

**Submission
No 60**

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

Organisation: Transport Workers' Union of New South Wales

Date Received: 29 May 2020



**Submission to the Inquiry into the Point to Point Transport
(Taxis and Hire Vehicles) Act 2016**

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Transport Workers' Union of New South Wales

1 About the TWU

- 1.1 The Transport Workers' New South Wales (TWU) represents tens of thousands of men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicle and freight logistics industries.
- 1.2 With over one hundred (100) years' experience representing the workers who conduct Australia's crucial passenger and freight transport tasks, the TWU has been proactive in advocating for the establishment and improvement of industry standards which advance the lives and safety of transport workers, their families and the community at large.

2 Introduction

- 2.1 The TWU welcomes the opportunity to contribute to the 'Inquiry into Point to Point Transport (Taxis and Hire Vehicles) Act 2016' Reforms (**Inquiry**).
- 2.2 Taxi and hire car industries play a significant role in transport infrastructure in New South Wales, offering flexible transport services that compliment regular scheduled public transport services.
- 2.3 Traditionally taxi and hire car industries were the flexible point-to-point transport service available at times where alternative public transport had either ceased operating or services levels had reduced. Taxi and hire cars exclusively offered twenty-four (24) hour a day, seven (7) days a week transport services that would transport customers from point-to-point at a time that suited the customer for a fare.
- 2.4 Taxi and hire cars also proved particularly useful for those whom public transport proved unsuitable for. Point-to-point transport aided those with accessibility issues and would otherwise experience social isolation, such as the elderly, disabled and less mobile individuals. Taxis and hire cars were also used as alternative modes of transport for those who did not live near public transport infrastructure.
- 2.5 The emergence of the point-to-point rideshare platform, Uber, in New South Wales in 2012 irrevocably altered the existing taxi and hire car industries worldwide.
- 2.6 The New South Wales taxi and hire car industry proved no exception to the disruptive technology, with the largely unregulated rideshare industry competing for market share in the point-to-point industry.
- 2.7 Unlike the traditional point-to-point taxi and hire car industry that required licencing and observance of existing legal and regulatory frameworks, rideshare platforms offered everyday civilians with cars the opportunity to work for rideshare platforms and provide a quasi-taxi and hire car experience to passengers.
- 2.8 Rideshare platforms operated largely unregulated, undercutting existing point-to-point transport infrastructure, unencumbered by the regulatory framework imposed on taxis and hire cars.
- 2.9 The New South Wales Government was slow to respond to unregulated operations of rideshare services which in turn decimated taxi and hire car businesses. Within the three years (3) between the emergence and operation of rideshare services such as Uber in New South Wales and reform accounting for rideshare, many taxi and hire car drivers and businesses ceased operating.
- 2.10 Of the drivers and businesses who ceased operating, most cited inequity of regulation causing taxi and hire car services to be uncompetitive as a reason for leaving the point-to-point industry.
- 2.11 The competitive advantage Uber enjoyed, saw the exponential emergence of other point-to-point rideshare platforms, looking to capture market share from taxi and hire car services who

could not continue to viably operate with rideshare due to overregulation. This is evidenced by the fact that there are twenty-seven¹ rideshare platforms readily available online in Australia.

- 2.12 Whilst the emergence of rideshare platforms in New South Wales such as *Uber, Ola, DiDi, Shebah, GoCatch, Bolt, Keyz, RideConnect* and many more has indisputably altered the point-to-point industry, rideshare platforms have challenged legislators worldwide.
- 2.13 The New South Wales Baird Government was slow in determining how the emergence of disruptive technology platforms were to be regulated, ascertain what regulations make taxi and hire car industries uncompetitive with rideshare and determine whether compensation should be payable to taxi and hire car drivers who experienced hardship and devaluation of licences due to Government inaction.
- 2.14 In June 2016, the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* was passed with the intent of regulating rideshare platforms.
- 2.15 The *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* established an adjustment package for taxi and hire car drivers experiencing downturn due to rideshare platforms and relaxed the overregulated taxi and hire car industry that made taxi and hire cars uncompetitive.
- 2.16 While the Act introduced measures to level the playing field in the point-to-point transport industry, equitability will not be observed until working conditions and entitlements of rideshare drivers are regulated, Adjustment Packages are reviewed and the New South Wales Government and Point to Point Commissioner provides information as to how the Adjustment Package sums were distributed.
- 2.17 The TWU submits that these recommendations require review by the New South Wales Government to ensure a level playing field in the point-to-point transport industry.

3 Point to Point Transport Taskforce

- 3.1 In November 2015, prior to the Act being introduced to the New South Wales Parliament, Professor Gary Sturgess AM and Dr Tom Parry AM were commissioned to establish a Point to Point Transport Taskforce (**Taskforce**) and “undertake an examination of the future sustainability of taxis, hire cars and other emerging point to point transport provers with a view to making recommendations about the complex issues facing the industry.”²
- 3.2 The Taskforce made fifty-seven (57) findings and recommendations to the Minister for Transport and Infrastructure.
- 3.3 Recommendations pertained to regulation of drivers for safety³, vehicle safety and security⁴, insurance⁵, fares⁶, service quality and innovation⁷, transport disadvantage⁸, compliance and enforcement⁹ and transition¹⁰.
- 3.4 The Taskforce concluded that it was inappropriate to graft rideshare platforms into the existing regulatory structure as this “would preclude the possibility of further innovation in the booked service market for entrepreneurs with entirely different service models”.¹¹

¹ IBISWorld, ‘Rideshare Services in Australia – Market Research Report’, (Web Page, October 2019) <<https://www.ibisworld.com/au/industry/ridesharing-services/5540/>>.

² New South Wales, *Parliamentary Debates*, Legislative Council, 22 June 2016 (The Hon. Duncan Gay MLC) <https://www.parliament.nsw.gov.au/bill/files/3308/2R%20Point%20to%20Point_1.pdf>.

³ Point to Point Transport Taskforce, ‘*Report to the Minister for Transport and Infrastructure*’, (2015), s 2.

⁴ Ibid s 3

⁵ Above n 3, s 4

⁶ Above n 3, s 5

⁷ Above n 3, s 6

⁸ Above n 3, s 8

⁹ Above n 3, s 9

¹⁰ Above n 3, s 10

¹¹ Above n 3, 5

3.5 The taskforce found that the taxi and hire car industries were overregulated, which stifled innovation and service delivery and that any legislation introduced by the New South Wales Parliament had to balance the interests of all parties involved in the transport industry, particularly consumers.

4 Point to Point (Taxis and Hire Vehicles) Act 2016

4.1 The *Point to Point Transport (Taxis and Hire Vehicles) Bill 2016* was introduced into the Legislative Assembly of the New South Wales Parliament 1 June 2016¹² and passed without amendments on 22 June 2016.¹³

4.2 The Legislative Council declared the bill as urgent on the same day and both introduced and passed the *Point to Point Transport (Taxis and Hire Vehicles) Bill 2016* without amendments on 22 June 2016.¹⁴ The Act gained assent on 28 June 2016.¹⁵

4.3 The *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* sought to regulate the point-to-point transport industry and establish an equitable playing field between the traditional taxi and hire car industry and rideshare industry, through four key areas:

(1) The *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* took steps to regulate the disruption of rideshare by introducing levies¹⁶ on point-to-point transport to fund an Adjustment Package¹⁷ for taxi and hire car licence owners and included the following:

(a) The Act introduced a levy of one dollar (\$1) for each passenger service transaction by the provider of a passenger service or booking service.¹⁸

(b) The levy was introduced to fund a two-hundred and fifty million-dollar (\$250,000,000) adjustment package, which comprised of:

(i) one hundred and forty-two million dollars (\$142,000,000) was allocated for taxi licence holders facing hardships;

(ii) ninety-eight million dollars (\$98,000,000) was allocated for transition assistance package for taxi licence holders facing hardship; and

(iii) up to ten million dollars (\$10,000,000) is provided for a buyback scheme for hire car licence holders.

(2) The *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* and *Point to Point (Taxis and Hire Vehicles) Regulation 2017* replaced the existing regulatory framework for taxis to ensure taxi and hire cars can compete with rideshare services and included the following:

(a) Changes include how often taxis and hire cars are to be inspected.¹⁹

(b) Changing the replacement age of taxi and hire car vehicles.²⁰

(c) Abolishing tests pertaining to the comfort and service quality of taxis.²¹

¹² Parliament of New South Wales, *Point to Point Transport (Taxi and Hire Vehicles) Bill 2016* (Web Page) <<https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3308>>.

¹³ Ibid

¹⁴ Above n 12

¹⁵ Above n 12

¹⁶ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), Schedule 4.

¹⁷ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), Schedule 3.

¹⁸ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), Schedule 4, 4(1).

¹⁹ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), 16.

²⁰ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), 16.

²¹ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), 16.

- (3) The *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* provides tax exclusivity over rank and hail²² services and introduced penalties²³ for rideshare providers who engage in rank and hail work.
- (4) The *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* established a Point-to-Point Commissioner²⁴ (**Commissioner**) who is appointed to:
 - (a) administer the authorisation and licencing schemes;²⁵
 - (b) manage enforcement of *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*²⁶;
 - (c) recommend safety and other standards for passenger services;²⁷
 - (d) assist in determining liability for the passenger services levy;²⁸ and
 - (e) advise the Minister on matters pertaining to the point-to-point sector.²⁹

5 Operation of the Reforms

- 5.1 It is undeniable that there was, and continues to be, a need for reform in the point to point industry.
- 5.2 Whilst observance of adjustment packages and establishing points of differentiation between taxi, hire cars and rideshare, such as the taxi industry having exclusivity over the rank and hail service, has proven helpful, there is still need for reform to create an equitable playing field within the industry.
- 5.3 Some general comments can be made about the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* – namely that whilst compensation for existing taxi and hire car licence holders is welcome, more needs to be done.
- 5.4 The TWU has long held the stance that irrespective of what provisions the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* introduces, the very nature of rideshare work compared to the taxi industry renders traditional point-to-point transport uncompetitive.
- 5.5 It is unreasonable to believe that taxi and hire car industries can compete with rideshare platforms that operate outside the labour laws currently existing in New South Wales.
- 5.6 Without the New South Wales Parliament reforming how rideshare platforms classify employment relationships, there will be no true level playing field in the point-to-point industry.
- 5.7 There is a significant disparity between the entitlements of rideshare drivers, operating on platforms that claim to merely provide a connection between car owner and passenger and taxi and hire car drivers covered under the *Industrial Relations Act 1996* (NSW).
- 5.8 The *Industrial Relations Act 1996* (NSW) allows drivers to engage in industry bargaining for contract determinations and establish conditions and rates for drivers.

²² *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), 16.

²³ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), 16.

²⁴ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), Part 9.

²⁵ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s139(1)(a).

²⁶ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s139(1)(b).

²⁷ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s139(1)(c).

²⁸ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s139(1)(d).

²⁹ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s139(1)(e).

- 5.9 The TWU submits that regulating the employment relationship of rideshare and gig-economy workers is the natural step from here, building upon the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016*.
- 5.10 The New South Wales Parliament is unable to fulfill its goal of establishing a level playing field to make the point-to-point industry competitive without this reform.
- 5.11 The TWU has highlighted the following grounds below as points of reference that the inquiry should turn its head to.

6 The Nature of Rideshare Work

- 6.1 Whilst the *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* sought to introduce reform to level the playing field within the point-to-point industry, one of the main differentiations between the taxi and rideshare industry is yet to be reformed.
- 6.2 In 2018, the Transport Workers Union of Australia (**TWU Australia**) and Rideshare Drivers Co-Operative, surveyed over one thousand (1,000) rideshare drivers³⁰ about their experience and working conditions in the gig economy.
- 6.3 Of the respondents, most worked for *Uber* and *Ola*, however *Taxify*, *DiDi* and other platforms were also represented.
- 6.4 TWU Australia found that drivers were experiencing low earnings, high rates of harassment, assault and sexual violence and were concerned about platforms varying terms and conditions that directly impact drivers' earnings without consultation.
- 6.5 Of the surveyed drivers, eighty-five percent (85%) are unsatisfied with their earnings³¹ with sixty-seven percent (67%) of drivers working full time hours earning below the Australian Bureau of Statistics average weekly wage.³²
- 6.6 Half the drivers surveyed (50%) work fulltime equivalent hours.³³
- 6.7 TWU Australia found that after company fees and taxes, yet before costs such as fuel and insurance, rideshare drivers were making sixteen dollars (\$16) per hour on average.³⁴
- 6.8 Nine-hundred and sixty-nine (969) instances of harassment and assault were also reported.³⁵
- 6.9 Thirty-seven percent (37%) of incidents involved threats being made, ten percent (10%) involved physical assault and six percent (6%) of drivers were subject to sexual assault or violence.³⁶
- 6.10 Drivers reported where incidents occur and were reported to rideshare platforms, platforms often failed to deactivate alleged perpetrators accounts.
- 6.11 A rideshare driver advised that after being held at knifepoint and reporting the incident to the police, the platform failed to deactivate the perpetrators rideshare customer account.
- 6.12 Drivers further advise that where they encounter false reports, driver accounts are deactivated with no right of reply.

³⁰ Transport Workers Union, 'Rides-share Drivers Reveal Low Pay and Violence' (Web Page, 12 March 2019) <<https://www.twu.com.au/ride-share/were-building-power/>>.

³¹ Ibid

³² Above n 30

³³ Above n 30

³⁴ Above n 30

³⁵ Above n 30

³⁶ Above n 30

- 6.13 Drivers reported that their biggest concerns about rideshare driving include:
- (1) company commission platforms yielding excessive commission;
 - (2) driving expenses being high;
 - (3) drivers not being remunerated enough to pay or save for superannuation or leave;
 - (4) not having a right of reply to passenger reports;
 - (5) a lack of transparency on payments;
 - (6) struggling to pay taxes; and
 - (7) encountering a lack of safety protection.³⁷
- 6.14 TWU Australia's survey offers a snapshot into what life and working conditions are like for transport workers in an on-demand gig economy.
- 6.15 The working arrangement and conditions evidence that there is a race to the bottom with working conditions and entitlements of drivers.
- 6.16 As gig-economy rideshare work does not amount to traditional employer/employee relationship, rideshare platforms undercut workers and provide employment through sham contract arrangements.
- 6.17 Rideshare work not only exploits drivers, but also puts pressure on traditional point-to-point industries such as taxi and hire car services to undercut workers to remain competitive.

7 Employment Status of Rideshare Workers v Taxi and Hire Car Workers

- 7.1 It is insufficient to perceive the *Point to Point (Taxi and Hire Vehicle) Act 2016* as the equaliser between taxi, hire cars and rideshare.
- 7.2 There are structural differences between employment relationships of taxi and rideshare drivers that pose as a significant point of differentiation within the point-to-point industry.
- 7.3 As rideshare platforms are not required to pay employee entitlements, the point-to-point industry is engaged in a race to the bottom with working conditions.
- 7.4 This places significant pressure on the point-to-point sector and renders taxi and hire car services uncompetitive as rideshare platforms have the ability to undercut traditional markets that abide by existing employment entitlements, whilst rideshare businesses dodge employee entitlements such as the minimum wage, sick leave, annual leave or any other benefits employees enjoy.
- 7.5 Given the precarious nature of rideshare arrangements, the Fair Work Ombudsman (**Ombudsman**) in 2019³⁸ was tasked with determining whether Uber had engaged in sham contracting.
- 7.6 The Ombudsman conducted interviews with drivers, reviewed driving records, pay arrangements, pricing schedules, Australian Business Number documents and driver contracts.
- 7.7 The Ombudsman concluded that there was no employment relationship between Uber and drivers on the platform.

³⁷ Above n 30

³⁸ *Joshua Klooger v Foodora Australia Pty Ltd* [2018] FWC 6836.

- 7.8 The Ombudsman affirmed that in order for these relationships to amount to employment status, at minimum, employees would have to perform work where demanded by employers and there was no obligation for drivers to perform work.
- 7.9 Further, the Ombudsman stated that “Uber Australia drivers have control over whether, when and for how long they perform work, on any given day or any given week...this was a key factor in our assessment that the commercial relationship between the company and the drivers did not amount to an employment relationship.”³⁹
- 7.10 This decision reflects previous decisions before the Fair Work Commission,⁴⁰ where drivers were deemed contractors, not employees.
- 7.11 Importantly, the Ombudsman was clear that this decision pertained to the Uber platform, and was not a reflection of the working arrangements of other rideshare platforms.
- 7.12 The TWU believes that there is undeniably a need for the New South Wales Government, as well as other Australian States and Territories respectively, to review how gig-economy platforms are structuring their business model to obfuscate existing employment entitlements.
- 7.13 This is particularly that case, as the Ombudsman’s decision to uphold Uber drivers’ status as contractors diverges from the decision made by the Fair Work Commission pertaining to *Foodora* unfairly dismissing a bicycle delivery driver.⁴¹
- 7.14 With the assistance of TWU Australia, a *Foodora* food delivery cyclist was deemed unfairly dismissed by the Fair Work Commission.
- 7.15 Whilst *Foodora* is a food delivery app that is not a point-to-point rideshare platform, the premise, questioning as to whether a gig-economy worker is an employee and the tests applied by the Fair Work Commission are comparable.
- 7.16 The facts pertain to a food delivery cyclist who signed an independent contract agreement stating the he as a cyclist, was not engaged as an employee.
- 7.17 The cyclist was dismissed after two (2) years of service for publicly whistleblowing that *Foodora* was providing less remuneration than the independent contract agreement signed had stated.
- 7.18 The applicant sought to also communicate with hundreds of other gig-economy workers about the change of remuneration and the general experience of gig-workers.
- 7.19 *Foodora* dismissed the applicant, which led to the matter being heard before the Fair Work Commission.
- 7.20 The Fair Work Commission found that the termination was harsh, unjust and unreasonable, asserting that there was an employer employee relationship.
- 7.21 The Fair Work Commission revised the relationship between the cyclist and the *Foodora* and determined that the platform engaged in a high level of control over workers, therefore this is a traditional employer/employee relationship.⁴²
- 7.22 These control factors are equally at play for rideshare drivers, with platforms controlling remuneration of drivers, price surges, promotions and discounts and the allocation of jobs.

³⁹ Fair Work Commission, ‘Uber Australia Investigation Finalised’ (Media Release, 7 June 2019) <<https://www.fairwork.gov.au/about-us/news-and-media-releases/2019-media-releases/june-2019/20190607-uber-media-release>>.

⁴⁰ *Janaka Namal Pallage v Rasier Pacific Pty Ltd* [2018] FWC 2579 and *Mr Michail Kaseris v Rasier Pacific V.O.F* [2017] FWC 6610.

⁴¹ *Joshua Klooger v Foodora Australia Pty Ltd* [2018] FWC 6836.

⁴² *Joshua Klooger v Foodora Australia Pty Ltd* [2018] FWC 6836, 74.

- 7.23 Rideshare platforms also exercise control by arbitrarily terminating drivers without offering avenues for appeal.
- 7.24 The control rideshare platforms offer to drivers is minimal, as the only autonomous decision drivers are able to make is how many hours they work.
- 7.25 The *Point-to-Point (Taxis and Hire Vehicles) Act 2016* must provide more than merely adjustment packages and flexibility in the regulatory framework taxi and hire cars have operated under.
- 7.26 With the existing disparity between taxi and rideshare employee/employer relationships, or lack thereof, one cannot truly believe the *Point-to-Point (Taxis and Hire Vehicles) Act 2016* establishes a level playing field for the point-to-point industry.
- 7.27 This is particularly the case in New South Wales, where permanent drivers within the Sydney Metropolitan Transport District are entitled to four (4) weeks of paid annual leave a sick leave.⁴³
- 7.28 These entitlements were vested onto taxi drivers after the Industrial Commission of New South Wales inquired into the taxi-cab industry and sought to protect drivers from unconscionable exploitation of bailors.⁴⁴
- 7.29 These entitlements were later codified in the *Taxi Industry (Contract Drivers) Contract Determination 1984*.⁴⁵
- 7.30 The bailee/bailor relationship of the taxi industry is covered by the *Industrial Relations Act 1996* (NSW).
- 7.31 The *Industrial Relations Act 1996* (NSW) enables taxi drivers to engage in collective bargaining in determining industry standards, minimum rates and contract determinations.
- 7.32 The TWU, along with countless other Unions, affirm that rideshare workers too require employment protections by way of minimum wages and employee entitlements such as sick leave, annual leave and superannuation.
- 7.33 As well as access to minimum wage entitlements, rideshare drivers also deserve:
- (1) access to training, including safety training;
 - (2) Workplace Health and Safety training;
 - (3) access to workers compensation;
 - (4) the opportunity to establish a collective voice for collective bargaining;
 - (5) dispute resolution procedures; and
 - (6) transparency of information where working conditions such as changes in commission or reporting occur through rideshare platforms.
- 7.34 Along with rideshare workers and peak advocacy groups, the TWU will continue to protest and work collaboratively with the rideshare industry to ensure the point-to-point transport industry is not engaging in a race to the bottom.

⁴³ Legislative Assembly of New South Wales, 'Workplace Arrangements in the Point to Point Transport Industry' (2016) 1(56) Transport Industry, 2.20
 .<<https://www.parliament.nsw.gov.au/ladocs/inquiries/2400/Final%20Report%20-%20Workplace%20Arrangements%20in%20the%20Point%20to%20Point%20Transport%20Industry.pdf>>.

⁴⁴ Ibid, 3.8

⁴⁵Above n 43, 4.14

8 Passenger Services Levy

- 8.1 The *Point to Point (Taxi and Hire Vehicle) Act 2016* introduced a temporary levy of one dollar (\$1) per passenger per passenger service transaction paid by taxi and booking service providers alike.⁴⁶
- 8.2 The Passenger Services Levy commenced on 1 February 2018 and will be in place for up to five (5) years in order to fund the New South Wales Government's two-hundred and fifty million-dollar (\$250,000,000) industry assistance package for taxis and hire cars.
- 8.3 *Point to Point (Taxi and Hire Vehicle) Act 2016* provides discretion for taxi and booking services to either absorb the cost of the levy or pass the levy onto consumers using point to point transport services.
- 8.4 Introduction of the Passenger Services Levy is not dissimilar to adjustment packages introduced in other Australian states and territories to compensate traditional taxi and hire car drivers.
- 8.5 Victoria's *Commercial Passenger Vehicle Industry Act 2017*, for example, imposes a levy with respect to each commercial passenger vehicle service transaction carried out during a return period.⁴⁷
- 8.6 Victoria's levy for a commercial passenger vehicle service transaction is also one dollar (\$1), however the levy is reviewed each financial year with the view of varying the levy where necessary.⁴⁸
- 8.7 New South Wales on the other hand, provided a flat levy rate payable.
- 8.8 Within the first six (6) months of collecting the Passenger Services Levy in New South Wales, "rideshare services, such as Uber, taxis and hire cars collected more than \$34 million."⁴⁹
- 8.9 This means that there were more point-to-point customers than the New South Wales Government anticipated and as such, the Government has discretion to cease the levy once the adjustment package amount of two-hundred and fifty million dollars (\$250,000,000) is raised.
- 8.10 The TWU notes that the Government indicated within second reading speeches that they levy is for a period of up to five (5) years or until the amount of two-hundred and fifty million dollars (\$250,000,000) is raised, however the *Point to Point (Taxi and Hire Vehicle) Act 2016* did not expressly stipulate this.
- 8.11 The TWU submits that there may be merit in the levy surpassing the adjustment package amount of two-hundred and fifty million dollars (\$250,000,000) (if the levy projection continues at the rate indicated in the first six (6) months) and ceasing the levy at the five-year (5) mark instead.
- 8.12 This would offer the New South Wales Government the opportunity to review the adjustment package and ascertain whether further adjustments are required, particularly for taxi and hire car drivers who were not accounted for under the *Point to Point (Taxi and Hire Vehicle) Act 2016* adjustment package.

⁴⁶ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), Schedule 4, 2(4).

⁴⁷ *Commercial Passenger Vehicle Industry Act 2017* (Vic), s 235.

⁴⁸ *Commercial Passenger Vehicle Industry Act 2017* (Vic), s 238(3).

⁴⁹ Nigel Gladstone, '\$1 Rideshare Levy Nets \$34m for State: But Taxis are Losing Money', The Sydney Morning Herald, (Online, 19 December 2018) <<https://www.smh.com.au/politics/nsw/1-rideshare-levy-nets-34m-for-state-but-taxis-are-losing-money-20181218-p50mvm.html#comments>>.

9 Adjustment Assistance for Taxi and Passenger Hire Vehicle Industries

9.1 The *Point to Point (Taxis and Hire Vehicles) Act 2016* introduced an adjustment package called the Transitional Assistance Payment Scheme, which provides one hundred and forty-two million dollars (\$142,000,000) for taxi licensees facing hardship due to changes in the point-to-point industry, ninety-eight million dollars (\$98,000,000) for transition assistance and up to ten million dollars (\$10,000,000) for a licence buyback scheme.

9.2 New South Wales Minister for Transport and Infrastructure, the Hon. Andrew Constance MP, in his *Point to Point (Taxis and Hire Vehicles) Bill 2016* second reading speech, stated:

*...a hallmark of a fair society is that governments provide reasonable assistance to those affected by regulatory change. The industry adjustment package in the bill recognises that thousands of mum and dad investors and self-funded retirees who invested in a highly regulated market will have their income affected and may experience hardship as a result of these changes.*⁵⁰

9.3 The TWU acknowledges the insurmountable impact that the emergence rideshare has had on the value of taxi licences.

9.4 It is widely reported that “average transfer prices of taxi licence plates in Sydney fell from about \$225,000 just before the government opted to legalise ride-sharing in late 2015 to below \$100,000 for the first-time”⁵¹ in November 2018.

9.5 Whilst the TWU sympathises with taxi licence holders, it must be acknowledged that depreciation of taxi licence value in part is attributable to the NSW State Government.

9.6 Considering the NSW Government was largely inactive between the period of Uber and other rideshare platforms commencing operation and the introduction of the *Point to Point (Taxis and Hire Vehicles) Act 2016*, it can only be expected that taxi licences depreciated.

9.7 There is a direct causal link between the Government’s inaction and taxi and hire car industry being rendered uncompetitive under stringent regulatory frameworks.

9.8 With respect, it is therefore insufficient for the Minister for Transport and Infrastructure to claim “other jurisdictions...have offered much smaller or in some circumstances no adjustment assistance to licensees.”⁵²

9.9 Whilst the adjustment package is welcomed, the TWU is concerned about the scale of the adjustment package and taxi and hire car drivers who are unaccounted for in the *Point to Point (Taxis and Hire Vehicles) Act 2016*.

9.10 To echo the sentiments of the former Shadow Minister for Transport (current Leader of the Opposition), Ms Jodi McKay MP:

*...how the Government reached the decision to provide \$250 million is unknown. How the Government reached the decision to provide \$98 million for transition assistance for licensees is unknown, as are the reasons for the decision to provide a \$142 million fund for licensees facing hardship.*⁵³

9.11 It is difficult to come to a determination as to the effectiveness as the New South Wales Government and the Point to Point Commissioner alike, have not been transparent in

⁵⁰ New South Wales, *Parliamentary Debates*, Legislative Assembly, 22 June 2016 (The Hon. Andrew Constance MP) < <https://www.parliament.nsw.gov.au/bill/files/3308/2R%20Point%20to%20Point.pdf>>.

⁵¹ Above n 49

⁵² Above n 50

⁵³ New South Wales, *Parliamentary Debates*, Legislative Assembly, 22 June 2016 (Ms Jodi McKay MP) < <https://www.parliament.nsw.gov.au/bill/files/3308/2R%20Point%20to%20Point.pdf>>.

publicising how many applications were made for adjustment packages, the rate of success for applicants seeking financial assistance, the average compensation amount payable to successful applicants and what proportion of the two-hundred and fifty million dollar (\$250,000,000) package has been accessed.

- 9.12 Contrary to the Minister for Transport and Infrastructure's claim of other jurisdictions not assisting those affected, Victoria's equivalent legislation, the *Commercial Passenger Vehicle Industry Act 2017*, provides one hundred thousand dollars (\$100,000) per licence for the first licence and fifty-thousand dollars (\$50,000) for up the three licences subsequent. The maximum adjustment that can be claimed for licencing is two-hundred and fifty thousand dollars for licence holders (\$250,000).
- 9.13 New South Wales provides a far less generous adjustment package for licence holders.
- 9.14 Of the ninety-eight million dollars (\$98,000,000) apportioned for transition assistance, twenty-thousand dollars (\$20,000) per perpetual licence for up to two licences is available.
- 9.15 Given the lack of consistency between jurisdiction and financial assistance being offered to taxi licence holders, it is no surprise that licence holders are starting to litigate against Uber and other rideshare providers.
- 9.16 A further criticism the TWU receives from countless members is that taxi and hire car drivers were not accounted for in the adjustment package, rather taxi licence holders were the beneficiaries of the *Point to Point (Taxis and Hire Vehicles) Act 2016*.
- 9.17 The stance the *Point to Point (Taxis and Hire Vehicles) Act 2016* takes on exclusively compensating licence owners reflects the recommendations of the Point to Point Transport Taskforce.
- 9.18 To assist with transition, the Taskforce affirmed that the New South Wales State Government should "provide transitional assistance to the owners of perpetual taxi licences, based on equity and hardship grounds; financial assistance to other industry participants is not recommended."⁵⁴
- 9.19 Whilst the New South Wales Government may think the *Point to Point (Taxis and Hire Vehicles) Act 2016* and *Point to Point (Taxis and Hire Vehicles) Regulation 2017* introducing provisions, such as establishing exclusivity over rank and hail services, as a means of the taxi industry retaining market share is sufficient, this is not the case.
- 9.20 Whilst the New South Wales Government was right to establish points of differentiation between rideshare and taxi and hire cars, the inaction of the Government in regulating the point-to-point sector affected the livelihood of countless drivers throughout the state.
- 9.21 This sentiment is evidenced in one of Australia's largest class actions to date, pursued by Maurice Blackburn Lawyers.⁵⁵
- 9.22 Maurice Blackburn is representing thousands of taxi, hire car, charter vehicle and limousine drivers and licence owners seeking compensation from rideshare market leader, Uber.
- 9.23 Maurice Blackburn is advancing the argument that Uber destroyed the livelihoods of countless drivers and licence owners by competing with disregard for established guideline and regulatory frameworks.

⁵⁴ Above n 3, 55

⁵⁵ Maurice Blackburn Lawyers, 'Uber Class Action' (Web Page) <<https://www.mauriceblackburn.com.au/class-actions/current-class-actions/uber-class-action/>>.

9.24 The firm will seek compensation “for the loss of drivers income between the time of Uber entering the market in early 2014 and the taxi industry being deregulated...compensation will also be sought for the devaluing of taxi and hire-car licence plates since 2014.”⁵⁶

9.25 The TWU believes that restricting taxi and hire car drivers’ access to the adjustment package provided for in the *Point to Point (Taxi and Hire Vehicles) Act 2016* shows an indifference to the plight of everyday transport workers who were deemed less competitive to rideshare counterparts who operated without regulation for years.

10 Composition of the Taxi and Hire Vehicles Industries Assistance Panel

10.1 The Taxi and Hire Vehicles Assistance Panel⁵⁷ (**Hardship Panel**) was established under the *Point to Point (Taxis and Hire Vehicles) Act 2016* as a peak body panel that oversees distribution of Transition Assistance funds of the Adjustment Package of one hundred and forty-two million dollars (\$142,000,000) to assist those most adversely affected by point-to-point industry changes.

10.2 The Hardship Panel’s formal duties, include:

- (1) determining procedures for application of assistance funds;⁵⁸
- (2) recommending criteria for the payment of additional assistance funds;⁵⁹
- (3) advising the Minister about disbursements of funds;⁶⁰
- (4) recommending assistance funds for particular applicants or classes of applicants;⁶¹ and
- (5) making recommendations where there is a dispute as to who holds a licence.⁶²

10.3 The Hardship Panel plays a central role in effecting the adjustment package of the *Point to Point (Taxis and Hire Vehicles) Act 2016*.

10.4 The *Point to Point (Taxis and Hire Vehicles) Act 2016* provides for four (4) members of the Hardship Panel, consisting of:

- (1) The Chief Executive of the NSW Taxi Council⁶³;
- (2) The Secretary of the Department of Transport⁶⁴;
- (3) The Secretary of the Department of Premier and Cabinet⁶⁵; and
- (4) The Secretary of the Treasury.⁶⁶

10.5 The TWU holds issue with the composition of the and the lack of representation offered to the TWU, particularly as the TWU is the recognised union for Taxi Drivers across New South Wales.

⁵⁶Timna Jacks, ‘Huge Taxi Class Action Against ‘Illegal Operator’ Uber Launches’, The Sydney Morning Herald, (Online, 3 May 2019) <<https://www.smh.com.au/national/huge-taxi-class-action-against-illegal-operator-uber-launches-20190502-p51jkc.html>>.

⁵⁷ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), Division 3.

⁵⁸ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s8(a).

⁵⁹ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s8(b).

⁶⁰ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s8(c).

⁶¹ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s8(e).

⁶² *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s8(f).

⁶³ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s7(1)(a).

⁶⁴ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s7(1)(b).

⁶⁵ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s7(1)(c).

⁶⁶ *Point to Point Transport (Taxis and Hire Vehicles) Act 2016* (NSW), s7(1)(d).

- 10.6 As the TWU is the only union entitled to represent taxi drivers in the Industrial Relations Commission in accordance with the *New South Wales Industrial Relations Act 1996*,⁶⁷ it is incomprehensible that the TWU was not accounted for on the Hardship Panel.
- 10.7 TWU New South Wales represents more than thirty-thousand (30,000) members who work in the taxi, public transport and trucking industry.
- 10.8 The TWU advocates for secure working conditions and safety standards, ensuring fair pay and remuneration and voicing the concerns of those working in the transport industry.
- 10.9 The TWU has a long history advocating for bailee taxi drivers and historically have played a vital role in establishing safety nets that the taxi industry currently has in place.
- 10.10 The Hardship Panel, consisting of four (4) members, came to the conclusion that there were four (4) key groups who required financial assistance from the Additional Assistance Payment Scheme.
- 10.11 These groups are:
- (1) Taxi licence holders dependent on the income from their taxi licence lease;
 - (2) Taxi licence holders with high levels of debt correlated with their licence;
 - (3) Taxi licence holders and operators at or near retirement age with few assets and no other sources of income; and
 - (4) Applicants who prove financial adversity.⁶⁸
- 10.12 Whilst the hardship panel rightfully identified these groups are detrimentally impacted, the TWU is unsurprised little interest has been shown to hardship encountered by taxi drivers themselves.
- 10.13 The TWU strongly believes that the interests of those working in the taxi industry have not been met, whereas the interests of license holders have been disproportionately advanced.
- 10.14 Whilst the Hardship Panel may claim that that the scheme is determined on a case by case basis with decisions contingent on an individual's ability to demonstrate financial hardship caused by reform, the Minister accepted⁶⁹ the Hardship Panel recommendations citing that license holders are the primary body affected.
- 10.15 The TWU is dismayed, yet unsurprised, that the Hardship Panel failed to turn their attention to the interests and hardship encountered by drivers considering the Baird State Government failed to account for union representation on the hardship panel.

11 Concluding Remarks

- 11.1 Whilst the TWU praises the introduction of the long overdue *Point to Point (Taxis and Hire Vehicles) Act 2016*, there is yet much to do to ensure equitable competition in the point-to-point transport sector.
- 11.2 The TWU trusts this Inquiry will provide an industry perspective of the challenges the point-to-point sector faces and is a catalyst for the New South Wales Parliament reviewing how an equitable playing field can be established.

⁶⁷ *Industrial Relations Act 1996* (NSW), Chapter 6.

⁶⁸ Transport for New South Wales, 'Personal Assistance Payment Scheme' (Web Page) <<https://www.transport.nsw.gov.au/projects/additional-assistance-payment-scheme>>.

⁶⁹ *Ibid*

- 11.3 The TWU, along with other labour organisations, will continue to advocate the plight of gig-economy workers who are engaged in sham contracting and work in a deregulated industry that is exploitative.
- 11.4 Whilst the two-hundred and fifty-million-dollar (\$250,000,000) adjustment package accounted for in the *Point to Point (Taxis and Hire Vehicles) Act 2016* goes a long way in assisting hard-done-by taxi and hire car licence owners, the adjustment package shows an indifference to the effects felt by traditional point-to-point drivers.
- 11.5 The New South Wales Government's adjustment package providing twenty-thousand dollars (\$20,000) per perpetual licence is too negligible.
- 11.6 If not for the same Government failing to take action and regulating rideshare platforms operating for years untouched, the value of taxi and hire car licences would not depreciate as rapidly.
- 11.7 The TWU welcomes the opportunity to work collaboratively with stakeholders and this Inquiry to ensure an equitable outcome for drivers of the point-to-point industry, irrespective of their membership, and/or lack of membership, to an industrial organisation.