

**Submission
No 67**

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

Organisation: Manly Warringah Cabs (Trading) Co-operative Society Ltd

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Written submission to the Legislative Council Inquiry into the operation of the Point to Point Transport (Taxis and Hire Vehicles) Act 2016

Thank you for providing the opportunity to make a submission to this important Inquiry.

INTRODUCTION

Manly Cabs is based on the Northern Beaches of Sydney and has proudly provided taxi services to the local community for over 60 years. Manly Cabs is a co-operative society registered in NSW. A large number of our taxis are hybrid-powered vehicles with greatly reduced emissions. Prior to the COVID-19 pandemic we had around 130 taxis in our network. Prior to legalisation of rideshare companies by the 2016 Act, we had well over 200 taxis.

We provide safe essential transport services 24 hours a day, every day of the year. Taxis are often the only form of public transport for some members of the community, providing essential transport services to some of the most disadvantaged people in the State. Our taxis provide services at times when other forms of public transport either significantly reduce service levels or cease operations altogether.

Taxi owner operators are small business owners who maintain 1 or more taxi vehicles and employ drivers on 12 hour shifts that keep their taxis on the road 24 hours a day. Taxi drivers are typically sole traders. Like many other small businesses, the income earned by taxi operators and drivers is the main livelihood of many families.

The most recent IPART Survey of the point to point transport industry reported that “Overall satisfaction with taxi services increased in all geographic areas we surveyed.”¹ The full report notes that “Taken together, these indicators don’t suggest that rideshare will diminish in the marketplace

¹ Page 2, Information Paper: Annual Survey of Point to Point Transport Use 2019, IPART, found at: <https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/investigation-administrative-publications-survey-of-point-to-point-transport/information-paper-survey-of-point-to-point-transport-use-2019.pdf>

at all, but do suggest the period of constant growth may be coming to an end.”² Finally: “Overall last trip satisfaction sits at above 85% for all forms of point to point transport services in all locations.”³

Our submission outlines that the Government can assist with further measures to preserve the operations and commercial viability of the taxi industry. Taxi networks provide a vital essential service to passengers and the community by having taxis available for hire 24 hours a day, every day of the year.

We respectfully ask the Inquiry to look closely where the local taxi industry is heading versus where it should be. Rideshare companies are typically from the overseas Gig economy and have no vested interest in our country other than unreasonably disrupting the markets for passenger services which had been providing full time jobs that supported many thousands of Australian families, and are worth billions of dollars in revenue to the State.

Some key areas of concern are outlined below.

UNEVEN PLAYING FIELD

There is no limit on the number of vehicles that rideshare companies can make available for hire at any given time. By contrast the taxi industry is inherently constrained by limits on the number of taxi licences.

The patterns of trading for taxis differ each day of the week, every week of the year. Factors such as time of day, which day of the week, the weather, the season, and large special events, all affect the volume of passengers on any given day.

Taxi drivers cannot afford to bail taxis during the quiet periods if they are not constantly working through the busy periods – that ongoing cross-subsidisation is essential to the taxi industry’s viability as a service to the public that is available 24 hours a day, every day of the year.

An entrenched practice of rideshare companies is to actively encourage an overwhelming over-supply of their vehicles to flood the airwaves at busy times when there is very high demand for point to point transport. Rideshare companies are not restricted by maximum fare scales, as a result surge pricing (higher prices) is also implemented by rideshares during times of high demand for point to point transport. While some rideshare companies have marketing material that makes the practice of flooding the market with vehicles sound like a benefit towards their passengers, in fact it is anything but, coming as it does with sudden steeply increased prices. Intending rideshare passengers who cannot afford surge prices will have to postpone or cancel their trip ... which is not an improvement in customer outcomes.

The surge pricing strategy has three undesirable outcomes.

First, over the longer term it will condition the travelling public to paying higher fares than they should have to, for point to point transport. In fact this conditioning is already well underway. While we have not conducted formal market surveys, anecdotally it is evident that very committed rideshare users are resigned to paying rideshare companies substantially more during busy periods. We would suggest that the rideshare companies might have their own market research results on

² Page 1, IPART 2019 Point-to-Point Transport Survey Report (full report) found at: <https://www.ipart.nsw.gov.au/files/sharedassets/website/shared-files/investigation-administrative-publications-survey-of-point-to-point-transport/consultant-report-orima-research-2019-point-to-point-transport-survey.pdf>

³ Page 3, *ibid.*

the level of 'resistance' their users display to the % of surge pricing charged, and that perhaps rideshare companies might use those results to identify where higher percentages can be charged without materially increasing user resistance. We respectfully submit that surge pricing is the wrong outcome from the legislative reforms, on any measure.

Second, the strategy is driving taxi operators out of business by ensuring that individual taxis can no longer obtain enough work during busy periods to adequately cross-subsidise their low-yielding shifts during quiet periods. While not the same, the strategy has a similar effect to predatory pricing of goods at such a low level that smaller competitor firms cannot compete and are forced to exit the market, eventually creating a monopoly (or close to it) for the remaining big player(s). It has been conclusively demonstrated that with predatory pricing tactics, once competitors have exited the market the prices charged by the predatory firm inevitably rise significantly. Surge pricing has this effect on the point to point industry because rideshare companies consciously use surge pricing to attract high numbers of rideshare drivers to work during busy periods. The resulting mass over-supply of rideshare vehicles during surge periods means that neither rideshare drivers nor taxi drivers have as many fares during busy periods. This reduces all point to point drivers' capacity to earn an income stream that will adequately support them and their family. By contrast, rideshare companies make more money from busy periods because they take the same percentage of every fare, regardless of whether surge-priced or not. An unintended consequence is that surge pricing erodes the capacity for driving to generate an income stream that adequately supports the rideshare driver and family.

Third, rideshare drivers are increasingly discovering (like their taxi driver colleagues) that they cannot make enough money from driving to earn a sustainable income stream, as a result of their company's tactic of surge pricing that overwhelms the market with vehicle over-supply during peak periods.

We acknowledge there is a balance to be struck between the need of the travelling public to have ready access to point to point transport, and the legitimate expectation of drivers of a sustainable income stream. However, the balance has been upset and does need to be restored; the current model is unsustainable for all drivers and operators, whether taxi or rideshare. Consumers' best interests long-term are certainly not served by the lessening of competition that would follow exit of several players from the market.

Consumers' best interests day-to-day are not served by an overwhelming oversupply of vehicle availability during busy periods and an undersupply during quiet periods. An undersupply during quiet periods is a consequence of surge pricing and oversupply of vehicles during busy periods. Since oversupply and surge pricing began, both taxi drivers and rideshare drivers have been less and less able to afford to be available for hire during quiet periods.

Have rideshare companies given Government the benefit of unfettered access to all their data? That would enable independent analysis of when rideshare vehicles are available for hire, of which periods of day/night are over-supplied with available rideshares and which are under-supplied. Unfettered access would enable Government to better understand the impact of surge pricing mechanisms on consumer behaviour. Such analyses would aid the Government in devising a more level playing field that improves consumer outcomes.

The current system has also led to the steep reduction in number of taxi plates working which sometimes generates slightly longer wait times now than in past years, for those wishing to use taxi services.

TAXIS SUBJECT TO MAXIMUM FARES FOR MANY TRIPS; RIDESHARES ARE NOT

Rideshare fares are not capped by law, whereas taxi fares are subject to laws that set maximum fares for rank and hail work. Taxi meters are structured to operate at the maximum allowable fare rates for rank and hail work. In theory at least, taxis are allowed to charge more for booked trips. However, it is not (and has never been) competitively realistic for taxis to charge more for booked trips than they do for rank and hail work, in an environment where some taxi business has been migrating to rideshare.

HIGHER OVERHEADS FOR TAXIS

The regulatory framework has not achieved its aims of maximising both customer and economic productivity. The change in framework has effectively made it impossible for taxis and rideshare to co-exist due to significantly higher overhead and operating costs in maintaining a taxi service.

Theoretically, taxi networks could have passed onto operators and drivers, their higher costs of monitoring safety and compliance. In reality that wasn't possible, with the sustained downward pressure on income for both operators and taxi drivers that came from rideshare companies flooding busy periods with their vehicles. Rideshare companies have no limits on how many vehicles can simultaneously be available for bookings, whereas taxi companies are constrained by ongoing limits on overall taxi plate numbers.

Increasingly both taxi and rideshare drivers are unable to earn a living wage that enables the driver to pursue taxi or rideshare driving as their fulltime occupation. As a result, both taxi networks and rideshare companies are seeing increased turnover in drivers. This lowers safety levels in the point to point industry as in practice, new drivers take time to learn how to manage fatigue in ways that are best suited to them, within the fatigue management rules. It also increases onboarding and induction costs.

SEVERE DIMINUTION OF JOBS

With the increase in rideshare there has been a severe diminution of jobs. Statistics from 2015 – 2020 show a decline of almost 65% of jobs completed by taxis. The drop in income is so significant that most drivers cannot afford to continue to work for so little.

The driver then refuses to drive a taxi, finds another job, or gets unemployment benefits. The flow on effect is the operator or owner of the taxi can no longer fill shifts nor run at a profit. Operators' ongoing costs such as Plate leases, CTP, Registration, Comprehensive Insurance, Workers Comp, Network affiliation fees and vehicle maintenance all contribute to this expense. The only alternative left for some operators is to return the plate to the owner, which in return has an impact on the owner of the plate. Some plate owners may have this as their only source of income which could possibly put them in financial hardship forcing them on unemployment benefits. Since the introduction of the new regulatory framework the income derived to support plate owners has been reduced by in many cases over 60%. This has now been exacerbated in many cases with plate owners receiving \$1 as token due to COVID-19, in order to provide essential taxi services and keep drivers and operators employed. The stark alternative being the plates put on hold by operators and the possibility that the plate may never be leased out again.

ASSISTANCE TO TRADITIONAL INDUSTRY MEMBERS THROUGH THE REFORMS

The initial financial assistance package offered to taxi plate owners was a restrictive payment, nowhere near the loss caused by changes in the legislation that decimated the value of taxi plates.

The value of plates before the current legislation was endorsed by the Government at the time, by selling taxi plates to prospective buyers for values of more than \$380,000 each. The Government could further compensate plate owners fairly for reduction of plate values. To qualify for specified hardship for the financial assistance above, the assistance package excluded most claims by those who on grounds of merit should have been considered.

The impact on value of taxi plates is easily measured from historic values which were as high as \$430,000 to what it is now hovering around \$80,000 on average.

Taxi plate owners received some assistance from the Government.

Taxi drivers received no financial assistance, even though the volume of taxi work was severely diminished as a result of the legalising of rideshare.

Taxi operators received no financial assistance. While the pay-in per shift that Operators received didn't change, the legislation did bring new and more onerous operational and monitoring obligations for Operators that significantly increased Operators' overhead costs.

Taxi networks received no financial assistance, even though their legal obligations increased significantly under the legislation and that caused very significant increases in taxi networks' overheads and operating costs.

The unintended consequence of the deregulation and P2P reforms has been economic destruction of the taxi industry. Stake holders which include networks, plate owners and operators, have had profit margins decline (before COVID-19) to such low levels that funds are rarely available to invest or reinvest into the business:

- Improving technology is expensive but essential in order to reduce fixed costs,
- Developing even better customer service and relations – while the IPART Survey shows satisfaction in over 85% of taxi customers, we would like to increase that to 95%,
- Promoting the tailored services we offer such as DVA, Wheelchair and other specialised services,
- Expanding industry education for both customers and service providers.

RIDESHARES AND RANK AND HAIL WORK

Rideshare vehicles are prohibited from taking rank and hail work because their vehicles are not equipped with the various pieces of safety equipment that are installed in all taxis and are checked frequently to ensure they are operational at all times. Taxis' safety equipment effectively deters both driver and passenger from carrying out criminal behaviour toward the other (i.e. violence or theft). As taxis are equipped with security cameras, duress alarms and other safety equipment they are therefore allowed to take rank and hail work. The law only allows rideshare vehicles to take booked trips.

However, the reality is that some rideshare drivers consciously find ways to take rank and hail work, thereby negating the greatly strengthened safety provisions in the framework (and also breaking the law).

Clause 84 in the *Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017* requires:

Clause 84 No plying or standing for hire:

“The driver of a hire vehicle must not:

- (a) ply, stand or park the hire vehicle for hire on any road or road related area, or*
- (b) use the hire vehicle to carry out a hiring other than for a booking made before the driver stops the vehicle at the place where the passenger is picked up, or*
- (c) stop, stand or queue in a taxi zone.*

“Maximum penalty: 30 penalty units.”

A hire vehicle is *“a motor vehicle that is used to provide a passenger service that is not a taxi service.”* (section 6 in the Act)

We are concerned about the levels of non-compliance by rideshare vehicles. Taxi drivers regularly observe rideshare vehicles consciously breaching Clause 84.

We understand the purpose of Clause 84 to be to ensure that no person gets into a hire or rideshare vehicle for the purpose of a point to point trip unless:

- 1 that person (or someone with them) has already placed a booking through the rideshare’s booking app or system, and
- 2 their booking has been accepted by the rideshare company, and
- 3 their booking has been allocated to the driver of the rideshare vehicle that the person enters.

Our concerns about non-compliance with Clause 84 cluster on four main areas of adverse impact: the reduction in quantum of CTP premiums paid in support of the CTP insurance scheme; the increased risk of serious violence towards rideshare passengers; the increased risk of serious violence towards rideshare drivers; the increased risk of third party property damage caused by a rideshare vehicle being uninsured with innocent third parties uncompensated as a result.

Compulsory Third Party (CTP) insurance scheme and vehicles used for rideshare trips

Records of all the rideshare trips undertaken in a vehicle are held in the rideshare booking system. Owners of vehicles used for rideshare trips are required to pay an additional CTP premium of 10c per km on every rideshare trip that is logged in the rideshare booking system. Rideshare drivers’ compliance with Clause 84 is therefore the only action that can ensure rideshare vehicle owners are paying the correct amount of additional CTP insurance premium for the vehicle’s rideshare usage. Every rideshare trip taken that was not booked through the rideshare system, is a rideshare trip that is not paying its fair share of premiums in support of the CTP insurance scheme. The CTP system is under enormous costs pressures – those costs pressure are borne by every NSW vehicle owner in the form of significant CTP premium increases every year - so it is essential that every rideshare vehicle pays CTP premiums on all their rideshare trips. With most rideshare vehicles owned by the rideshare driver or a close relative of the driver, the temptation to reduce their CTP insurance premiums by not following Clause 84 might be present.

The current model of CTP for taxis is calculated on every kilometre the taxi travels in a year whether engaged or not. Taxis travel long distances vacant; every kilometre in a taxi is counted towards the taxi’s CTP premium. Rideshare on the other hand pays 10 cents for engaged kilometres only, and only for trips that are logged in the rideshare booking system, that is when the driver picks up the passengers and drops them off. Rideshare do not pay for kilometres while driving to pick up these

passengers. A partial solution would be to charge for all kilometres from the time that the rideshare driver logs onto the booking system app. This will serve a number of purposes:

- Enable rideshare companies to monitor for drivers who are illegally plying for hire (ie. driving around looking for hail work which the legislation prohibits rideshares from doing because they are not equipped with the (very expensive) safety equipment that all taxis must have installed),
- Remove the unnecessary increase in traffic and carbon emissions caused by rideshare drivers who drive around with their only purpose being to pick up a fare from the rideshare booking app,
- Ensure that once the vehicle is engaged through the booking system app the general public is adequately covered under the rideshare vehicles CTP,
- Ensure the costs of the CTP scheme are more fairly supported by the rideshare industry. (This measure will not raise rideshare CTP costs to the level that taxis pay every year.)

Serious risk of violence towards rideshare passengers

Clause 84 delivers an important safeguard for the personal safety of rideshare passenger(s) by ensuring that the rideshare driver can be conclusively identified after the journey and the driver's home address easily obtained by Police if anything befalls the passenger while in the rideshare vehicle. That safeguard means rideshare drivers with malevolent intent will be effectively deterred from any criminal behaviour towards the passenger – offences such as theft, fraud, assault, sexual assault, manslaughter or murder are all deterred by rideshare drivers' compliance with Clause 84. The media regularly reports incidents where the driver of a rideshare vehicle has committed crimes against a passenger.

Serious risk of violence towards rideshare drivers

Clause 84 also protects drivers of rideshare vehicles from criminal behaviour by a passenger, because it ensures the passenger can be conclusively identified afterwards and easily tracked down by Police for arrest. Every point to point trip taken in a rideshare that is not booked through the rideshare system / app exposes the driver to real risk of criminal behaviour because in all those instances the passenger cannot be conclusively identified afterwards. The history of serious violence towards taxi drivers shows clearly that criminal behaviour towards taxi drivers typically only occurred when the passenger knew he/she could not be identified afterwards. Instances of serious pre-meditated violence towards taxi drivers disappeared when security cameras and other safety equipment were made mandatory in taxis.

Increased risk of third party property damage being uninsured

In effect, compliance with Clause 84 also ensures that if the rideshare vehicle is involved in an accident while on a point to point trip that results in third party property damage (TPPD), the third party will be able to claim on the vehicle's TPPD policy that applies to rideshare trips (as the trip will be recorded in the rideshare system). By contrast, if the TPPD insurer is able to avoid the third party's claim because the rideshare driver was carrying out a hire not booked through the rideshare system, then the third party's only option will be to take legal action against the vehicle driver and owner. Legal action is expensive and lengthy, as well as being of uncertain outcome if the vehicle owner and driver do not have sufficient monies to compensate the third party for the property damage and their legal costs.

Public policy purpose in Clause 84

We respectfully suggest that compliance with Clause 84 is a vitally important safety protection for all rideshare drivers, because rideshare vehicles do not contain the driver safety equipment that is found in all taxis. Rideshare vehicles have no security cameras, no recording systems for the cameras, no duress alarms, no Driver ID prominently displayed at all times, and no signage on doors or inside warning the passenger that security cameras will monitor all their actions. All rideshare drivers are vulnerable to violent criminal attacks (theft, assault, manslaughter, murder) whenever the passenger cannot be identified later.

Clause 84 is New South Wales' chief mechanism for deterring rideshare drivers and rideshare passengers from engaging in criminal behaviour towards each other, because it prevents rideshare vehicles - which do not have any safety equipment installed - from taking rank and hail work or plying for hire. Clause 84 also ensures rideshare vehicles are not avoiding the payment of the correct CTP premiums for the rideshare trips taken in the vehicle.

Details of the more common types of contraventions of Clause 84 by rideshare drivers that are observed by taxi drivers, have been included in our submission to the Point to Point Transport Independent Review 2020 being conducted by Transport for New South Wales. As a result those details are not included here. Our submission to that Review also included suggested monitoring that companies might adopt that could reduce or prevent contraventions.

TAXIS ARE SINGLE PURPOSE VEHICLES WITH SMALLER ENVIRONMENTAL FOOTPRINT

Taxis are essentially single purpose vehicles. Conspicuous branding on all 4 sides, high initial fit-out costs, high overhead and ongoing maintenance costs - these features all combine to mean taxis are inherently more likely to be made available for hire 24 hours a day, every day of the year by their operator (except when off road for repairs or inspection). From the perspective of our society's interest in obtaining the maximum possible benefit from the expenditure of resources and energy in manufacturing a motor vehicle, taxis deliver a higher net benefit than any other form of point to point transport, simply because they are generally available for hire 24/7. Taxi fleets like ours, with majority hybrid-powered or fully electric-powered vehicles, also have a profoundly smaller environmental footprint than a typical rideshare fleet. While such factors are complex to quantify completely, they are also positive factors that merit being taken into account.

DRIVER FATIGUE MANAGEMENT REQUIREMENTS

The conspicuous nature of taxi branding means a taxi vehicle can only operate with one network. (Taxis can change networks if the old branding is removed and new branding affixed, however this cannot be done frequently.) This enables all taxi networks to conclusively monitor whether their owner-drivers are following the driver fatigue management requirements that are a key safety feature in the legislation.

By contrast, rideshare vehicles are not branded other than with a very small inconspicuous sign on the back window (designed to be easily be removed), which means rideshare owner-drivers can choose to flout the driver fatigue rules by working for more than one rideshare company concurrently. The capacity for rideshare vehicles to operate with multiple rideshare companies makes it impossible for any one rideshare company to conclusively monitor or know if the owner-driver is switching between different rideshare apps to avoid complying with driver fatigue

management restrictions that impose maximum shift lengths and mandatory rest breaks. Prevention of these kinds of breaches by rideshare drivers could be easily achieved through cross-checks between competitor rideshare companies of all their drivers' licence numbers and driving times, to ensure rideshare drivers are not breaching the driver fatigue management requirements by driving excessive hours.

DISQUALIFYING OFFENCES FOR DRIVERS

The Regulations⁴ helpfully list a wide range of criminal offences that will disqualify a driver from being a taxi or rideshare driver. We appreciate the support these provisions give us as a non-negotiable basis on which we can ensure all our taxi drivers are fit for the task of providing an honest and safe service to the public. However, on occasion we come across individuals charged with / convicted of certain criminal offences akin to those listed, offences that involved serious intentional dishonesty that resulted in harm to others, or involved physical violence. Yet those particular criminal offences are not listed in the Regulations. While this may be a minor point in the scheme of things being considered by this Inquiry, we raise it as something that would provide the point to point industry with further assistance in view of one key objective of the reforms, ie. improving safety for passengers. One possible solution could be to add a new sub-clause to Clause 24 that mirrors the provisions in Clause 24(2)(n), except the new sub-clause would apply to offences committed in New South Wales that are substantively very similar to those listed in Clause 24(2)(a)-(m).

WHEELCHAIR ACCESSIBLE SERVICES

We consider that improvements made in response to the above comments relating to all taxis, will also bring about improvements needed for wheelchair accessible services.

Thank you again for providing the opportunity to make a submission.

Kind Regards,

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⁴ Clause 24, *Point to Point Transport (Taxi and Hire Vehicles) Regulation 2017*.