best is the individual getting behind the wheel of the car.

The CHAIR: Someone raised a point that an Uber driver looking at their phone and responding by texting is actually breaching the law. To be an Uber driver do people have to breach the law in order to be able to interface with the app?

Mr ROHRSHEIM: It is not how I would describe it. The Uber app, and most ride share platforms, first things first, are put on a mount, they do not have it in their lap, which would be against the New South Wales transport laws. When a message pops up it beeps and someone is looking for a ride. How far away are they? All they have to do is tap a screen to say yes, they want that request or they can let it expire. Typically they will be sitting on the side of the road when that occurs. The passenger gets in and all they have to do is say, "I have picked up Bloggs," which is a swipe of the screen. They drive from A to B and at the end of the journey they drop them off and say, "I have dropped them off." They are typically stationary.

The CHAIR: When they say "yes" does the phone then go into Google maps so that they get a guided route? Is it more or less operating not too dissimilar to a global positioning system, like a TomTom?

Mr ROHRSHEIM: During the journey that is one of the features of the app that will help them find the passenger to pick them up and during the journey. There is no reason to interact.

The CHAIR: If I was setting a TomTom I set the address before I take off and it will guide me to where I want to go and it will turn off at the end of the journey. It sounds like the Uber driver does a swipe to indicate they have picked the person up and then they go to the destination. It does not sound very different. Is it fair to say that Uber's position is that you would not agree with your drivers being brought under Chapter 6 of the Industrial Relations Act?

Mr ROHRSHEIM: I will not pretend to be an expert on that. We do not see it applying today. My understanding is that describes the bailee-bailor arrangement specifically for the taxi industry. The New South Wales reforms have clearly articulated that prebooked transport, including hire cars and ride share, is different to taxis and the regulations have gone in that direction.

The CHAIR: Chapter 6 would not apply to an owner-driver of a taxi anyway, would it? And most of your drivers are owner-operators?

Mr ROHRSHEIM: Yes, they are using their own vehicle and setting their own hours and making their own decisions about how and when they work, which is different to my understanding of the bailee-bailor arrangement.

The CHAIR: The Committee will confirm in a question to industrial relations that Chapter 6 does not apply to owner operator taxi drivers. We will check that. If the overwhelming majority of your drivers are owner-drivers then there would be no difference?

Mr ROHRSHEIM: It is always their vehicle. They are not working for a set shift.

Ms JODI McKAY: We did hear evidence that there are commercial fleet operators who are running fleets of cars on the Uber platform.

Mr ROHRSHEIM: There is a list of vehicle financiers out there. The market is responding to people looking for cars. A lot of this is not new. If someone wants to get a lease for a vehicle they can do so.

Ms JODI McKAY: These are not necessarily owner-drivers. People are actually setting up organisations using your platform and getting drivers to drive the cars.

Mr ROHRSHEIM: Everything I have seen is somebody leasing or renting a vehicle for at least a week or two and that is their vehicle for that whole period of time. They are not driving for 168 hours per week. That is for their use, sometimes ride sharing and sometimes for personal use. There is nothing particularly new there between leasing a vehicle or renting a vehicle. Some ride sharing partners buy, lease or rent their own car. It tends to be a long-term arrangement, not for 12 hours.

The CHAIR: From the evidence we have heard today, you may or may not agree with this, the disruption to the point to point industry which Uber has brought is a work in progress in the sense that there may well be taxi drivers who ultimately leave the industry because they cannot make a living, there may be hire car drivers that do the same, and there may be platforms similar to Uber that come into the market and substantially compete. It seems that we are not talking about a mature environment yet and it will probably take some time before it completely settles down. Would you agree with that?

Mr ROHRSHEIM: Yes. Acknowledging that the primary legislation in this category is weeks old and the regulations are yet to be written. It is certainly the middle of a reform process. I commend the Committee for looking into it. With respect to potential winners and losers, there is no question that the point to point transport market as a whole is growing. I submit there are more winners than losers, particularly if you focused on the drivers themselves and the options they have. There are more people using point to point transport to get around than before. IPART would endorse that view. Deloitte Access Economics has estimated

that 60 per cent of the rides being booked through our platform are new. These are people who previously have driven their own car or not gone from A to B at all.

Ms MELINDA PAVEY: Or caught a bus or train.

Mr ROHRSHEIM: Potentially a bus. As to trains, I will observe that we spend a lot of time looking at late night journeys, expecting to see plenty of people in the hot spots such as Kings Cross, but there are a lot of pick-ups happening at train stations. These are people that have said, "I am not comfortable walking from a train station at night. I do not happen to live on top of a train station, but I will train back to my neighbourhood and then I know I can get an Uber for that last mile." We are a long way from finished. There will be more competition coming. I think overwhelmingly we have grown the market and the reforms are sensibly recognising this is a new way of doing things and we are happy to participate in that process.

The CHAIR: At the moment there is nothing stopping somebody with a taxi doing rank and hail services, taking long-term bookings similar to a hire car and also taking Uber bookings all within the one day?

Mr ROHRSHEIM: Yes. It is worth mentioning for the fullness of the conversation, taxi drivers can use the Uber app to receive taxi bookings as well. As a passenger you can open the Uber app and say, "I am interested in an Uber Black hire car, I want a taxi or Uber X", which is ride sharing. That is already happening. It is worth mentioning that taxis have the exclusive right to rank and hail, in addition to prebookings.

The CHAIR: Thank you for appearing before the Committee. The Committee may wish to send you additional questions in writing, the replies to which will form part of your evidence and be made public. Would you be happy to provide a written reply within one week to any further questions?

Mr ROHRSHEIM: I am happy to help.

The CHAIR: Thank you for your time today and explaining the point of view of Uber and how it operates.

Mr ROHRSHEIM: Thank you for your interest. I am sure it has been a long day.

(The witness withdrew)

(The Committee adjourned at 17.08)