

INQUIRY INTO OPERATION OF THE POINT TO POINT TRANSPORT (TAXIS AND HIRE VEHICLES) ACT 2016

Organisation: Australian Taxi Drivers Association and Taxi Driver Action Inc

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**Parliamentary Inquiry into the Operation
of the Point to Point (Taxis and Hire
Vehicles) Act (NSW) 2016**

**Submission by the
Australian Taxi Drivers Association , and
Taxi Driver Action Inc**

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The ATDA and TDA welcome this Parliamentary Inquiry into the operation of the Point to Point Legislation and its impact on the NSW, and particularly, Sydney Taxi Industry. It comes at a time when the devastating global impact of the COVID 19 Pandemic has had a massive impact on that Industry, already weakened by the legislation permitting and endorsing the unfair competition presented by unlimited entry, and effectively unregulated entry of Hire Vehicles. We note from the start the total lack of informative data available to validate our assertions and opinions. This lack of data has long been an undesirable feature of the Industry, and it is regrettable that the 2016 Act did nothing to require publication and public analysis of the data that the Point to Point Commission has necessarily accumulated.

We note also that this Inquiry is focused on the impact to the Taxi Industry and appears to neglect the impact on the whole of the Point to Point Industry, including of course Hire Vehicles. It is certainly our view that Regulatory impositions on those Hire Vehicles is light indeed, and is generally in disregard of quite clear Regulatory requirements.

The operation of the Act has been characterised by inequitable, uneven, and unfair application of its Regulations by the Point to Point Commission, and its failure to enforce clear Regulatory requirements.

A case in point is Clause 84 of the Regulations, prohibiting Hire Vehicles from “plying for hire” or “parking or standing on a public road”. Certainly the Common Law remains undecided as to whether a vehicle cruising urban areas of high passenger related activity and utilizing an electronic device to receive proximate booking offers is technically Plying for Hire. But with the inclusion of Park and Stand there is no doubt that the only proper use of a Hire Vehicle on a public road is when Hired, or proceeding to a Hire.

A case in point is the absence of any retro-reflectivity on the Uber sign displayed on the right of the rear windscreen.

The critical case is the decision to limit numbers of taxis, (other than WATS) and thereby maintain a scarcity value, without any restriction on the numbers of Hire Vehicles, thereby creating a Supply imbalance.

The failure, after four years, to adduce any balance of Insurance Premiums, be they Comprehensive or CTP, is an issue for SIRA and the Insurers. But that issue reflects poorly on the operations of P2P.

The continued problem of Operators not lodging Claims on their mandatory policies remains an issue post the new Regulations, and ignored in those Regulations, to the detriment of Drivers. The sub-clause introduced to permit an ‘agreement’ as to the Driver paying all or part of the excess, but without noting a specific sum or percentage of only an ‘at-fault’ accidents has already created problems.

We note, anecdotally, that a large number of Drivers are International Students, and we query the adequacy of Regulatory requirements, and Compliance measures.

That Networks appear not to accept the registration of Drivers from other Networks is inconsistent with the intent of the Act.

The lack of clarity as to the nature of a “shift” has created an OH&S problem. Who is responsible for a Driver driving unreasonable extended hours ? How can there be a “weekly lease” ?? Who is responsible for the Workers Compensation coverage ???

One new matter is the former RMS requirement on the issue of a Plate to provide off-street parking for all Registered Taxis. We now see thousands of de-registered taxis parked illegally on public roads. Unintended consequences !!

There are many more Operational issues to be presented to the Inquiry, the complexities of Fatigue Management being a significant issue.

The Inquiry has been tasked with a review of the Bailment System within the Taxi Industry, and we present a view of that outdated and ineffectual system from a Taxi Driver Viewpoint. Up until the current Corona Virus Crisis, the single enduring constant has been the power imbalance between Bailee and Bailor. Now, curiously, that market place pay-ins have dropped to \$50 - \$80 a shift, Bailors are generously proposing a 50 / 50 split.

Industrial Relations in the Taxi Industry have effectively been lost in a 36 year time warp since the 1984 Taxi Drivers Contract Determination formalised the relationship between Bailee Taxi Drivers and their Bailor Operators. Not Employees nor Independent Contractors. Not bound to a 50/50 split of the Fare Box as determined by Mr Justice Beattie some twenty years before but to a maximum pay-in based on a minimum 60 hour working week, as an option, demanded by Bailors. Entitlements possibly for full time workers, but not even pro-rata benefits for casuals. And with market place pay-ins considerably less than the maximum.

Over the years the only significant changes were to increase that maximum pay-in. Year by year the maximum pay-ins continued to rise, but with a near total disconnect to the quantum of Fares or Driver earnings or of actual pay-ins. By 2014 IPART, the Independent Pricing and Regulatory Tribunal determined an average gross hourly rate of \$7.65 an hour as representative of Taxi Driver earnings

With the illegal entry of Uber into the Sydney transportation market, and its subsequent legalisation and the new Point to Point hybrid of a Regulated / Unregulated industry those average earnings have continued to drop.

An extra layer of confusion is Chapter 6 of the NSW Industrial Relations Act 1996, setting out a “ Contract of Bailment” across NSW , but effectively limiting it to Sydney.

The Point to Point (Taxis and Hire Vehicles) Act clearly stayed away from any Industrial Relations concerns, but for industry participants, the issues of a worker sub-class and the real disadvantages of a 'gig economy' remained. The previous Legislative Council noted and postponed investigation or action. Now it's on again.

A major issue that has now arisen is the practise of a "weekly lease" agreement between Drivers and Taxi Service providers owning, or themselves leasing a plate. The only legal relationship of Bailor / Bailee has become confused.

A Contract Determination, having the force of an Award, that has existed without review for 36 years, is manifestly inappropriate. That Drivers in Sydney, and probably in NSW, are excluded from the National Passenger Transport Award and earn about a third of the Minimum Wage and National Award Entitlements is shameful.

That Operators, now "Taxi Service Providers", who were formerly heavily regulated, by Standards of Operations for Operators and Networks that were never actually legislated, now function under an all-embracing "duty of care" other than for the welfare of their engaged workers (still not employees) is disgraceful.

Nor does the perception of that duty extend to the unsafe levels of Fatigue for a Driver purportedly agreeing to a "weekly lease". A Compliance disaster.

That Taxi Networks, without any direct relationship to the Driver, are able and very willing to use their new- found powers, to coerce, fine and prevent from driving is an absolute misuse of their authority.

Our new-found colleagues as Ride Share or, more correctly, as Private Hire Vehicle Drivers are no better off. They are more Independent Contractors than Employees, but they enjoy none of the benefits of the Independent Contractors Act ; especially that a fair contract is one in which the contractor is no worse off than if he where an Employee. Their net hourly earnings are much the same as Bailee Taxi Drivers.

But now the landscape has changed. We respectfully request that this Inquiry take a radical and proactive role and commence to bring back all Workers into an Employment relationship. Australia has now seen the disastrous consequences of an unregulated 'gig economy'.

Where an individual choses to operate a taxi service on his own account, in his own taxi, there is no need or justification for an Industrial Relations regime.

But , as soon as that individual engages another person to drive the taxi, a workplace relationship is established, and one that needs be subject to Industrial Relations regulatory practises. That is the issue.

It is complicated. We must cross State and Federal boundaries. There are several Acts and multiple Regulations to resolve and co-ordinate. This is a starting point. The one defining point must be that :

“The engagement of a worker, in whatever capacity, must be founded on a minimum hourly rate for full time or casual work ; employee, independent contractor or bailee, not less than the National Minimum Wage, and be within the constraints of the Passenger Transportation Award. “

In the course of its last few representations on behalf of Taxi Drivers, the Transport Workers Union (TWU) nominally achieved Superannuation for Taxi Drivers. But it was limited to an impossible case scenario by the Industrial Relations Commissioner then presiding , to a situation where a specific portion of the Taxi Fare was designated as the “superannuation “ component. What other Workers in Australia are so excluded from Superannuation ? In what other industry are Casual Workers not compensated for lack of Entitlements by way of a higher remuneration ? In what other Industry are Workers obliged to work a 60 hour week to be regarded as a full time worker ?

In that last foray into the Industrial Commission, over six years ago, the TWU proposed a “Safety Net” based on the Minimum Wage, but the matter was curtailed by the previous Parliamentary Inquiry. Perhaps this time , the matter may progress.

During the current COVID 19 Crisis over half the Sydney Taxi Fleet is off-the-road, and many Taxi Service Providers have de-registered their vehicles to save on some of the standing charges. They cannot find enough Taxi Drivers willing to drive and to put themselves at risk for the scant remaining business. It will a slow process to turn the Fleet back on. It will be however an ideal time to re-structure.

It will be at least the next five months before on-road net earnings match the \$750 JobKeeper payments available to Taxi Drivers as Sole Traders, and before the confusion is cleared as to their work status. Will there be a requirement on a Bailee Driver to bail out a Taxi, and for how long and for how much to keep on getting JobKeeper payment from the Federal Government ?

All of this must also factor in the indubitable reality that the Minimum Wage for a Taxi Driver in the PTA is \$23.56 an hour on a 38 hour week. Overtime and Penalty rates are such that the Taxi Industry would be incapable of meeting legal Standards.

Skipping several stages of reasoning, the only logical conclusion is that the Engagement of Drivers is no longer a viable part of a sustainable Taxi Industry. Only in an Owner / Operator Sole Trader environment and free-for-all Industry in which the Taxi Service Provider operates and drives only his own Taxi is there a way forward.

He, the Taxi Service Provider, needs a nominal Plate Fee and an unrestricted market place for Insurances and Network-type Fees. He needs no Industrial Regulation, other than if he were to engage a Driver, it would be as an employed Driver under the National Award. Nor can there be limits on Plate Numbers.

Over the last four years, the total number of Point to Point trips has apparently doubled. Taxi numbers are virtually constant, other than for WATS. Hire Vehicles have increased exponentially. A level playing field requires no such restriction on Taxi numbers, without similar restraints on Hire Vehicles. It is possible that if Taxi Utilization were to dramatically increase, then the existing Fleet might be able to match Demand, but a free market requires no artificial limits on Plate numbers. IPART , the Independent Pricing and Regulatory Tribunal could well be tasked with determining an appropriate quantum of Taxis, based, we suggest, on Professional Drivers in new low emission vehicles, driven by a single Taxi Service Provider, with a nominal Plate Lease Fee.

Our future Industry is going to require Standards for Professional Driver Accreditation such as would naturally limit numbers, and create a development path for new Drivers.

In relation to the impact of the Legislation on the value of Plates, the simple response is “monumental”. Plate values previously in excess of \$400,000 have been reduced to \$70,000 (and \$100,000 for deceased estates). Tendered Plates have been issued for about \$22,000 a year (and all to one Network as the most affluent tenderer.)

Notwithstanding, the pre Corona lease, of around \$1200 per month, represents a return on investment still hugely above average returns. This is no Reform, it is still a protection of and for Plate Owners.

Not until an independently determined number of Taxi Plates are issued at a nominal fee, and as a right, for suitably qualified and experienced Taxi Drivers who are prepared to warrant that they alone will be the Drivers, in new low-emission vehicles, will the desired impact of Reforms will be realized.

The role and function of the Point to Point Commission must be to continue and maintain optimal passenger services for all Passengers utilizing Point to Point Services.

The focus must always be on Passenger Services and not on the convenience for Service Providers. The services provided must, however, be based on competitive neutrality and on the much vaunted “level playing field”.

What we now have is no such competitive neutrality.

We look forward to this Inquiry moving towards such a situation

Our further comments relate to the current world scenario of the COVID 19 Crisis.

When we get to the other side of the Pandemic, we will all be facing a new world and the need for a new response. Taxis will be a safe provider of door-to-door transportation for both people and delivery services. With adequate sanitisation procedures, possibly the safest. To insure that status we will need greater Regulatory oversight and control measures. Taxis can meet that challenge – Ride Share cannot.

It may be desirable to re-visit the notion of an Industry wide Minimum Fare, and of minimum Vehicle Standards for all Point to Point Vehicles.

It is now time to draw back from the “gig economy” and a free-for-all. To meet the new Standards we will require new Standards that only a regulated system can provide.

The last four years have demonstrated that Safety Standards alone are insufficient. The last four months have cruelly emphasised that fact.

We, the Taxi Industry, are prepared to go back a few steps in order to go forward.

Since this Submission was prepared, the NSW Government and Transport for NSW have released a support package for the Taxi Industry as a functional response to the COVID 19 Crisis. We applaud the determination and inputs of the Point to Point Commissioner, the NSW Taxi Council and those key stakeholders who brought on this commendable assistance to Taxi Operators, now known as Taxi Service Providers.

It appears anomalous that Taxis de-registered before 1st May are not eligible.

For many Taxi Drivers there has already been assistance by way of JobSeeker and JobKeeper from the Australian Government, which has also assisted Single Vehicle Operators as well as Operators of Bases employing workers other than as Taxi Drivers.

Regrettably, and as a Australia-wide failing, there has been no support for that very large group of Drivers upon whom the Industry survives – International Students, New Arrivals and Casuals.

It is their acceptance of earning less than half the Australian Standard Minimum Wage that as permitted the Industry to be “sustainable”. Until now !

We note, without comment , that the single largest beneficiary of the proposed reduction of the Tendered Plate Lease Fees will be A2B / 13 Cabs.

It is very much to be hoped that the \$2900 Grants will be sufficient inducement to Taxi Service Providers to re-register their Taxis’ by end June, and to thereby fulfill the anticipated Demand for that which remains the safest, most efficient, and most reliable mode of Public Passenger Transport.

The open question is, however, will there be Drivers willing to work, without certainty of earning at least a Minimum Wage ?

Michael Jools

President ATDA May 2020