

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

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



LEGISLATIVE COUNCIL

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Executive Summary

- The industrial relations system applying to Taxi Drivers is stuck in the 1984 determination which has suited former vested interests.
- Gladys Berejiklian introducing the Passenger Transport Act 2014 in June noted the importance of the government review of the 1990 Act which had started in 2012 with extensive industry consultation that was given careful consideration.
- Thirteen months later, on 1st July 2015 Minister for Transport and Infrastructure Andrew Constance announced an independent Taskforce to examine the future sustainability of taxis, hire cars and emerging point to point transport providers in NSW including ridesharing services.
- The sclerotic unrepresentative management of the networks has not responded in a coherent thoughtful way to the competition from rideshare booking services such as Uber. Drivers have had a considerable decrease in their cash flow and are required to pay for something that appears to no longer exist the monopoly rent of a Taxi License.
- Uber was the first entrant into the Point to Point Transport sector that was created by legislation in 2016 to accommodate a booking service for rideshare transport. The Point to Point Commission has allowed Uber and other rideshare companies to act as Taxi Services contrary to the NSW legislation and the understanding of the Legislature.
- Uber has followed a strategy to become the Google of transport, its tactic to date has been growth at any cost ignoring profit, this tactic has been supported by billions of dollars from Soft Bank which was a backer of WeWork and several other less spectacular failures.
- Uber started in March 2009 in San Francisco as a ride service, it then became a ride share app. January 2016 San Francisco Yellow Cab Company filed for bankruptcy as Uber had become a ride hailing service by mission creep.

- Uber commenced operations in Sydney in 2014 as a booking service for rideshare, the Point to Point legislation allowed it to become a booking service for rideshare. It is now a ride hailing service.
- Uber drivers operate in the hail market by using the Uber app as a means of being hailed, this has caused the point to point transport market to expand by about 20%. However, over 50% of this market is now served by rideshare vehicles.
- The largest competitor in the Point to Point market in Sydney is A2B the former Combined Taxi Service that is an ASX listed company that does not have the borrowing capacity of Uber, nor will its shareholders have the tolerance for the losses that Uber has incurred in its gaining of market share in Sydney and cities around the world.
- The smaller networks are not competitive and the COVID 19 pandemic has accelerated the worsening financial position of several who will no doubt decline into administration.
- Being Bailees many taxi drivers fall between the cracks of Jobseeker and JobKeeper in considerable numbers making it unlikely that they will return to the Taxi sector of the point to point transport industry in Sydney once the pandemic passes.
- Approaches by the Taxi Council of NSW and several other stakeholders to the NSW Government have not resulted in a Taxi Stimulus package.
- There is a considerable cost in CTP, Insurances and Vehicle Registration returning a vehicle to the road to allow operators to offer drivers who many are reluctant to drive either because of greatly reduced cash flow from the competition by of rideshare services or infection with COVID 19
- Hailing is the preserve of the Taxi Industry by Legislation; Uber appears to be offering a hailing service
- From the calculation of the GST payable on a State levy through retroreflective signs to allowing Uber to expand from a booking app for rideshare to a ride hailing offering to the Point to Point market in Sydney the Point to Point Commission has been remarkably inactive and thoughtless.

Industrial Relations

A quick Wikipedia search of all the members of this committee shows that most of the members of the committee were born in the mid-80s.

Each member has no doubt undergone many changes and adaptations leading to them representing the people of NSW in the MLC. No doubt each of you has a complicated story that would be hard to fairly deal with in a few A4 pages.

In 1984 a contract determination was made that set the relationship of the plate owner and the taxi driver as that of Bailment. The taxi driver is a bailee within the meaning defined in the then Industrial relations Act and later accepted by the 1996 Industrial relations Act.

307 Contract of bailment—meaning

(1) For the purposes of this Chapter, a *contract of bailment* is a contract under which—

- (a) a public vehicle that is a taxi is bailed to a person to enable the person to ply for hire, or
- (b) a public vehicle that is a hire vehicle is bailed to a person to transport passengers.

Sir William Jones in 1781 wrote *An Essay on The Law of Bailments*¹ and the history of how this very old principal came to be applied to Taxi Drivers in the late twentieth century is an interplay between the major players in the Sydney Taxi Industry and the Transport Workers Union that in the eighties had considerable membership among taxi drivers.

The eighties were characterized by The New Matilda in its obituary of Neville Wran, NSW Premier 1976 to 1986, in 2014. Mr. Wran joined the Cabcharge Board in 2001 and was awarded 250,000 shares, valued at \$1,500,000 in 2009².

From reading the obituaries, you would have no idea what it was like to be in Sydney at the time. Wran presided over a state in which hundreds of prisoners paid their way out of prison. The police force was routinely corrupt and included detectives who killed people. Court cases were fixed, key judicial figures mixed with organised crime, and corruption in the property, racing and gambling industries was rife and backed by heavies.

<https://newmatilda.com/2014/04/24/wran-balmain-boy-gone-bad/>

Mr. Reginald Kermode founded both Taxis Combined Services (TCS) and Cabcharge, TCS owned four Taxi networks in Sydney and was listed on the ASX in 1999.

Mr. Kermode had the largest fleet of Taxis in Sydney and ran the NSW Taxi Council. There is an interesting nexus between Mr. Wran and Mr. Kermode, between 1982 and 1985 the Wran government gave at least 92 plates to Sydney's taxi networks at no cost, 51 of these went to Cabcharge. In a Sydney Morning Herald article in 2009 it was noted that Mr. Kermode was a key force behind the NSW Taxi Council³. The same article pointed out that the Taxi Council had caused a lack of reform to the industrial relations of Taxi Drivers.

It is thought that a further possibly 200 plates were transferred to TCS between 1988 and 1990 as a loan of plates to enable Networks to put Wheelchair Accessible Taxis on the road. Later premier Rees allowed these loan plates, Nexus plates, to be sold by the networks.

¹ <https://en.wikipedia.org/wiki/Bailment> Accessed 30th May 2020

² <https://www.smh.com.au/national/inside-the-world-of-mr-taxi-20090918-fv9k.html> accessed 31st May 2020

³ <https://www.smh.com.au/national/free-ride-mr-taxis-20-million-windfall-20090918-fv9o.html> accessed 31st May 2020

Soon after the point to point legislation came into force TCS amalgamated all four networks into one 13CABS and changed the name of the ASX listed company to A2B. 13CABS also left the NSW Taxi Council in 2016, leaving less than half of NSW drivers to be represented by the Council.

From 1999 to 2009 there were eight reviews of the industry "all of which recommended sweeping changes to boost competition and all bitterly opposed by the industry's leaders"⁴. These changes also would have included an update and possibly the elimination of the bailment agreement formed in 1986.

Mr. Neville Wran was a director of the company from 1996 and in its annual report 2004 was listed as Non-Executive Director Member of the Remuneration, Investment and Risk Oversight & Management Committees. Mr. Wran as a barrister had represented Cabcharge in various matters.

Various organizations such as the radio station 2CH were given plates about this time, the connection between the Government of the day and the need to exclude taxi drivers as either sub-contractors like other tradesmen and women or employees has perhaps come to the end of its usefulness.

The NSW Taxi Council funds and instructs the NSW Taxi Industry Association that is the only acceptable party to represent the owners and operators in the industrial commission. Conversely the drivers are represented by the TWU who is the only party accepted by the commission.

The two parties who determine the maximum remuneration structure are the TIA and the Transport Workers Union. Neither group has many active taxi drivers as members. There have been several challengers to this rather unrepresentative mix, none of them has been successful. As noted before 13CABS before the corona pandemic had slightly less than half the plates in Sydney but it and its drivers had no representation in the determining of contract parameters.

Subsequent determination about maximum pay ins have been made as the fares of taxis increased, however, it appears that the last available on the internet was in 2011⁵.

In 2014 there was an application by the TWU for a guaranteed minimum hourly rate of \$25, this application was bitterly opposed by the TIA. An Upper House review terminated these proceedings and led to the now Premier introducing an update to the Passenger Transport Act 2014 to allow for rideshare.

Prior to 2000 fares were CPI indexed as a matter of fairness. IPART found that average Taxi driver earnings were \$7.60 per hour in 2015, the viability of an industry based on workers earning considerably less than the minimum wage was questionable. Especially as a basis for government policy.

From before the 1984 contract determination until about 2009 there was a very close working relationship between the employers and the state government. This led to the drivers' industrial relationship languishing in a 1984 time warp.

Uber rideshare drivers could possibly be contractors for employment purposes in NSW, despite 307 (1) (b) above. It is also noted that the 2016 point to point legislation that allows Uber to operate a rideshare business is titled Point to Point Transport (Taxis and Hire Vehicles) Bill 2016.

Also, of interest is the following section of the Industrial Relations Act 1996 No 17

(2) For the purposes of subsection (1), a reference to a carrier includes a carrier carrying on business under a franchise or other arrangement.

⁴ Ibid page 2

⁵ <http://www.lawlink.nsw.gov.au/irc/ircgazette.nsf/LUPublications/28CC391B9E4DCD11CA257905002059EE?OpenDocument>
accessed 30th May 2020

(3) A contract of carriage includes any contract that the Commission declares, after inquiry, to be such a contract. The Commission may make such a declaration if, in its opinion—(a) the contract was entered into for the purpose of defeating, evading or avoiding the

provisions of this Act relating to contracts of carriage, and

(b) but for being entered into for that purpose, the contract would have been a contract of carriage.

It would seem quite appropriate for the committee to question if Uber and the other rideshare services are employing people to transport passengers along a route that the rideshare driver has determined. Uber started as a booking service but is now described as a ride hailing service.

Earlier this month the New York Times printed that “California’s attorney general and a coalition of city attorneys in the state sued Uber and Lyft on Tuesday, claiming the companies wrongfully classified their drivers as independent contractors in violation of a state law that makes them employees.”⁶

When rideshare drivers on their particular journey they are either bailees or employees not contractors in California and possibly in NSW.

Both Taxi drivers, Uber drivers and all rideshare drivers need a contract determination that is more recent and in keeping with the aims of the Point to Point Transport (Taxis and Hire Vehicles) Bill 2016 as expressed in the introductory remarks of the Minister for Transport.

There are several companies providing vehicles for Uber drivers to use; the relationship between them and the driver would seem to be a bailment arrangement. Particularly if the driver allows passenger determination of final destinations. The Uber drivers do not have Workcover and the level of comprehensive insurance is not clear. An Uber driver in an accident may incur a financial cost which will be impossible for them to meet. Before there can be innovation and competition there needs to be a clarification of what taxi drivers and hire vehicle drivers are; employees, bailees or contractors and a twenty first century contract developed.

The committee should look at ways of allowing taxi drivers to exit the 1984-time warp of industrial relations that they have been trapped in through the power of vested interests.

⁶ <https://www.nytimes.com/2020/05/05/technology/california-uber-lyft-lawsuit.html> accessed 30th May 2020

Short History Point to Point Legislation

It started in June 2014 with the then Minister for Transport Gladys Berejiklian introducing the Passenger Transport Act 2014 during which she noted the importance of the government review of the 1990 Act which had started in 2012 with extensive industry consultation that was given careful consideration.

The 2014 bill regulated booking services and allowed for the safe use of new app technologies, the approach of rideshare was noted and new standards for the taxi industry would be balanced and in the public interest.

Now Premier Berejiklian made the point that “Bringing new booking services into the regulatory framework provides regulatory certainty for taxi booking service providers and a level playing field for all industry participants. It will also mean that when using new, convenient booking technologies that are rising in popularity, customers can be sure that they are booking a licensed taxi, with an authorized driver who has been through the appropriate background checks and training. This will benefit customers and, at the same time, promote a taxi industry that is focused on better ways of providing services, helping to ensure its ongoing viability and sustainability in an increasingly competitive environment.”

Thirteen months later, on 1st July 2015 Minister for Transport and Infrastructure Andrew Constance announced an independent Taskforce to examine the future sustainability of taxis, hire cars and emerging point to point transport providers in NSW including ridesharing services.

This was no doubt in various responses for and by Uber that is was operating a ‘**booking service**’ for ‘**ride-share**’ which the Taskforce noted had been operating illegally for some time.

Overview of the Taxi Structure Before and After Point to Point Legislation

There are three groups that interact to provide a car bearing a white on blue taxi plate signifying a car being operated on behalf of a Taxi License holder to provide point to point transport in the Sydney metropolitan area.

The Point to Point Legislation gave the plate owners a monopoly over rank and hail immediate bookings. Only Taxis are allowed to stand and ply for hire, rideshare vehicles are not. Plate owners and their less than adequate management have allowed the rideshare booking services to become ride hailing services in direct contravention of the Point to Point legislation. This brazen flaunting of the intent of the legislation has gone unquestioned until this submission.

Before the Point to Point regimen became the framework for the new competitive environment the Taxi License gave the driver of the car onto which the plate was attached the monopoly right to accept immediate physical bookings as conveyed by a whistle, a shout of 'taxi', raising the arm at an angle to the chest or any other physical action including dialing a number to summon a driver of a Taxi Licensed vehicle to satisfy their point to point transport needs. A Taxi Driver could ply for hire by driving apparently aimlessly around areas that they knew from experience would likely yield a hail or wait on a rank for someone to choose them from the rank. The Point to Point regimen has not changed this.

The lack of compliance has decreased driver income considerably by decreased cash flow and narrowing margins from plate owners not reducing plate lease fees to reflect the considerable decrease in value of their plates as evidenced by the graph below. A considerable number of plate owners have received significant compensation but are still collecting a plate lease fee that is more reflective of a monopoly rent.

Both linear and polynomial trend lines are towards zero quite soon, until the COVID 19 pandemic plate lease fees were very sticky giving annual returns of 12 to 15.2% on the decreased value.

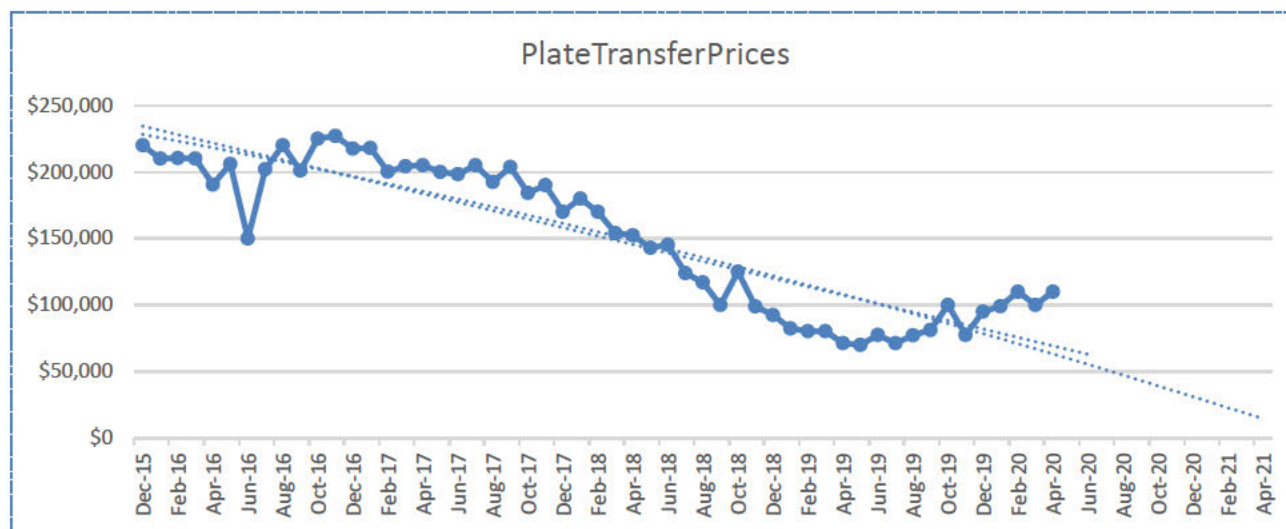


Plate Owners are Taxi License Holders

The owners of the rights attached to the white on blue plate are known as plate owners legally they are Taxi License holders. They have since the 1950s had the right signified by the plate affixed to a sedan or vehicle up to eleven seats to transport passengers from any place in the Sydney Metropolitan area for a consideration quantified by the operation of a meter device. The meter runs to quantify the cost to the passenger which this cost is calculated by the kilometer travelled while engaged over 26 km/per hour and time if the vehicle is travelling at less than 26 km/per hour.

With each step in technology after World War II the plate owners have continued to have a monopoly on immediate bookings or hails arranged by a physical action either extending the arm on seeing a vacant taxi or using the finger to dial a number to summon point to point transport for less than eleven people.

After World War II taxi cabs were required to stand near a telephone at a railway station to receive calls to summon the taxi to a residence to provide point to point transport. Returned servicemen were given plates and grouped themselves into co-operatives to provide various basic services to each other.

During the mid to late 1950s two way radios were installed in cars bearing the monopoly conferring plates and a dispatch room with a single number communicated point to point jobs via verbal instructions after the passenger had dialed with their finger the network number.

The networks were composed of owner operators and there were strict rules by regulation limiting ownership of a plate to one natural person. The networks were co-operatives formed to run the radio rooms dispatching the jobs to the owner drivers. Co-operatives tended to cover the distinct geographic areas of Sydney, St George in the Shire, Manly in the Northern Beaches, Premier in the North Shore and ABC in the lower North Shore with RSL providing services to the Western Suburbs. The Eastern Suburbs were serviced by Yellow Cabs, Green Cabs and De-Luxe which in the seventies were united into one brand Combined Taxis.

Radio work was dispatched by the driver listening to a speaker that sat above his head continually offering jobs and waiting for a driver to respond to the offer, the job was then dictated to the individual driver who accepted the job. The first call of the job was assigned to either of the first two cars to call in with their position the closest gaining the job, the second call was open to any driver in the assigned radio area who was first in and the cover call was to be available to any driver who could carry out the job in a reasonable time. Regulations in the sixties were changed to allow owner drivers who were part of a co-operative network to employ a driver on a bailee arrangement to drive shifts either in the morning or afternoon starting or finishing at 3:00 PM to enable drivers or owner operators to pick up children at school.

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One man in the seventies combined several networks into one fleet Combined Taxi Services and introduced an account system where a passenger could sign for a taxi ride and receive a monthly account for their trips payable within a month. The driver was paid by the owner driver on a weekly basis who in turn was paid his account fares on a fortnightly basis. This was all done manually by considerable numbers of clerical staff and involved considerable risk for Cabcharge waiting to collect payments for up to two months. Cabcharge charged a surcharge of ten percent for this service and gained an adequate margin providing the first account system for taxi fares in the world.

The system evolved initially as a three-button system, a button for bid, second call and acceptance. As technology advanced these systems became considerably more advanced until in the early 2000s a computer-generated system with an ergonomic large button screen was installed in all taxis throughout Sydney. This screen measures 10.6x8.5 cm and has large buttons and uncluttered screens that are easily operated by a driver. It is much larger than a smart phone and is easier to operate safely than a smart phone.



With the computer revolution starting in the late eighties the large numbers of clerical staff were replaced by computer systems and physical imprinters of Bankcard were accepted greatly increasing the availability of non-cash payment to the point to point transport customers in Australia. Also, Cabcharge's margin increased greatly as did many other businesses who replaced large numbers of clerical staff with computer systems.

Cabcharge cemented its monopoly, occurring as a first mover advantage, of having its and its alone EFPTOS terminal in each Taxi in Australia; with an exemption from the Australian Competition and Consumer Commission (ACCC) granting an exception to various anti-competitive sections of the Trade Practices Act.

During the Premiership of Neville Wran from 1976 to 1986 the ownership of more than one cab was allowed, plates were issued to drivers by ballot on entry limited by years driven and plates could be bought and sold through the networks that remained co-operatives of plate owners. In keeping with the design and safety of the vehicles at that time being used for public transport various stringent regular safety checks were required and introduced. The services of an authorized mechanic were required on a regular basis largely limiting operators to being mechanics or being able to employ a mechanic if the operator could scale up.

The Cabcharge monopoly on EFPTOS terminals was challenged successfully in 2009.

Plate owners range from inheritors of retuned service men who gained the plates in a lottery at minimal cost; through to plates that were given to drivers who had driven for greater than a certain number of years were entitled to enter into a lottery for plates at minimal cost; plate owners who had purchased from the NSW Government; to those who have never had an ancestor who had been a participant in the Taxi

Industry nor had any knowledge of the Taxi Industry as a participant and had purchased the plates as a good source of regular cash flow that had a slow capital appreciation. No doubt financial planners who sold these investments did not mention for consideration the legal risk of buying a monopoly rent.

Some plate owners were former politicians or radio stations such as 2CH who were gifted the plates for a variety of rather obscure reasons.

Most plate owners, Taxi License holders, could quite fairly be characterized as absentee landlords. They have been extractive in their relationship with the travelling public of NSW.

Networks

Networks were formed by mainly geographically connected owner drivers in the 1950s, they were formed as co-operatives. A2B, the former Taxi Combined Service was formed by amalgamating several networks and growing organically and by acquisition of various smaller networks to become an ASX listed company.

Most voters in the networks must be plate owners, experience in business or driving a Taxicab while participating in decisions affecting the other participants that the networks serve is not necessary.

A considerable number of plate owners are geriatric and quite disengaged from the changes that have occurred because of the Point to Point legislation in 2015. This has resulted in the installation of management that is poorly equipped to deal with the changes in a thoughtful way.

Through making the networks designated booking services the costs and skill set necessary for compliance have increased considerably. Several of the smaller networks will no doubt soon fail because of not hiring in management with the increased skill set necessary to survive in the changed competitive landscape. This was probably inevitable but has been accelerated by the COVID 19 pandemic.

The NSW Taxi Council is made up of representatives from the various networks, it confuses offering training for potential drivers with representation. A director of the NSW Taxi Council has been known to state that while he sympathizes with drivers, he represents the plate owners and must prioritize their interests.

Soon after the PtoP legislation was enacted Taxis Combined Services changed its name to 13CABS obliterating the various names of networks it had purchased and presenting one marketed and administered taxi service. 13CABS has about half the plate and drivers in Sydney and is no longer a member of the Taxi Council of NSW. Its parent company runs the WATS service Australia wide. At best the Taxi Council of NSW represents about half of the NSW Taxi Industry.

Paul Keating would no doubt characterize the directors of the NSW Taxi Council as unrepresentative swill. Prior to the change in the competitive landscape because of the Point to Point legislation and now five years later nothing has changed with the NSW Taxi Council.

13CABS is the singular network that is owned by an ASX listed company. Its response to the COVID 19 pandemic initially followed the other network's responses which was to offer extraordinarily little by way of reducing costs to maintain operator and driver viability.

Later 13CABS offered a deferment of a significant proportion of the taxi licenses lease fee (the lease). Many operators considered the implications of exiting the pandemic into a recession of owing a significant amount of their past lease costs on deferment and paying the same monthly lease costs as before the pandemic making their businesses most likely unviable.

About two thousand five hundred plates were returned to 13CABS and now sit waiting for an operator in a filing cabinet within the Roads and Maritime Services for NSW offices. Plate owners who have their plates with 13CABS were paid \$100 for their plate lease fees for April and informed that this would be their payment monthly for the foreseeable future.

However, plate lease charges to operators have been of the order of \$500 a month a great reduction from \$1300 a month. This discrepancy may be 13CABS acting more like a benevolent society and distributing its total plate income between all plate owners equally independently of whether the plate is on the road or not. Or it could be construed as price support for unused plates. Whichever, a properly functioning market for plates would make the plate owners able to respond to market forces.

The Australian Taxi Drivers Association has made enquiries about using blockchain technology to create a market for taxi plates and stands ready to form such a market if financial support is provided by the NSW Government.

Operators

Operators are by way of history most often mechanics who are authorized to determine and certify that a Taxi Vehicle is safe, on a regular basis, a great regular expense if the operator is not a mechanic. Information is often with a photocopied A4sheet or two on an irregular basis.

Operators carry out all maintenance, regular and urgent. They should ensure that the Taxi has always better than minimal tyre treads. Networks pass information for drivers, often as photocopied sheets, through the operators, general disciplinary matters flow from the Network to the driver via the operator.

Generally, operators have about ten cars with all the equipment necessary for compliance with the Point to Point legislation and regulations. There is apparently an enormous attrition rate when operators grow to more than ten or twelve cars, however, there are a few larger operators who have been quite successful.

Radio fees, before COVID 19, of about \$750 per month per plate are paid by the operator to enable the bailee drivers to access the radio services that provide pre-booked or immediately booked jobs which are the passengers' details and position, with the destination to the driver. The driver can accept the booking, if he refuses a job, they suffer a radio penalty.

Radio fees mainly pay for the administrative costs of the network including the provision of booking services commonly known as the radio work, marketing, and now compliance costs.

Operators collect the Cabcharge and account receipts from their drivers and submit them to their respective network for payment monthly. The drivers are paid for these receipts on a weekly basis, creating some risk for the financial viability of the operators in what is a very marginal business.

Furthermore as a result of the breaking of the monopoly that Cabcharge had on the EFPTOS terminals in Taxis the operator has to collect his pay ins (rental fees) from either the driver or the Network, risk on either side for the operator.

The risk on the network side is considerably increased because that apart from operators associated with A2B the owner of Cabcharge, most operators are denied direct access to Cabcharge receipt data.

Payments are that flow from Cabcharge to the Networks are pooled and distributed to the operators by the Networks. If a network goes into administration this considerable cash flow will stop and a significant proportion of the cash flow of operators and drivers will be disturbed for a considerable time.

An unnecessary risk could be eliminated by giving all operators in Sydney direct access to receipt data and payment from Cabcharge.

The Point to Point legislation and the Plate owners Networks thoughtless response has increased the risk of smaller networks failing.

Drivers

Drivers have become waiters; waiting at ranks, waiting at home while connected to the dispatch system; driving to come across a hail is fruitless and electronic hails have decreased considerably with the playing out of the COVID 19 pandemic.

Drivers are attached to a single operator who is attached to a single network generally.

Drivers are attached to a single operator as an organizational preferred by of the Networks who communicate through the operators to drivers. Minor disciplinary matters are dealt with through the operator to the driver.

Before the recent imposition of fatigue management rules driver either drove mornings with the car available from 3:00 AM until 3:00 PM, evenings with the car available from 3:00 PM to 3:00 AM. A number of drivers would elect to drive a semi double whereby they had the use of a car for twenty-four hours from 3:00 AM usually. The cost to the driver of a particular shift is called a pay in.

Pay ins vary according to the morning and afternoon shift and the day of the week, Sunday to Wednesday nights are the cheapest nights and Friday and Saturday nights the most expensive. Weekday mornings tend to be the same, slightly less than the mid-priced night shifts.

The variable pricing reflects the business that was to be expected on particular shifts prior to the change in the competitive landscape brought about by the Point to Point Legislation.

Ride share has demonstrated that the point to point market was elastic. Prior to 2015 IPART determined the optimum number of Taxi Licenses to satisfy market demand. It was determined that the market was inelastic, demand was fixed and met. The entry of Uber in late 2014 demonstrated that the market was elastic and indeed there was considerable unmet demand which is now being met by what has now become ride hailing booking services.

Complete accurate numbers are unavailable but there appear to be about fifty thousand ride share drivers sharing the cash flow from 51% of the market and about sixteen thousand taxi and Hire Car drivers sharing the remainder. A considerable proportion of these ride share drivers appear for a short time weekday evenings and for the weekends until about 8:00 PM Sundays. This dramatically decreases Taxi driver incomes on the weekday night and weekend night shifts but pay ins have not been adjusted to reflect this change in their competitive environment.

There is a contractual arrangement between the driver and the operator in regard to paying the excess of an insurance claim and a contractual arrangement between the driver and the network through the onboarding processes to follow network protocols which are approved by the Point to Point Commission.

One of the most variable contractual arrangements is the management of fatigue. Each different network and Uber have a different regimen for dealing with fatigue, a single problem; drivers from each Booking Service can drive for between twelve and sixteen hours depending on the network fatigue management plan authorized by the Point to Point Commission. Drivers may or may not be denied access to the booking service or meter as an enforcement measure for fatigue management or be able to log back on immediately after the excess of hours has been met.

There are no courses to allow extension of mandated length of driving such as those provided to heavy vehicle drivers. These various regimens have approved by the Point to Point Commissioner. Most of them appear to note the importance of good hydration and aerobic fitness in the management of fatigue.

Despite the Point to Point regulations and the 1984 workplace agreement the drivers, not the operators, have become responsible for keeping the car clean and presentable. As a function of the lack of regular

communication from the network highlighting that the interior of the car should be more importantly cleaner than the exterior before the COVID 19 pandemic the interior of cars was not of any good standard.

Based on the observation that the most important point that a Point to Point passenger looks for is a vacant light or the number of their assigned car drivers are not lead by the networks to provide a clean interior. The passenger spends more time in the car observing, listening, and smelling, the networks do not communicate this or very much else that is important to the driver particularly new drivers after their course.

Lack of leadership allows the driver's cultural norm to be expressed. Cars can be spotless on the outside and rather unfortunate on the inside as cleaning carpets and interiors is perhaps gender specific.

Driver incomes have dropped considerably, and the arbitrary enforcement of fatigue management stops them working a few extra hours a week to increase their incomes.

There was little or no leadership from the plate owners before the Point to Point legislation and there is little now.

Bailment

The ancient arrangement of bailment results in the temporary control of property by the bailee. The property in the case of a taxi is a registered maintained insured vehicle that has a functioning radio dispatch unit with white on blue number plates.

Drivers are bailees. The Commissioner is causing taxi booking services to turn off the radio dispatch units in an individual driver's car after the passing of exactly twelve hours if the meter is not running. This results in the radio dispatch system exercising control over the finish time of drivers, and indirectly the starting time of drivers in that knowing the dispatch unit will be turned off after twelve hours of use the driver will not have the full use of the property for times that they choose to work.

The Fair Work Commissioner Ian Cambridge in his judgement in the Foodora⁷ case is reported as placing emphasis on the control of starting and finishing times of shifts. This control of shifts was one of several indications that an employee employer relationship existed.

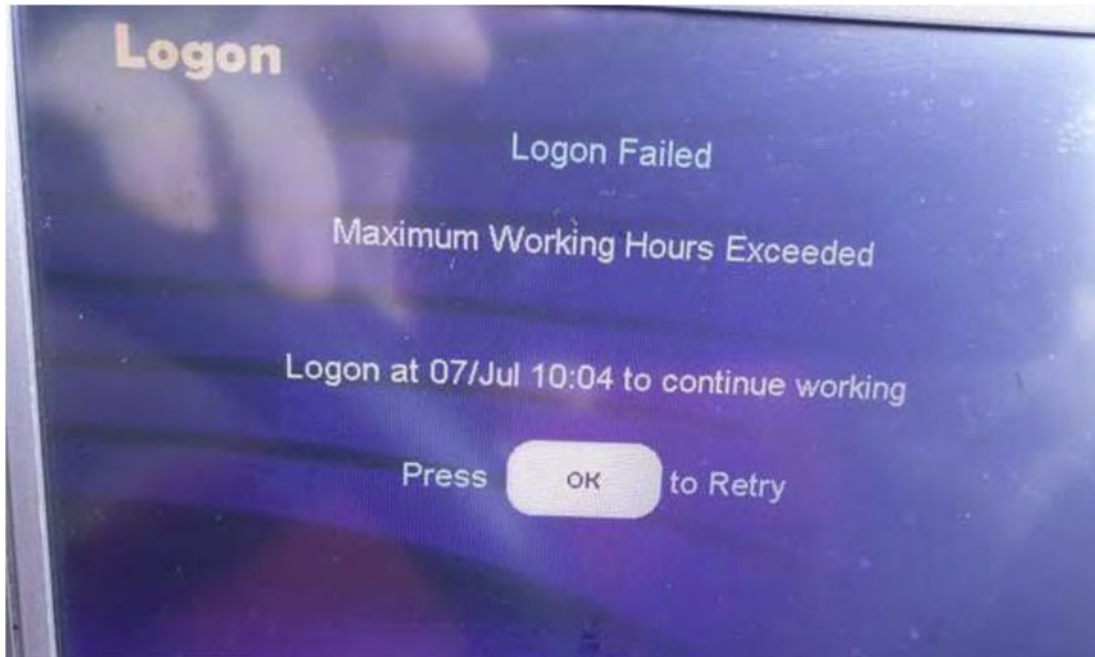
His judgement was based on the *Hollis v Vabu* the first three findings appear to decrease the enjoyment of bailment by taxi drivers⁸:-

1. The couriers were not providing skilled labour or labour which required special qualifications. They were not running their own enterprise. (*the driver is driving the operator's car to complete bookings which are received by the business of the network's booking services*)

2. The couriers had little control over the manner in which they performed their work. They were assigned to work in a 'work roster' and were not able to refuse work. (*the turning off of an individual radio dispatch after twelve hours is exerting control not available to the use of an asset for a period of time negotiated between a bailee and bailor*)

⁷ <https://www.smh.com.au/business/workplace/foodora-creditors-vote-to-accept-less-than-half-of-debts-claimed-20181116-p50gic.html> accessed 21st May 2010

⁸ <http://www.austlii.edu.au/au/journals/AUConstrLawNlr/2001/68.pdf>



3. The facts showed that the couriers represented to the public as a courier service of Vabu. They were required to wear uniforms and certain attire was prohibited. Vabu's system of business was to encourage pedestrians to identify the couriers as part of their own working staff. (*booking services require uniforms and some pedestrians are passengers waiting for point to point transport*).

The Point to Point Commissioner by causing the radio dispatch unit to be turned off after twelve hours of usage appears to be moving drivers from a bailment relationship to one of an employee employer relationship. This unwarranted intrusion into a long standing universally accepted relationship is unnecessary and unwarranted.

The strict setting of the use of the radio dispatch system by individual drivers and the attaching of liability for the fatigue negligence of drivers appears to be moving towards the conclusion of the High Court that "the courier who knocked down Mr Hollis was in a relationship of employee/employer with Vabu. Vabu was vicariously liable for the consequences of the courier's negligence in performing the work."⁹

(a former General Manager of Manly Cabs), (the administrative officer of Manly Cabs) and others have given me an opinion based they say on Point to Point Inspectors statements that this vicarious liability exists between Manly Cabs and drivers for negligent performance of fatigue management.

Before Point to Point legislation drivers were bailees, they now may be employees.

Sydney Taxi Fares are not the Most Expensive in the World

It is often claimed that Sydney taxi fares are among the most expensive in the world.

They have not changed since 2014.

⁹ <http://www.austlii.edu.au/au/journals/AUConstrLawNlr/2001/68.pdf> accessed 21st May 2020

Rank	City	Lowest 3 km Fare	Highest 3 km Fare	Difference
1	Seoul	\$4.12	\$7.99	\$3.87
2	Krakow	\$4.39	\$7.99	\$3.60
3	Santa Ana	\$4.48	\$5.97	\$1.49
4	Singapore	\$4.87	\$8.66	\$3.79
5	Moscow	\$5.25	\$10.49	\$5.24
6	St. Petersburg	\$5.25	\$7.88	\$2.63
7	Prague	\$5.34	\$8.91	\$3.57
8	New York City	\$5.97	\$14.93	\$8.96
9	Taipei	\$6.45	\$8.93	\$2.48
10	Lisbon	\$6.70	\$10.06	\$3.36
11	San Jose	\$6.76	\$9.25	\$2.49
12	Zagreb	\$6.78	\$7.45	\$0.67
13	Budapest	\$7.01	\$8.70	\$1.69
14	Athens	\$8.39	\$11.75	\$3.36
15	Madrid	\$8.39	\$11.75	\$3.36
16	Tel Aviv	\$8.46	\$12.69	\$4.22
17	Montreal	\$8.85	\$13.27	\$4.42
18	Vancouver	\$8.85	\$14.37	\$5.52
19	Melbourne	\$8.99	\$13.46	\$4.48
20	Toronto	\$9.96	\$14.37	\$4.42
21	Dublin	\$10.06	\$16.78	\$6.72
22	Rome	\$10.57	\$16.78	\$6.21
23	Washington DC	\$11.19	\$16.42	\$5.22
24	Auckland	\$11.43	\$16.10	\$4.67
25	Barcelona	\$11.75	\$16.78	\$5.03
26	Chicago	\$11.94	\$16.42	\$4.48
27	Orlando	\$11.94	\$22.39	\$10.45
28	Boston	\$12.24	\$19.40	\$7.16
29	Stockholm	\$12.34	\$17.13	\$4.79
30	Sydney	\$12.34	\$20.42	\$8.07
31	Cairns	\$12.43	\$16.96	\$4.52
32	Brussels	\$13.42	\$16.78	\$3.36
33	Munich	\$13.42	\$20.12	\$6.70
34	Vienna	\$13.42	\$20.12	\$6.70
35	Tokyo	\$13.55	\$17.61	\$4.06
36	Berlin	\$15.09	\$20.12	\$5.03
37	London	\$15.51	\$23.25	\$7.75
38	Amsterdam	\$15.51	\$15.51	\$0.00
39	Honolulu	\$16.42	\$22.39	\$5.97
40	San Francisco	\$16.42	\$22.39	\$5.97
41	Copenhagen	\$16.75	\$16.84	\$0.09
42	Helsinki	\$16.78	\$25.15	\$8.37
43	Monaco	\$16.78	\$23.48	\$6.70
44	Paris	\$16.78	\$25.15	\$8.37
45	Edinburgh	\$17.45	\$27.13	\$9.69
46	Oslo	\$17.58	\$22.85	\$5.27
47	Los Angeles	\$17.91	\$23.88	\$5.97
48	Reykjavik	\$18.15	\$28.75	\$10.60
49	Nice	\$20.12	\$25.15	\$5.03
50	Miami Beach	\$22.39	\$29.85	\$7.46
51	Zurich	\$27.70	\$36.93	\$9.22
	Average	\$11.86	\$17.02	\$5.16
	Standard Deviation	\$5.13	\$6.71	\$2.47

From the table above it can be seen that Sydney fares are cheaper than Cairns and within one standard deviation of the average of 51 comparable cities.

Compliance

Most of the staff within the Point to Point Commission have transferred from the Roads and Maritime Service (RMS). Having lost to Uber in the early days of Uber's operations they seem to be loath to enforce any regulation on Uber and the subsequent rideshare operators. They have watched a ride share booking service morph into a ride hailing service contrary to the legislation without making any move to make the rideshare operators stick to being rideshare providers.

Retroreflective signs

Point to Point Transport (Taxis and Hire Vehicles) Regulation 2017

Current version for 8 February 2019 to date (accessed 30 April 2019 at 11:50)

Part 2 Division 3 Clause 20

20 Signs and markings—hire vehicles

(2) The driver of a hire vehicle (other than a motor cycle) that is being used to provide a passenger service must ensure that a **retroreflective** sign is displayed on or attached to the vehicle that:

(a) makes it apparent that the vehicle is a hire vehicle, and

(b) is located on or near the rear of the driver's side of the vehicle, and

(c) is clearly visible from the outside of the vehicle.

(3) The sign may be in the form of an identifying logo or other business identification.

(4) Subclause (1) is specified as a safety standard for the owner of the vehicle.

(5) The provider of a booking service is a responsible person for this safety standard, if the hire vehicle is used to provide a related booked service



With zoom on image applied it is discernible that it is indeed a vehicle displaying an Uber vehicle with a sticker applied to the inside left side of the rear cabin window.

These areas to the front of the taxi rank at Belgrave Street Manly are a bus stop or after 10:00 PM a taxi rank a common dropping point for obviously Uber cars not displaying a retroreflective sign
Five possibilities,

- it is a prank,
- for some reason a P-plate driver wants to display an Uber sign,
- the car is owned by a P-plate driver who has lent it to an Uber driver with an unrestricted licence,
- the P-plate driver is in possession of the Uber linked mobile and is obeying the restrictions on his licence or the P-plate driver is an Uber driver.

- It is an Uber Eats vehicle

The Uber sign is clearly not retroreflective compared to the number plate that is. The Uber sign is not on the driver's side rear window it is behind the glass of the rear window.

In a telephone conversation with a compliance officer of the Point to Point Commissioner September 2018 the officer assured me that the Commissioner had determined that the Uber identifying signs were retroreflective. He appeared to be unsure about which Australian Standard for retroreflective material had been applied.

There appears to be one, AS/NZS 1906.3:2017 Retroreflective materials and devices for road traffic control purposes. The standard is to primarily increase the night-time conspicuousness of signs. In the image above the 'no parking' symbols, the direction arrow to the parking, the 'no stopping' sign, the lane markings and arrows are all retroreflective, as is the number plate. These signs are safely and effectively visible in the light available, a feature of retroreflexivity.¹ All of these in the image have about the same small angle between the camera and the external light source, the setting sun. The Uber sign is clearly not retroreflective but appears to be the same as those displayed on about half of the Uber vehicles identified by the distinct appearance of the smart phone app and nothing else.

The trousers and upper garments of firemen and ambulance personnel are retroreflexive, occasionally driving at night there is an opportunity to contrast the retroreflexive nature of vests worn by police at a random breath test with that of an Uber sign usually on the inside of the rear window. The Uber sign is not at all retroreflexive and is often displayed under the rear windscreen wipers point of origin or affixed to the interior surface of a tinted rear window.

In conversations with various other Taxi drivers my general impression that less than half of at less than one third of Uber drivers display any signage identifying them as Uber cars that may turn abruptly when a passenger insists on going in a different direction to the drivers' choice. Sudden unexpected changes in direction or hesitancy on a main road is one of the reasons that Taxis are clearly marked so other drivers can make allowances for the passengers' abrupt changes in direction.

Non display of retroreflective signs by Uber drivers is a safety issue.

There is a widespread noncompliance with Part 2 Division 3 Clause 20 requiring rideshare vehicles to display a retroreflective sign indicating the vehicles use by a rideshare booking service. This is a safety issue for other drivers that is not being enforced by the Point to Point Commission starting with the acceptance of a sign that does not comply with the relevant Australian standard. The Point to Point legislation has allowed a great number of inexperienced poor drivers on the road at night increasing risks for Taxi drivers particularly and other late-night drivers in general.

It appears that fifty thousand ride share drivers sharing the cash flow from 51% of the market for point to point transport and about sixteen thousand taxi and Hire Car drivers sharing the remainder in about half the number of cars.. A considerable proportion of these ride share drivers appear for a short time weekday evening and for the weekends until about 8:00 PM Sundays. This dramatically decreases Taxi driver incomes on the weekday night and weekend night shifts but pay ins have not been adjusted to reflect this change in their cash flow.

The Point to Point legislation has increased risks for both passengers and other users of the road, particularly night-time taxi drivers.

Enforcement

At the least every Friday and Saturday afternoon and evening at the area imaged above, Manly, there is a continual parade of vehicles that are clearly vehicles providing a point to point service most of these cars are not displaying a retroreflective sign as required in the regulations, but their smart phones are displaying the distinctive colour arrangement of the Uber app.

This sad caravan has been continuous for the last two years, nothing has been done about it.

There are multiple booking services operating on Telegram that the Commission was made aware of in September last year, these illegal booking services continue.

Nothing has been done.

A search on Google provides ample evidence of various entities providing point to point services, none of these websites appear to have a booking service provider number. It seems odd that at this time of the internet that the Commissioner does not require services given a booking service status to provide proof of this authorisation on their web pages.

Taxi drivers can only drive for one radio network at a time, there are rightly considerable restrictions on video images taken by the security system of the taxi and the networks impose administrative penalties for jobs given and not accepted, plus penalties for not picking up booked passengers.

Point to Point drivers have none of these restraints or impediments. There are detailed instructions on Uberpeople.net on how to set up an unobtrusive continuously recording video, there have been stories in the media of well-known people videoed in Uber cars. Taxi drivers are risking a \$5,000 fine for picking up passengers outside of designated rank areas at the airport. Point to Point vehicles by their behaviour are not risking this fine or are unaware that the possibility exists.

Point to Point drivers seem unaware that they are responsible for the safety of passengers exiting their vehicle.

Point to point drivers appear to believe that the horn of a car and the high beam are communication devices.

There appears to be no way of checking that point to point drivers have the appropriate insurance, waiting for an accident to reveal that the point to point driver does not have enough insurance seems to be a poor strategy.

Once point to point drivers are onboarded there is little contact to enable review of their general demeanour. Taxi drivers are in weekly contact with their operators at a minimum.

GST on Levy

The Point to Point Transport Commissioner has made a judgement that if the levy is passed to passengers it will attract GST¹⁰. The calculation of the GST to be collected is possibly incorrect.

Can I pass the levy on to customers?

It is up to each service provider to decide whether to absorb the levy, or to pass it on to customers. If you choose to pass the levy on to customers (for example, as an addition to their fare), it will attract GST.

The link to check the ATO site provided by the Commissioner results in a page 'not found' the link is <https://www.ato.gov.au/business/income-and-deductions-for-business/indetail/industry-assistance-payments-to-taxi-licence-holders/#PassengerMovementLevies>.

In the Point to Point Transport (Fares) Order 2018 under the Point to Point Transport (Taxis and Hire Vehicles) Act 2016 Point 3 is "The Passenger Service Levy of \$1.10 (inclusive of GST) may be added to the fare for a taxi service for which the levy is payable."

Arithmetically this appears to be not correct. If a levy of \$1.00 is payable, then the transaction leading to this payment should be a total of say \$1.001 being \$0.91 part levy contribution, plus GST component \$0.091 being GST collected contribution to levy. As when the Network pays a State Levy it is GST exempt.

\$0.10 is a small amount, however, the levy is to collect \$250 million and ten percent extra of this amount is to be paid by passengers of the various NSW taxi booking services. Twenty-five million dollars in excess to the levy is to be collected by the taxi booking services on the instruction of the commissioner. This money is to be offset against other tax liabilities a gain for companies either of plate owners or founded by plate owners.

The collecting of the levy is a simple administrative activity that the Commissioner has caused a ten percent administrative fee on each dollar collected resulting in a twenty-five-million-dollar tax credit for the taxi booking services.

The Point to Point legislation clearly was not meant to contribute of \$25M to the networks as an administrative charge for collecting the Levy to compensate plate owners.

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Plying for Hire

Brief History of Rideshare

For most of ridesharing's history which started soon after the invention of the motor vehicle and the mass production of the Model T about 1914¹¹, it is not a new system as the Sturgess report claimed.

During the recession in the USA of 1914 enterprising car owners began to offer seats in their cars for a nickel, a jitney. This was the same price as a streetcar in San Francisco where the jitney craze had started, and it spread to Maine within nine months carpooling and the consequent ridesharing was successfully opposed with the co-operation of city and regional governments.

During World War II to conserve rubber and fuel for the war effort the Federal government and the oil industry spent into today's dollars \$100m through the Petroleum Administration for War (PAW) to

¹⁰ <https://www.pointtopoint.nsw.gov.au/passenger-service-levy#GST> accessed 21st May 2020

¹¹ <https://www.shareable.net/the-history-of-carpooling-from-jitneys-to-ridesharing/>

encourage drivers to take passengers along when they drive. This led to a famous slogan “When you ride alone, you ride with Hitler.” Sharing a ride with a stranger along your route was a patriotic imperative.



The substantial marketing in a time of national emergency was remarkably effective in changing consumer habits.

With the boom that followed the ending of World War II ridesharing fell out of favour with consumers and governments.

It was the oil crisis of the 1970s that caused President Carter to give some level of funding for ridesharing to conserve fuel and improve air quality¹². Decreasing oil prices and the loss of government concern over air quality lead to a decrease in the use of rideshare despite insurance regulations being changed to allow a claim for an unrelated rider with a common starting point and common destination. As incomes increased in the 1980s the saving on personal transport was not a necessity and ridesharing languished until the oil prices started rising in 2005.

Andrew Amey now a Project Manager¹³ for CH2M an engineering company with many billions of dollars in turnover made rideshare his thesis subject for Massachusetts Institute of Technology dissertation in 2010. He makes some interesting points about familial and non-familial ridesharing. The common thread is a common shared origination and a shared destination with or without a return to the family home. He then derives the following definition “the transportation of two or more individuals in a motor vehicle with a capacity not exceeding.... when such transportation is incidental to the principal purpose of the driver”.

This quite obviously considers the historical nature of rideshare and places it into a modern context in the age of smartphones and apps. The apps are to aid the driver to pick up passengers who have a destination along the route of his driver-initiated journey.

He goes on to point out that since the definition states that “the driver’s principal purpose determines the trip being undertaken, multi-occupant trips catering to the passenger’s trip purpose should not count as ridesharing”.

This submission will quote various parts of the Sturgess Report of 2015 and the introductory speech by the Hon Mr. Andrew Constance (Bega—Minister for Transport and Infrastructure) as recorded in the

¹² https://d36iur3orme9ke.cloudfront.net/wp-content/uploads/2012/02/ridesharechoices.scripts.mit.edu_home_wp-content_papers_AMEY_Thesis_Final.pdf

¹³ <https://www.linkedin.com/in/amamey/>

NSW Hansard. This is to enable the full appreciation of what was reported, in part as rideshare was new to NSW and needed to be regulated by granting the organizers of ride share booking service status.

“A further complicating factor is that the same technology that facilitates rideshare services is also being used for courier and food delivery work. The same driver could use their vehicle to go to visit a friend (personal use), pick up a paying passenger along the way (providing a point to point service), then deliver a parcel (courier) on the way home. This is already occurring overseas and given how quickly Uber has established itself in Sydney, it should not be ignored in developing an appropriate response. It is likely that existing categories will lose their utility much sooner than generally expected.”¹⁴ So there is always the driver going to his destination and returning.

“There is evidence in other cities that, after making some initial inroads, ridesharing has acquired additional market share principally by stimulating new demand. The following graph, based on data supplied by taxi and ridesharing providers in Portland, Oregon, strongly suggests that, in that city at least, there are limits to the penetration into the traditional taxi market in the short term. Ridesharing began in Portland in December 2014.”¹⁵ To encourage ride sharing the NSW Government introduced Transit Lanes, the use of which have different criteria to Bus Lanes. Rideshare vehicles cannot use these lanes as the driver is going to his own destination.

Sturgess then puts forth that “we also expect that should our other recommendations to reduce the costs and red tape associated with point to point services and fares for all booked services be adopted, it will create new opportunities for existing providers.”¹⁶

IPART submitted to Sturgess that “On the other hand, increasing the number of taxis – or close substitutes such as hire cars or commercial rideshare – and therefore the demand for drivers would tend to improve the bargaining position of drivers.”¹⁷ Identifying rideshare as a separate service to Taxi as no doubt the essence of ride share is that the driver picks the destination. Decreased numbers of Taxi drivers would no doubt lead to the improved bargaining position of taxi drivers.

Rideshare Arrives in Australia

“The value of taxi licenses has already been falling because of an increase in license numbers since 2010, and competition from hire cars and rideshare providers”¹⁸. The seventy five percent decrease in the transfer prices for Taxi Licenses would suggest that the drivers of rideshare companies are letting the passengers choose the destination hence becoming a hailing service.

“While enforcement action is being taken by Roads and Maritime Services, participation in this market appears to be growing quickly. In the first year of operation, a ridesharing platform provider claims it has close to 2,500 rideshare drivers, this compares to around 18,000 taxi drivers in Sydney, and around 24,000 state-wide.”¹⁹ There appear to be about fifty thousand rideshare drivers in Sydney now and there were only twelve thousand taxi drivers pre COVID 19 pandemic. This dramatic increase in rideshare drivers and significant decrease in Taxi drivers would suggest that the rideshare drivers are doing more than picking up passengers on their way to work or some driver-initiated destination.

¹⁴ Page 62 NSW Government Point to Point Taskforce 2015

¹⁵ Ibid Page 86

¹⁶ Ibid Page 86

¹⁷ Ibid Page 117

¹⁸ Ibid Page 122

¹⁹ Ibid Page 132

“The new regulatory regime allows rideshare drivers to operate legally, provided they get a hire car driver authorization and have a business registration for their car.”²⁰ The booking services such as Uber, Ola and Didi appear to be used by rideshare drivers to facilitate more than a shared ride to the drivers’ destination. Marketing for all these services promote the passenger’s choice of destination not mentioning that it is the drivers destination that is part of the rideshare experience.

In fact the Uber Australia web site specifically states “An easy way to get around Relax and let your driver take you where you want to go.”²¹ Uber is allowed to operate as a booking service for rideshare but touting a service that is not rideshare, it is a ride hailing service.

In his introductory speech for Point to Point Transport (Taxis and Hire Vehicles) Bill 2016 Mr Andrew Constance made the observation that “Research by the Grattan Institute backs this up and noted that the collaborative economy had the effect of boosting employment and incomes for those on the fringe of the labour market. The first stage of these reforms in December 2015 allowed rideshare drivers to provide services legally so long as they met certain safety requirements. At the same time a number of prescriptive regulations which imposed unnecessary costs on taxis and hire cars were repealed.”²² This makes it clear that rideshare is now legal and drivers proceeding to a particular destination can legally carry a non-related passenger along their proposed route.

Clause 5 of the Point to Point Act contrasts the rideshare service with a Taxi “A taxi service is a passenger service where the transport is provided by a motor vehicle that plies or stands for hire on a road or road related area or is a vehicle that is authorized to do so.” Rideshare vehicles cannot stand or ply for hire as they have a destination that is initiated by the driver. Uber no doubts matches all these destinations with passengers’ destinations.

“Taxi companies and booking services, including rideshare companies, will have an obligation to ensure that services are safe. They will have general safety duties, there will be clearly defined safety standards and there is a graduated penalty regime in place for noncompliance.”²³ Taxis can stand and ply for hire, rideshare booking services are a separate different entity but have to provide safe ride share services.

“The task force also heard from the industry that in order to have a level playing field, the categories that the insurance industry relies upon to calculate compulsory third party [CTP] would need to be reviewed in order to reflect new business models, such as rideshare. Accordingly, the task force recommended that the Government review the current CTP regime for point to point vehicles in an effort to provide a system that is fairer, more equitable and reflective of risk for the point to point industry.”²⁴

“The NRMA's claim that ridesharing services had been well received by the community in New South Wales was supported by the numbers. Several thousand rideshare customers made submissions to the task force, and many of those gave detailed reasons in support of their choice. Further, since the first stage of the reforms in December 2015, a survey conducted on behalf of the Independent Pricing and Regulatory Tribunal [IPART] in February 2016 found that around 22 per cent of the Sydney population had used ridesharing services. Price.”²⁵ It is interesting to note that a company that had started operating the previous year is able to garner the written support of thousands. Now over fifty percent of point to point transport is provided by rideshare services.

²⁰ Point to point transport The NSW Government response to the taskforce report

²¹ <https://www.uber.com/au/en/ride/>

²² Page 1 Hansard 6/7/2016 POINT TO POINT TRANSPORT (TAXIS AND HIRE VEHICLES) BILL 2016 Mr ANDREW CONSTANCE (Bega—Minister for Transport and Infrastructure)

²³ Ibid Page 1

²⁴ Ibid Page 2

²⁵ Ibid Page 3

The rideshare drivers' fact sheet is very clear, the driver has a Driver Authority to provide rideshare services, they can pick up and drop passengers that share their route and/or destination.

"What rideshare services can I legally provide?

A rideshare or hire car driver that has a DA and whose car has a current business use registration can legally provide booked point to point transport services.

A booked point to point service is a service where the origin, destination and passenger details are arranged prior to the start of the booking. A rideshare driver may not pick up passengers without a booking. A rideshare driver may not tout for a fare, or park on a road or at a taxi rank and ply for a fare. A rideshare driver who picks up passengers without a booking or who touts for business is liable to be fined. A fine of up to \$5,000 may apply. Repeated infringements of this requirement are likely to see a person's DA revoked."²⁶ The booking service for a rideshare no doubt takes into account the driver's nominated destination and matches it with a passenger who will share part of the driver's route.

The Wikipedia description of Uber with "**Uber**, is an American multinational ride-hailing company offering services that include peer-to-peer ridesharing, **ride service hailing**, food delivery (Uber Eats), and a micromobility system with electric bikes and scooters. The company is based in San Francisco and has operations in over 785 metropolitan areas worldwide. Its platforms can be accessed via its websites and mobile apps."²⁷ However, in NSW hailing by whatever physical means from a shout to a finger manipulating an app is retained by the Taxi component of the Point to Point service industry.

Indeed, Uber in its submission to the 2015 Point to Point Taskforce said that "... ridesharing does not engage in rank and hail work. That will remain the exclusive domain of taxis. Nor does it engage in the advance booking work characteristic of traditional hire cars. Ridesharing operates exclusively in the 'on-demand ready-to-ride' market". Within the historical and traditional meaning of rideshare its drivers will have a predetermined destination that fits with the rides point to point needs. By doing this the Uber driver does not need to be in breach of:-

Division 3 Hire vehicles

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.

Section 84 confirms that the legislature meant that the rideshare vehicles were meant to have a destination before they accepted a ride and they could not stand or ply for a ride.

Uber, became the leading light of "ride-share" by using teams consisting of lawyers, finance specialist, public relations experts, logistics specialists and social media experts to carry out its city by city repeated pattern breaching of existing laws and regulations which had developed over a century. It effectively borrowed considerable funds to gain entry to markets and has been prepared to lose tens of millions of dollars each year to gain a significant proportion of the hail market despite it being excluded by law from the hail market. The strike teams then enabled ridesharing to be codified to allow Uber to become a booking service for rideshare. The essence of Uber was, and has been in its own words a ride hailing booking service.

Once Uber had enabled its ride sharing booking platform to be accepted by legislatures it then enabled its drivers to become hail providing point to point transport providers. Being "ready to ride" for a ride share does not confer approval to park or stand on a roadway with no driver-initiated destination. It uses its app

²⁶ Factsheet Point to Point transport and rideshare drivers

²⁷ <https://en.wikipedia.org/wiki/Uber>

to allow a physical action to summon a point to point transport vehicle, a hail, a market that is reserved for Taxi License holders.

The mission creep from rideshare to ride hailing has been ignored by the Point to Point Commission in defiance of the clear intention of both the Sturges report and the Minister introducing the legislation to enable Uber to become a booking service for rideshare.

Fatigue Management

The Event

The rush to fatigue management appears to have been precipitated by the unfortunate death of Samuel Thomas who was killed after holding the driver's side door open for several seconds, long enough to wake the other passengers and measurable by CCTV cameras; despite the interior light being activated and the quite audible noise of the car door being opened the Uber driver Mr. Nazrul Islam accelerated when the lights turned green. The acceleration spilled the passenger under the wheels of a bus that was moving through the green light²⁸.

Her Honour found that the facts would have alerted a reasonably prudent driver to remain stationary. The Uber driver had been driving for twenty-one hours; Her Honour was not satisfied that Mr. Islam had seven hours sleep during his shift, a shift that was obviously not a rideshare shift but a shift being a ride hailing car. not a rideshare vehicle.

Uber introduced a system that logged drivers off after twelve hours, however, these twelve hours of continuous driving were calculated excluding time when a driver is stopped at traffic lights or is driving without a passenger. This allows drivers up to fifteen hours of driving.

It also demonstrates that Uber knows that it is operating a ride hail service as it is hard to imagine that any driver would have a series of destinations requiring fifteen hours of driving.

Taxi drivers by education and experience to pull over to the curb to allow passengers to alight and do not move forward until the passenger doors are all closed. Being part timers with no education to provide ride hailing services Uber drivers omit this basic safety measure for passengers more often than not.

Need for Fatigue Management

The commissioner appears not to have not provided any evidence specific to taxi drivers that fatigue plays an important role in accidents of taxi drivers in metropolitan areas of NSW.

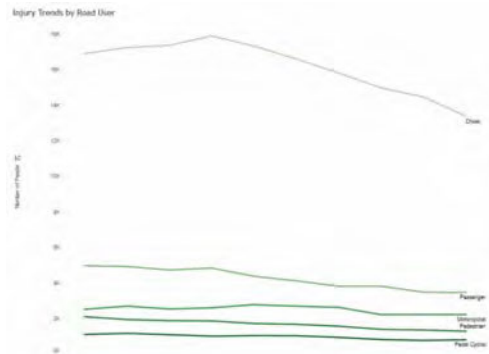
In the absence of any data provided by the Point to Point Commissioner one has to rely on the general crash and casualty statistics provided by Road Safety and transport at <https://roadsafety.transport.nsw.gov.au/statistics/interactivecrashstats/nsw.html?tabnsw=2> .

The Commissioner appears to have applied the generality of the observations on this web site to the quite specific subset of Taxi drivers. This use of generalisation may not be appropriate considering that the Taxi driver group has considerable experience in time and total lifetime kilometres driven in many different conditions and are constantly assessed by their operators, radio networks and colleagues behaviourally.

The generated graph demonstrates graphically a steady decrease in crash and casualty trends since 2011 as evidenced by the graph from the web pages provided by Road Safety NSW. It is noted that there

²⁸ <https://www.abc.net.au/news/2018-11-26/nazrul-islam-guilty-uber-negligent-driving-samuel-thomas/10554134> Accessed 20th May 2020

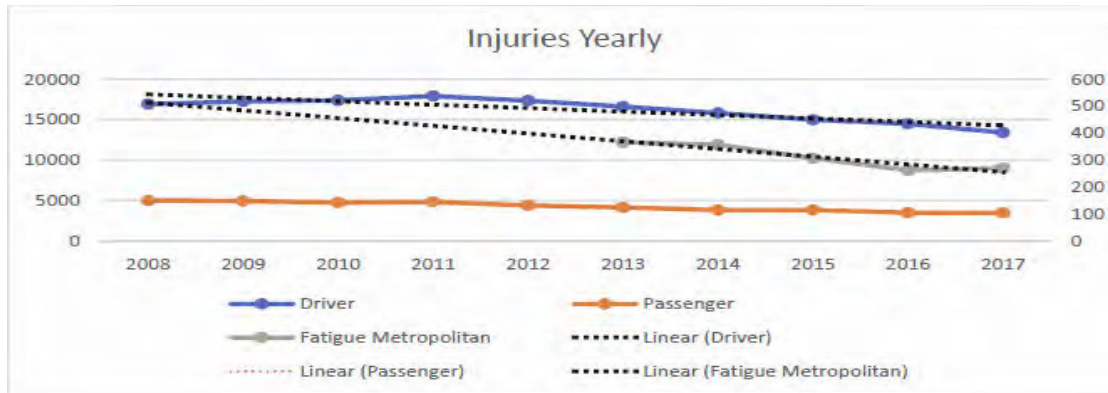
appears to be a significant decrease in driver injuries starting 2011 while passenger, motorcyclist and pedestrian injuries have slowly decreased over the same period.



This graph appears not to support the imposition of the highly proscriptive fatigue management regimen imposed on, at least Manly Cabs and no doubt other booking service providers. Over the period moderately injured is trending down as demonstrated below.



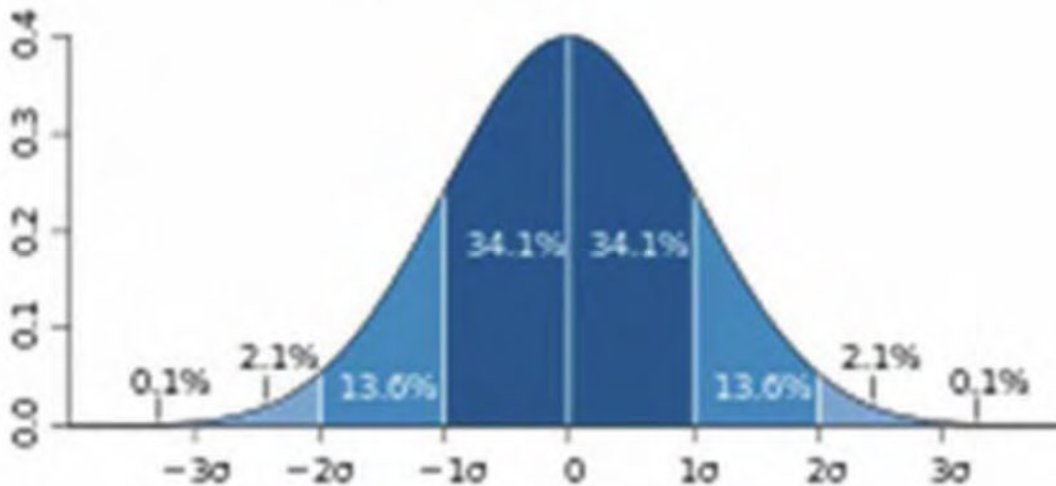
Data from the Road Safety Transport NSW allow the construction of a graph of fatigue related serious injuries of passengers and drivers in Metropolitan NSW. The trend line of fatigue related serious injuries has a markedly downward trend from at least 2013 and has been extrapolated backwards to 2008 (dotted lines).



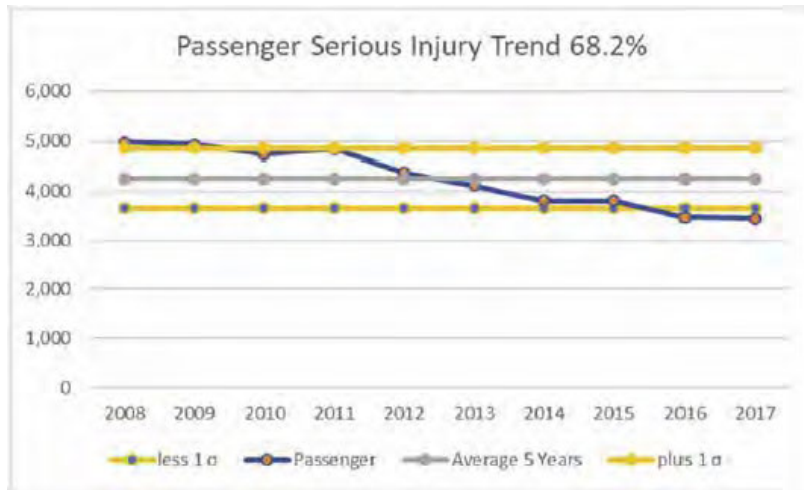
These charts call into question the need for the restrictive fatigue management regimen being approved by the Commissioner. The slight uptick in serious injuries of passengers in 2017 could easily be attributed to the rapidly escalating numbers of Uber drivers in that year. Uber drivers appear to often set down passengers away from the kerb interfering with traffic flow unnecessarily, no doubt often at the instigation of the passenger or from the middle lane of three lanes at great risk to the alighting passengers.

Uber drivers treat double unbroken lines as an advisory to take care when performing U-turns, as are the advisory stop signs and waiting in no stopping areas is a more than acceptable practice. The numbers of Taxi drivers being static or decreasing as the trips they are providing decrease and they most likely have a small but steady contribution to the statistics used below.

However, using one data point of a series is fraught with difficulty. As can be seen by a normal graph exhibited below about 95% of a data series will fall within two standard deviations of the average. Most data sets in nature have the properties when graphed exhibited below.



The serious injury trend for passengers is graphed below, with the average and plus or minus one standard deviation (σ). It is significant that the number of passenger serious injuries falls outside the value of one standard deviation only in 2016 and 2017. This would indicate that these two years of serious injury have a 94.2% chance of being other than random. So the years 2008 through to 2015 have a 31.8% chance of having no trend, that the measurement's apparent trend occurred by chance. The last two are significant as then there is a 94.2% chance that something less than chance is occurring, they are greater than one standard deviation from the average.



When the driver serious injury trend data is graphed showing two standard deviations evidence that there is a 98.4% chance that the point on the series occurred by other than randomness; it is only the 2017 years total that exceeded the probability that the number was only 1.6% or about one in fifty due to chance or greater than two standard deviations.



The downward trend of driver injuries, the most dramatic of the ten-year trends above appears to have a 98.4% probability of being the result of something other than chance. This resonates with Jennie Connor's literature review that found in 2001 that **“the direct epidemiological evidence for a causal role of fatigue in car crashes is weak, but suggestive of an effect”**²⁹

Science of Fatigue Driving

The textbook Traffic Safety and Human Behaviour – David Shinar 2007 has been to develop these notes on fatigue management.

Fatigue has a variety of meanings in various sciences, in behavioural science no generally agreed on definition, it is not sleepiness or lack of sleep. Although lack of sleep for greater than twenty-four hours will induce fatigue of varying individual levels as Connor *et al.* 2001 showed an association with deterioration of driver performance and an increase in accidents. Although it is quite weak as detailed above.

Fatigue can be a result of too much physical exertion or too little visual stimulation, **underloading a person can lead to fatigue as can overloading**. The highly proscriptive rules that some networks have enforced are purposely underloading drivers and could easily cause fatigue. Fatigue can be a subjective experience, or it can be a physiological event. It can result in death or severe injury in well-defined activities such as driving or piloting and aircraft. A poll taken by the National Sleep Foundation found that 36 percent of Americans have driven while drowsy or fallen asleep while driving, shift workers are more likely to drive when fatigued and to fall asleep at the wheel³⁰. No doubt that there would be similar findings in Australia. However, noting that much of metropolitan USA has long straight freeways it may not be the case.

Desmond and Matthews (1997)³¹ showed that fatigue impaired lateral control while driving on easy, straight and monotonous roads, but not when driving on more demanding curved road sections. Sydney roads by observation are more demanding than the freeways that US cities enjoy. They also demonstrated that fatigue impaired lateral control on easy, straight and monotonous road sections but not when driving on more demanding curved road sections³².

The diagram below demonstrates why taxi drivers should not be treated as occasional drivers, looking at the graph below from David Shinar's 2007 textbook it can be postulated that taxi drivers have a high fitness level and will stay in the optimal performance zone even when situational demands are high. Fatigue is a situational demand, it can and has been managed successfully by taxi drivers for many years.

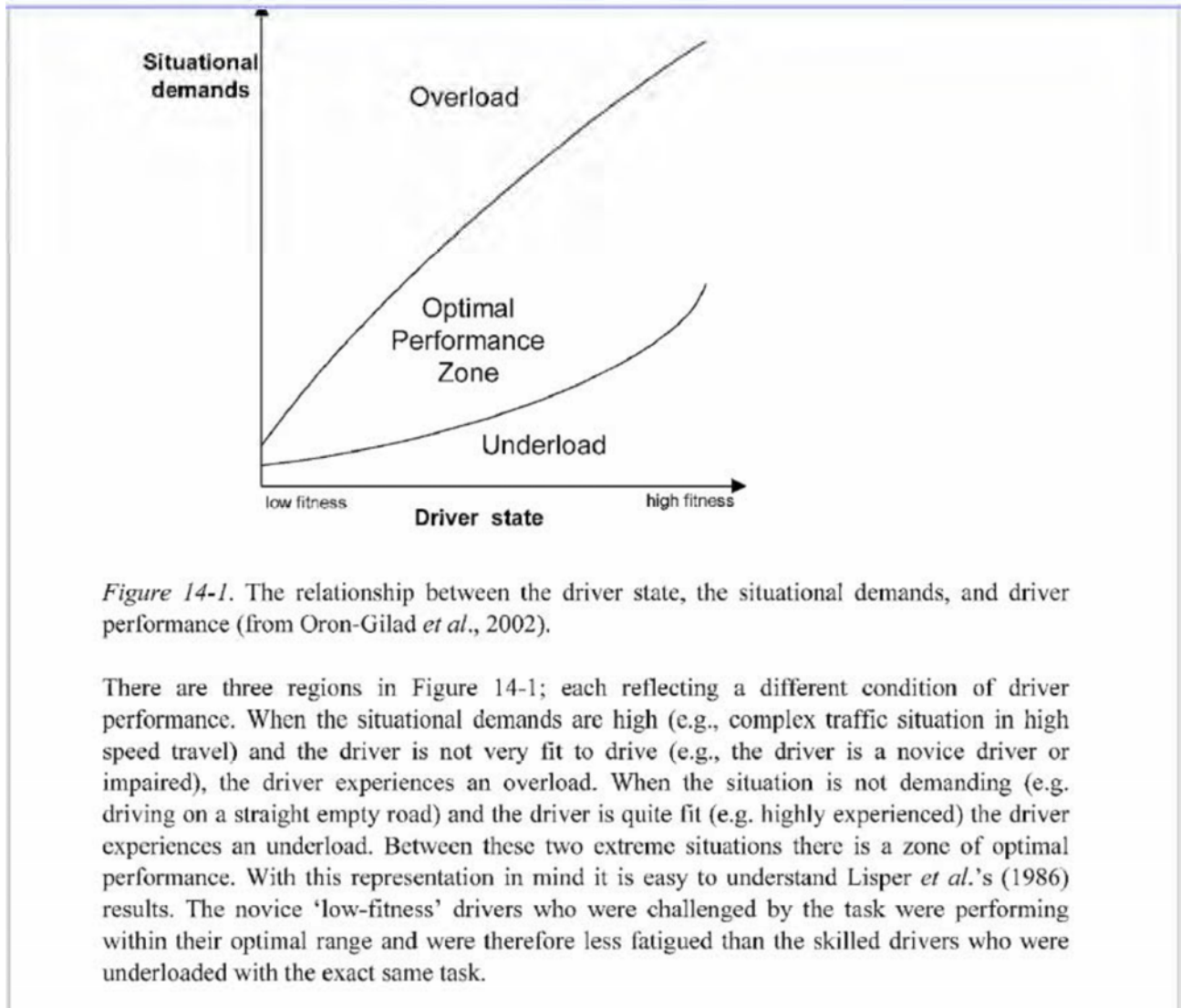
Taxi driving is not monotonous as there are different passengers, different destinations and different road conditions that considerably decrease the monotony of the driving task. Nilsson *et al.*³³ demonstrated that different drivers can tolerate differing amounts of driving before they reach a subjective level of fatigue, taxi drivers have been conditioned to be tolerant of long periods of being in the vehicle but not necessarily driving for all of them.

³⁰ <https://sleepdisorders.sleepfoundation.org/chapter-1-normal-sleep/abnormal-sleep-sleep-disorders/> Accessed 21st May 2020

³¹ <https://journals.sagepub.com/doi/abs/10.1177/107118139704100262> Accessed 21st May 2020

³² https://books.google.com.au/books?id=3Bc4sDuHqA0C&pg=PA568&lpg=PA568&dq=Kahneman+fatigue&source=bl&ots=tJ1QWNTTb4&sig=ACfU3U0lkybBUSIGnahNydAILdC3_UiZuw&hl=en&sa=X&ved=2ahUKEwjYsIDOiubhAhUNeiskHhV7Dow4HhDoATAGegQICRAB#v=onepage&q=fatigue&f=false Accessed 21st May 2020

³³ https://books.google.com.au/books?id=3Bc4sDuHqA0C&pg=PA568&lpg=PA568&dq=Kahneman+fatigue&source=bl&ots=tJ1QWNTTb4&sig=ACfU3U0lkybBUSIGnahNydAILdC3_UiZuw&hl=en&sa=X&ved=2ahUKEwjYsIDOiubhAhUNeiskHhV7Dow4HhDoATAGegQICRAB#v=onepage&q=fatigue&f=false Accessed 21st May 2020



Administrative and Safety officer of Manly cabs reports that a point to point inspector has an aviation background; this inspector would be no doubt be aware that there is always balance between optimising cash flow and maximising safety. He has been made aware of this well-founded scientific material and refuses to enter into a dialogue as required by the Point to Point Commission.

Sometimes safety measures such as that on the Boeing 737 MAX have unfortunate consequences when instituted without informing stakeholders such as the pilots. Unnecessarily safety regimens such as that imposed on Manly Cabs may lead to an increase in driver fatigue by decreasing driver stimulation and increasing financial stress.

The Point to Point Commissioner has failed to quantify the risk to taxi drivers and their passengers. The Commissioner appears not to have determined if taxi drivers are more prone to accidents than other passenger vehicle drivers in the metropolitan areas of NSW.

The Commissioner appears not to be familiar with any of the extensive literature concerning fatigue and accidents. Before any fatigue management regimen is implemented the scientific literature should be assessed to determine the possible effectiveness of measures imposed on Manly Cabs and the NSW Taxi industry in general. The restrictions on driving imposed on Manly Cabs cause a fourteen percent decrease in

earning capacity individual drivers, this decrease in what is a marginal business is no doubt stress inducing and could be a greater contributor to fatigue than not having a system that arbitrarily denies access to radio dispatch jobs.

Safety necessarily is an expense to cash flow, but at some time the expense becomes so great that the organisation fails, or the driver seeks employment elsewhere. The attributed quotes below show there are better ways of predicting accidents than a blind application of quite significant financial costs to drivers and operators by thoughtlessly restricting driver hours.

Eventually one of Danny's students discovered that you could predict, from how efficiently they switched channels, which Israeli bus drivers were more likely to have accidents.
Lewis, Michael. *The Undoing Project: A Friendship that Changed the World* (pp. 137-138).
Penguin Books Ltd. Kindle Edition.

The friendship was that between Daniel Kahneman and Amos Tversky, both professors of psychology who developed behavioural economics. Daniel Kahneman received the Nobel Prize for economics, Amos didn't share it as he had died several years before it was awarded.

The point is that there are other ways of measuring fatigue risk other than an overly proscriptive roster of resting which because of the distress they cause, may actually increase accident risk.

*"I'm sorry, Dr. Redelmeier, I have to go. I just had an accident." The guy had been talking to him on a cell phone while driving. Redelmeier wondered: Did talking on a cell phone while driving increase the risk of accident? In 1993, he and Cornell statistician Robert Tibshirani created a complicated study to answer the question. The paper they wrote, in 1997, proved that talking on a cell phone while driving was as dangerous as driving with a blood alcohol level at the legal limit. A driver talking on a cell phone was four times as likely as a driver who wasn't to be involved in a crash, **whether or not he held the phone in his hands**. That paper—the first to establish, rigorously, the connection between cell phones and car accidents—spurred calls for regulation around the world. It would take another, even more complicated study to determine just how many thousands of lives it saved.*

Lewis, Michael. *The Undoing Project: A Friendship that Changed the World* (pp. 345-346).
Penguin Books Ltd. Kindle Edition.

There is a range of safety actions between that of the 737 MAX where pilots were not aware of a new safety feature and the no fatigue management regimen that existed in the Taxi Industry before the Point to Point changes. The sweet spot will be no doubt found by extensively studying the science of fatigue and listening to drivers, something that the networks seem reluctant to embrace, even for safety.

Uber

Appears to be all smoke and mirrors with great swathes of blue sky.

Uber Financial Analysis

Uber operates in 600 cities and has outstanding bonds of \$USD24.7B this means it has an average debt per city of some \$USD41m.

Similarly, Uber lost \$USD8.4 billion in 2019 or \$USD2.1 billion a quarter on average or \$USD3,500,000 per city. To continue to operate in Sydney with an exchange rate of \$USD1 buys \$AUD0.64 then in Sydney Uber on average will lose \$5,468,750 per season.

In NSW Uber started in 2014 with a base of a few Sydney Taxi drivers and a number of vehicles driven by people who were no doubt influenced by Uber management to break the existing regulations about providing public passenger services in vehicles with less than eleven seats.

RMS the regulatory predecessor of the Point to Point Commission failed to secure any significant convictions for these many breaches of the then regulations. In July 2015 the RMS withdrew prosecutions against 24 Uber drivers due to lack of evidence³⁴. Resulting in a hesitancy to pursue Uber for breaches of the regulations continued until December 2015 when Uber's activities as a rideshare booking service were allowed within the Point to Point legislation.

The hesitancy was fear of the new and the inability to collect evidence was partly a result of Greyball, which is explained below. The reluctance by the Point to Point Commission to enforce the new regulations on Uber continues to this day.

This section is based on information from the Wikipedia entry on Uber which seems to have been written by persons closely associated with Uber and 'Superpumped: The Battle for Uber' by Mike Isaac a New York Times technology correspondent³⁵.

Uber was originally founded by Garret Camp founder of StumbleUpon a social content sharing platform. He needed to continue to devote his efforts to this early social media platform. Garret Camp knew that Travis Kalanick was looking for a new project having just sold his internet start-up for \$USD20 million and invited his friend to drive the expansion of Uber starting 2009. Initially Uber was a limousine booking service based on an app.

Travis quickly realized that San Francisco cabs were providing a sub optimal service and that by having limousine drivers do essentially taxi work Uber could provide a better, certain service with upmarket cars.

Demand soon outstripped supply and Uber commenced providing passengers for transport within the San Francisco area by private vehicles. This led to conflict with the San Francisco transport authorities but combined with a change in politics, and the claim that Uber was only a booking service, a technology company. Accepting this proposition that Uber was a technology company only allowed it to grow considerably until the iconic San Francisco Cab company entered bankruptcy.

Travis Kalanick quickly made it known to all hires that he wanted to be the next Bill Gates, Larry Ellison, Steve Jobs or Jeff Bezos of transport. To achieve this, he instituted a strategy of growth at all costs

³⁴ <https://www.abc.net.au/news/2015-07-30/nsw-drops-prosecutions-against-uber-drivers/6660626> Accessed 18th February 2020

³⁵ https://www.amazon.com.au/Super-Pumped-Battle-Mike-Isaac/dp/0393652246/ref=asc_df_0393652246/?tag=googleshopsk-22&linkCode=df0&hvadid=341744909748&hvpos=&hvnetw=g&hvrnd=4689718453526509177&hvpon=&hvptwo=&hvqmt=&hvdev=c&hvdvcmdl=&hvlocint=&hvlocphy=9071649&hvtargid=pla-814033087563&psc=1 Accessed 19th February 2020

ignoring all city regulations governing what was to become Point to Point transport in Australia, in response to the arrival of Uber. Strike teams would move into the target city about six months before the proposed start.

He was aided by Soft Bank a Japanese Saudi Arabian venture fund with \$USD100 billion of funds to invest in start-ups and an equally strong philosophy of growing at all costs despite the incumbents or presumptive competitors.

“He let nothing get in the way of that growth — not the livelihood of drivers, not the health and welfare of employees, not the counsel of his own advisers, not the laws and regulations of multiple states, and not the rules of Apple’s app store (which in Isaac’s account worried Kalanick more than a few pesky laws).”³⁶

Tactics no doubt developed by ex-CIA counter surveillance operatives and hackers that the Guardian Newspaper has alleged worked for Uber³⁷. A system called Greyball that was given to identified officers of enforcement that would not deliver an ordered car nor give an accurate indication of the number of cars available to that particular officers Greyball Uber account.³⁸ The system frustrated potential litigation by denying any evidence to enforcement officers.

This system aimed at frustrating authority’s enforcement activities was still active as late as 2017 according to The New York Times³⁹. There is no information as to a more subtle form to protect Uber drivers from compliance officers but the remarkably low levels of compliance breaches by Uber drivers causes consideration of another form of Greyball being in existence.

Another tactic of Uber was to use strike teams of about twenty professionals in Law, Logistics, Finance, Public Relations, Marketing and Social Media to move into the target city about six months before planned kick off day to prepare for a successful confrontation with the local regulators and the incumbent taxi companies.

These various tactics that Uber employed worked worldwide. This was probably a combination of an extremely tech savvy, experienced company competing with divided amateurs regulated by organizations that suffered from regulatory capture and who were unable to resist the well-honed well-funded disruption of Uber.

Heavy discounts, millions of unprofitable journeys for Uber made it very popular, but incurred billions of losses.

Most taxi companies in most cities had a monopoly and like all monopolies had become bloated, satisfied with their level of sub-optimal service, and complacent. They have fallen like nine pins.

It was most definitely a David and Goliath struggle with local taxi companies being David without a slingshot. The incumbents have lost worldwide mainly in cities with a population of over a million, and their adjacent catchment areas.

³⁶ <https://www.nytimes.com/2019/09/06/books/review/super-pumped-mike-isaac.html> Accessed 19th February 2020

³⁷ <https://www.theguardian.com/technology/2017/nov/28/uber-court-waymo-trade-secrets-trial> Accessed 19th February

³⁸ <https://www.nytimes.com/2017/03/03/technology/uber-greyball-program-evade-authorities.html> Accessed 19th February 2020

³⁹ <https://www.nytimes.com/2017/03/03/technology/uber-greyball-program-evade-authorities.html> Accessed 19th February 2020

By 2018 Uber had bond debts of \$USD24.7 billion⁴⁰, but a significant proportion of what we now term the point to point transport industry in over 600 cities. It had also entered the vocabulary of significant number of speakers of many different languages.

In 2019 Uber projected losses of \$USD8 billion it booked losses of \$USD5.2 billion⁴¹ in the second quarter of 2019. CNN reported that in the final quarter of calendar 2019 Uber lost \$USD1.1 billion bringing losses for the calendar year 2019 to \$USD8.5 billion⁴².

This enormous expenditure enabled Uber to buy market share in many cities by expensive marketing, heavily subsidized rides, pervasive social media activities and causing decades old regulations to be changed in favour of allowing rideshare.

Travis Kalanick by Christmas Eve 2019 had sold most of his share holdings after the company's stock lockup period for approximately \$USD2.5 billion, he also resigned from the board effective December 31st, 2019⁴³. The other co-founder Garrett Camp had dumped \$USD620 million worth of shares by the 24th January, 2020⁴⁴ but continues the board.

TfL Shows Uber System has Major Flaws

In August 2017 Transport for London (TfL) notified Uber that its license to operate would not be renewed and that it had twenty-one days to appeal⁴⁵. TfL said it had found unauthorized drivers using the accounts of real, approved Uber drivers and picking up passengers using vehicles they were not registered to drive. The regulator said these fraudulent drivers had conducted 14,000 trips⁴⁶.

Helen Chapman, the director of licensing, regulation and charging at TfL said, "It is unacceptable that Uber has allowed passengers to get into minicabs with drivers who are potentially unlicensed and uninsured,"⁴⁷

A number of Uber active and non-active drivers were selling their log on details. Obviously, the only people who could possibly be interested in renting an Uber log in would be those who could not pass the police checks of did not have the required license level.

Again, various stories noting this event in 2017 describe Uber as a "car-hailing app"⁴⁸. The physical action of using an app is the same as a hail and may be as anonymous for the actual driver who has rented access to the Uber app. Hailing is the preserve of Taxis, rideshare is the preserve of Uber and the other minor ride share booking services.

Anecdotally there have been advertisements on Gumtree selling Uber login details for \$30.

⁴⁰ https://www.crunchbase.com/search/funding_rounds/field/organizations/funding_total/uber Accessed 18th February 2020

⁴¹ <https://boingboing.net/2019/08/09/schadenscooters.html> Accessed 18th February 2020

⁴² https://edition.cnn.com/2020/02/06/tech/uber-q4-earnings/index.html?_ke=eyJrbF9lbWVpYm91bnR1bWVhbnR1c2hvbWUuY29tLmF1Iiw%280%A6 Accessed 18th February 2020

⁴³ <https://www.cnn.com/2019/12/24/travis-kalanick-to-depart-uber-board-of-directors.html> Accessed 19th February 2020

⁴⁴ <https://www.cnn.com/2019/12/24/travis-kalanick-to-depart-uber-board-of-directors.html> Accessed 19th February 2020

⁴⁵ https://www.investopedia.com/articles/personal-finance/111015/story-uber.asp?utm_source=personalized&utm_campaign=bouncex&utm_term=11%E2%80%A6 Accessed 30th May 2020

⁴⁶ https://sifted.eu/articles/uber-london-taxi/?_ke=eyJrbF9lbWVpYm91bnR1bWVhbnR1c2hvbWUuY29tLmF1Iiw%280%A6 Accessed 31st May 2020

⁴⁷ Ibid

⁴⁸ <https://www.nbcnews.com/news/world/amp/london-refuses-uber-license-operate-says-company-not-fit-proper-n803706> Accessed 31st May 2020

TfL continued to refuse Uber permanent status for two more years as it had determined that Uber was not a 'fit and proper' person to operate in London. There were further concerns over passenger safety, congestion, and pollution. Companies are persons at law, multinational companies who no doubt have part of their personality in tax havens have the same personality over a larger area. It is hard to fathom why personality that is unacceptable in one city is acceptable in Sydney.

The Washington Post⁴⁹ has found that Uber has a unit of 80 workers who deal with the worst incidents that happen in Uber rides, they concentrate more on decreasing Uber's liability than on passenger safety. They do not forward allegations to [police nor do they counsel victims to seek legal advice.

The most inexplicable actions of this unit are that when Uber kicks drivers off the platform it does not share this information with the police or other rideshare companies, preventing offenders from repeating their actions with other rideshare businesses. "But investigators say Uber's process leaves bad actors on the road. One investigator recalled the San Francisco driver who purportedly forced his way into the back seat and put his hand up a passenger's blouse before she struggled free. Another heard from riders that their driver threatened them with a hammer hidden under his seat. Neither lost their driving privileges at the time."⁵⁰

Uber has continued to appeal the loss of its ability to offer rideshare services in London; and non-authorized drivers have continued to use their service. The latest exploited a gap in the Uber security system that allowed an unauthorized driver to upload their image to the accounts of other Uber drivers and to pick up passengers as if they were an authorized driver.

Uber being the most popular is the first to have their security breached, no doubt in time the smaller players will have their security breached by determined hackers. The Point to Point Transport Commission cannot even apply an Australian Standard to judge if a sign is retroreflective.

How can the public be sure that the Point to Point Commission can ensure that their rideshare driver is really an authorized rideshare driver?

Uber and Congestion

Uber entering the market by defying the taxi regulations in Sydney caused the government to revise the regulation of the Taxi industry to open what came to be known as the Point to Point transport sector by offering rideshare that would decrease traffic congestion at no cost to the government. Rideshare drivers would be able to earn a reasonable income by using their car to transport people along the route that the driver was going to journey.

The proposition ignores a human trait that if one reasonable income is good then several is better. A driver can repeat his journey several times to double or triple his reasonable extra income. However, in peak hour when it is most likely that rideshare trips will be more likely the extra trips are extra cars on the roads leading to increased congestion.

In August 2015 New York City⁵¹ became the first city to attempt a restriction of rideshare vehicles in response to worsening congestion and pollution⁵². Pay rules for drivers were also considered for drivers. After a year of negotiations Uber agreed to a deal with the NYC officials that was like the proposed deal a year before. By June 2019 it had agreed to limit the number of rideshare cars, limit the number of cars

⁴⁹ <https://www.washingtonpost.com/technology/2019/09/25/ubers-investigations-unit-finds-what-went-wrong-rides-its-never-companys-fault/> Accessed 31st May 2020

⁵⁰ Ibid

⁵¹ <https://www.theguardian.com/technology/2015/jul/23/uber-strikes-deal-with-new-york-to-avoid-car-cap> Accessed 31st May 2020

⁵² <https://www.channelnewsasia.com/news/business/uber-quarterly-loss-jumps-as-it-invests-in-big-bets-10620784> Accessed 31st May 2020

and the time they could spend in Manhattan and to limit the cruising of vacant rideshare vehicles. The mayor Mr. de Blasio said, "It's a horrible model for the drivers and their income, it's a horrible model in terms of congestion and in terms of pollution,"⁵³

In the 2015 article referenced above Josh Mohrer Uber NYC general manager is reported as saying "We are pleased new drivers will continue to be free to join the for-hire industry and partner with Uber." This is about the same time that Uber Australia was putting forth that it was a booking service for rideshare drivers.

By 2018 London TfL was lobbying for the ability to cap the number of private hire vehicles. A DfT was quoted as saying that caps for Private Hire Vehicles should be guided by a "public interest test" to prove need "This can help authorities to solve challenges around congestion, air quality and parking and ensure appropriate provision of taxi and private hire services for passengers, while maintaining drivers' working conditions,"⁵⁴

In September of 2018 research commissioned by Uber and Lyft clearly showed that in the CBDs of Chicago, LA, and Seattle. And New York City their vehicles made a significant contribution to congestion⁵⁵.

By 2019 there had been several academic studies demonstrating quite clearly that Uber and Lyft the two dominant players in the ride hail business increased the traffic congestion in San Francisco. Dated 8th May 2019 an article in Science⁵⁶ In using computer modelling compared the traffic in 2010 before ride sharing became ride hailing with the time spent in cars in 2016. The increase was 69%, about 22% of the total was attributed to increase in population and employment, so more than half of San Francisco's real-world traffic increase could be attributed to the activities of Uber and Lyft drivers. An interesting technique used by the authors to calculate the number of cars that Uber and Lyft were putting on the street in the absence of data from either company was to use "ghost users" to ping the apps every five seconds for six weeks in 2016, this revealed the locations of nearby drivers and thus the number of drivers on the streets at any one time could be tabulated.

The study and others have shown that Uber is not only taking passengers from traditional Taxi services but also public transport.

London also joined US cities in limiting the number of rideshare vehicles. "Most drivers entering London's central zone, spanning King's Cross in the north, the City in the east, the Imperial War Museum in the south and Buckingham Palace in the west, pay 11.50 pounds (\$22.73) Monday to Friday during the day. Private hire firms had been exempt from the Congestion Charge but regulator Transport for London (TfL) is seeking to cut down the number of vehicles on the British capital city's roads, which has surged partly due to burgeoning taxi apps."⁵⁷

Sydney has sought for many years to decrease the number of cars on the roads in peak hour by increasing the numbers of trains, buses, and ferries. In Ubers S1 a pre IPO regulatory filing it was made clear that Uber sees public transportation as a market that it will expand into to. "To have this big

⁵³ <https://www.wsj.com/articles/uber-lyft-drivers-face-stiffer-regulations-in-new-york-city-11560375449> Accessed 31st May 2020

⁵⁴ <https://techcrunch.com/2018/09/24/license-caps-and-cctv-among-ride-hailing-rule-changes-urged-in-report-to-uk-govt/> Accessed 31st May 2020

⁵⁵ <https://www.theverge.com/2019/8/6/20756945/uber-lyft-tnc-vmt-traffic-congestion-study-fehr-peers>

⁵⁶ <https://www.sciencemag.org/news/2019/05/uber-and-lyft-may-be-making-san-francisco-s-traffic-worse> Accessed 31st May 2020

⁵⁷ <https://www.reuters.com/article/us-britain-taxi/uber-and-other-taxi-firms-to-pay-london-congestion-charge-idUSKBN1O14H> Accessed 30th May 2020

company about to go public, being so upfront about well, we're going after your public transportation rider, even though we know this is bad for cities, it's just very jarring," Schaller told CNN Business⁵⁸.

In the USA public transport ridership is decreasing, however, in Sydney the number of patrons of Public transport has been increasing steadily since 2011. Public transport in Sydney does not need to be disrupted. Disruption by Uber will decrease revenue to the state from passengers and increase traffic congestion in proportion to the disruption.

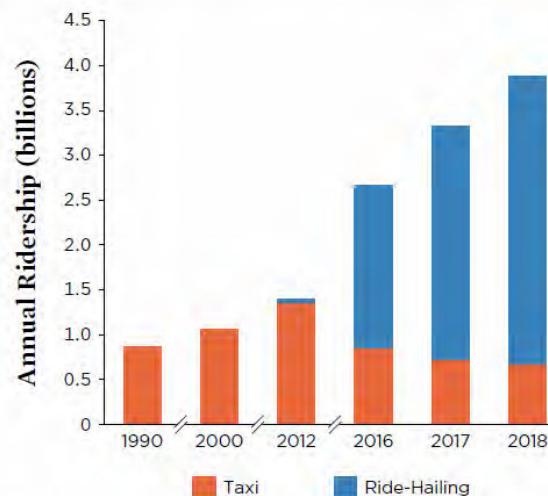
Sydney has traffic congestion for many hours a day, this leads to increased pollution and wasted fuel waiting in congestion plus frustrating delays. The cities in the studies have considerably better road systems than Sydney's CBD. Rideshare vehicles acting as ride hail vehicles have been shown to increase congestion in other major cities.

Ride hailing has made its biggest impact in the CBD an inner-city areas. These areas are well served by trains, trams, buses, bicycle paths and footpaths. When an Uber car is used for a journey that could have been carried out by one of these existing modalities emissions and traffic congestion rise.

In the USA it has been estimated that a typical ride-hailing trip is about 69% more polluting than the trips it replaces⁵⁹. It could be greater in Sydney as the large concentration of ride-hailing trips by Uber and its competitors in the CBD and inner-city areas.

The figure below⁶⁰ shows how the ride hail business has taken a considerable number of taxi rides from taxis. This number is far exceeded by the extra number of ride-hail trips. Those trips mostly would have been carried out by less emission intense or zero emission means.

FIGURE 1. Ride-Hailing Ridership in the United States Is Rising Rapidly, Vastly Surpassing Taxi Ridership



Since Uber and Lyft's introduction, ride-hailing has quickly displaced taxis and led to an overall increase in for-hire vehicle ridership.

⁵⁸ <https://edition.cnn.com/2019/04/25/tech/uber-public-transportation/index.html> Accessed 30th May 2020

⁵⁹ <https://www.ucsusa.org/sites/default/files/2020-02/Ride-Hailing%27s-Climate-Risks.pdf> page 5 Accessed 31st May 2020

⁶⁰ Ibid Accessed 31st May 2020

No Restrictions on Rideshare Driver Numbers

By design the Point to Point Commissioner or TfNSW cannot limit the number of rideshare vehicles, despite their considerable contribution to traffic congestion^{61 62}.

Competing with the Uber financial juggernaut on a very unlevel playing field has made the demand for existing taxi licenses slump. This is demonstrated clearly by the dramatic contraction in the transfer prices of existing Taxi Licenses demonstrated in the graph at the beginning of this submission. The graph starts in January 2015 when the Point to Point Task Force was announced.

Taxi license owners, operators and drivers produce a modest surplus for each participant group each year until now. Uber's surplus operating income when it occurs will no doubt be remitted to the parent company in USA to service enormous debt. Uber has spent an enormous amount of money to buy market share as detailed above.

Many cities including New York city have limited the number of rideshare vehicles in total or at any one time. In New York Uber drivers are also restricted by the time they can spend in Manhattan.

Lack of publicly available information

In the information sheet for submissions for Transport for NSW it was noted that there are 5,593 taxi licenses for Sydney. It is rather difficult to accurately determine the number of rideshare drivers in Sydney. Estimates vary from 21,000 full time drivers to some 50,000 Uber partners in Sydney. This range could be explained by some speaking of full-time drivers and others of the total number of Uber drivers in Sydney. The numbers appear not to be known at all to this enquiry nor to the Point to Point Commission.

The number of Uber partner drivers should be publicly available.

Many of these Uber drivers drive at peak times such as Friday and Saturday night taking the cream of work that would increase average income for drivers that is depressed by providing services Monday to Thursday which are quiet evenings.

IBISworld has a report that perhaps has these numbers, but it costs \$995⁶³ for an individual report. A 2019 research paper by Alpha Beta commissioned by Uber⁶⁴ demonstrates that 42% of Uber drivers are not in full time work and assumed to be driving full time for Uber. The report also states that Uber driver earnings are \$21.00 per hour after costs, a figure which is considerably higher than the \$16 per hour reported by Business Insider⁶⁵ and considerably higher than the \$12-\$15 per hour after costs reported by Uber drivers on various chat rooms.

These discrepancies could in part be explained by the first report using a cost basis of registration appearing to be for a non-commercial registration and a comprehensive insurance rate that does not reflect the increase in premium when a driver nominates that he is driving for a rideshare company. The lower figure is what Uber drivers calculate their earnings on after all costs.

⁶¹ <https://www.gizmodo.com.au/2019/05/new-research-confirms-that-ride-hailing-companies-are-causing-a-ton-of-traffic-congestion/> Accessed 19th February 2020

⁶² <https://www.theverge.com/2019/5/8/18535627/uber-lyft-sf-traffic-congestion-increase-study> Accessed 19th February 2020

⁶³ <https://www.ibisworld.com.au/cartv2/purchase-options/default.aspx?rcid=61&rtid=101&entid=5540> Accessed 18th February 2020

⁶⁴ <https://ubernewsroomapi.10upcdn.com/wp-content/uploads/2019/03/Alphabet-Report-Flexibility-and-fairness-what-matters-to-workers-in-the-new-economy.pdf> Accessed 18th February 2020

⁶⁵ <https://www.businessinsider.com.au/a-new-survey-of-uber-drivers-in-australia-finds-the-vast-majority-are-unhappy-with-what-theyre-being-paid-2018-10> Accessed 18th February 2020

It is quite obvious that the Point to Point Commission has the number of rides carried made by each network as the Commission collects a dollar for each ride from each of the networks on a regular basis, the Commission appears reluctant to share this information with interested parties within the Taxi segment of the Point to Point transport system.

The commission should provide a csv file that details the days of collection of the levy.

There is no market nor a level playing field

Sydney Taxi drivers have always been in competition with each other, for the best position while cruising for a hail, for point on a fixed rank or on a pop up rank that appears at the time of a large office closing at night. They compete for quickness in assessing the closeness and desirability of a cover radio job. Meter fees are set and there is no way of conveying a taxis discount rate at a time and place on the street. The arm hailing passenger is looking for the first vacant light. Drivers are often reluctant to talk about their own pay in traditionally. This competition has not changed with the point to point legislation.

Operators compete for drivers by politicking amongst drivers and with the administrative staff of the smaller networks to be the first on the list to which new drivers are referred. Minimum pay ins are fixed by the individual networks often by reference to an appreciation of the market price from administration at 13CABS. Their pay in rates appear to be based on what they have bid for the lease of annual government leased pates.

Operators try to charge more than the minimum but do not budge under the minimum amount and usual weightings for weekend shifts as opposed to weekday shifts. Competition in this space is more on the perception of the quality and maintenance of the cars. Drivers do tend to stay with one operator often as a matter of habit or cultural linguistic convenience. Change is preceded by ringing around the various operators in the network to enquire about the availability of various shifts and pay ins. There is little or no bargaining. This competition has not changed with the point to point legislation.

Networks compete for plates to join them more on a personal relationship developed over time, plate owners are more likely to leave a network as a consequence of interpersonal conflict rather than a tactical business decision. The plate lease fees are general set by reference to 13CABS lease fees, there is no readily available information source that can viewed by a potential lessor or lessee of a plate. Plate lease fees vary marginally between networks, one apparent difference is that one network's published lease fee was slightly lower per month as it calculated the lease fee on a thirty-day cycle rather than a calendar month cycle. Plate lease fees are not discussed between operators, networks, and drivers to any extent. There is no place where the various lease fees are published.

Plate owners generally have their plates managed by the networks, often the network that an ancestor drove for or the network into which the family historical network has been subsumed.

There is no direct line of responsibility for service between the driver and the plate owner. Costs at each level are difficult to determine, are not discussed generally and are not part of any published publicly available source.

It is not a level playing field between Uber and the various networks. About half of Sydney Taxis belong to the 13CABS network that is owned by an ASX listed company with a market capitalization of \$81.29 million⁶⁶. The other networks in Sydney do not have a cash flow or valuation to match A2B which operates Taxi Services throughout Australia and owns the Cabcharge payment system.

⁶⁶ <https://www.marketindex.com.au/asx/a2b> accessed 17th May

Uber in 2019 it lost on average for those four cities \$AUD \$67,675,159 in 2019. A2B which operates in those four cities has a market capitalization of \$AUD\$81,290,000. This is not a level playing field for the largest incumbent, let alone the small co-operatives with inadequate poorly trained management.

There is not a market within the various parts of the Sydney Taxi part of the Point to Point transport segment. There is the appearance of no level playing field between the slightly profitable largest incumbent and Uber and its rideshare competitors who are riding a mountain of debt to gain market share with heavily discounted rides.

It has resulted in a recent story in The Australian Brad Norington an Associate Editor headed "Coronavirus: No idle threat as cabbies in decimated taxi industry return plates"⁶⁷.

This story is attached as Appendix B, the story dated May 11 details how 2815 taxi plates of 5572 metropolitan cab fleet that had been leased to operators had been returned over the past three months to NSW Roads and Maritime Services, the issuing authority. This represents 50.5% of plates that are no longer leased, there is no means by referencing public available data that a person or company could offer a short-term rental at a reduced rate to maintain a taxi presence during the COVID 19 pandemic.

This is not a market failure; this story demonstrates that there is no market.

At <https://www.australiancompetitionlaw.org/law/economics/market.html> there is an outline of what constitutes a market. Section 4E of the Trade Practices Act Amendment Act 1977 is quite specific.

"For the purposes of this Act, unless the contrary intention appears, market means a market in Australia and, when used in relation to any goods or services, includes a market for those goods or services and other goods or services that are substitutable for, or otherwise competitive with, the first-mentioned goods or services."

For a market to exist I must be able to substitute my current plate status for another state of plate ownership. To enable me to determine the viability of my intended substitution there must be some organized data based on all the plates that are on offer and the terms of the offer to enable assessment of the substitutability.

We have discussed this problem with the owner of a block chain offering and for a very reasonable fee they will develop a marketplace for taxi plates. As plate rental fees can be half of a pay in such a market could help give drivers the assurance that the proportion of their pay in has been established by a well-functioning market. The other part representing the operators' vehicle costs and margin.

A market for shifts could also be established so that inappropriate weightings for afterhours work would be market based rather than a traditional weighting. This would also allow operators to develop new innovative services and drivers to deliver these services for a return that is reflective of a market.

For quick reference and to demonstrate the importance of competition various sections of the Sturgess report and the Ministers introductory speech are copied below with competition highlighted.

To ensure that existing point to point providers, and particularly the taxi industry, are capable of responding to **competition** in booked services, the taskforce is proposing fundamental reform of the regulatory framework. The primary regulatory and service responsibilities will rest with four entities: booking services (which receive bookings and dispatch vehicles), taxi organisations (the entities through which rank & hail services will be offered), drivers, and vehicle owners. Individuals or firms may perform more than one of these functions, and more than one entity may be held responsible for a failure to comply with the law. Page 5

⁶⁷ <https://www.theaustralian.com.au/nation/coronavirus-no-idle-threat-as-cabbies-in-decimated-taxi-industry-return-plates/news-story/5e359d5e047674789d09de2b4bc507c5> accessed 16th May 2020

Cooperatives and networks must be opened to greater **competition** from within the rank & hail market, and taxi operators must be given the freedom to develop new business models. We are proposing that taxi operators no longer be required to belong to a network, and to the maximum extent possible, regulatory and funding biases in favour of incumbents must be eliminated. Page 6

26. The Government's review of profits and **competition** in the CTP insurance market be released as soon as possible page 9

Governments have assumed some of the responsibility for regulating quality, and networks and operators have lacked the incentives (and in some cases, it is claimed, the capacity) to manage drivers. Networks, the organisations with the strongest brand, have had few incentives to actively manage relations with customers. Unintentionally, governments created a market for perpetual taxi licences that has seen their value soar to as high as \$425,000 in Sydney in recent years and even higher in some regional centres. Taxi licences contribute nothing to the delivery of better customer service, and yet they add around \$27,000 a year to the cost of operating a taxi, and around 20 per cent to the cost of a fare. The evolution of the industry over time, reinforced by government regulations, has locked the industry into a four-tier structure of network, operator, licensee and driver, with each of these layers trying to make a profit out of the customer. It now finds itself **competing** with a disruptive new business model that has one and a half layers and, unsurprisingly, it is finding it difficult to **compete**. Prescriptive and, in some cases, unnecessary regulations have significantly reduced the flexibility of the industry to respond to customer need, and burdened operators and drivers with red tape that has further weakened their capacity to respond to new competition. Page 17

The future regulation of point to point transport services should be outcome-focused and appropriate for the particular risk it is seeking to mitigate. Regulation that focuses on achieving particular outcomes is more likely to be effective and efficient, rather than policymakers, in consultation with incumbent industry participants, seeking to specify the individual steps that must be taken to achieve those outcomes. Any government fees should be set at the cost of efficient regulation.

The new regulatory framework will promote innovation and **competition** Constance

The Government should respond to market changes by regulating for effective **competition** and implementing policy settings that provide a level playing field for market participants. Constance

Nevertheless, much will change under the new regulatory framework to allow for the development of new business models, improved safety outcomes and increased **competition**. While taxi licences will continue, only annual licences will be issued via tender, with the market setting the price. This is expected eventually to reduce the cost burden on industry and customers. Constance

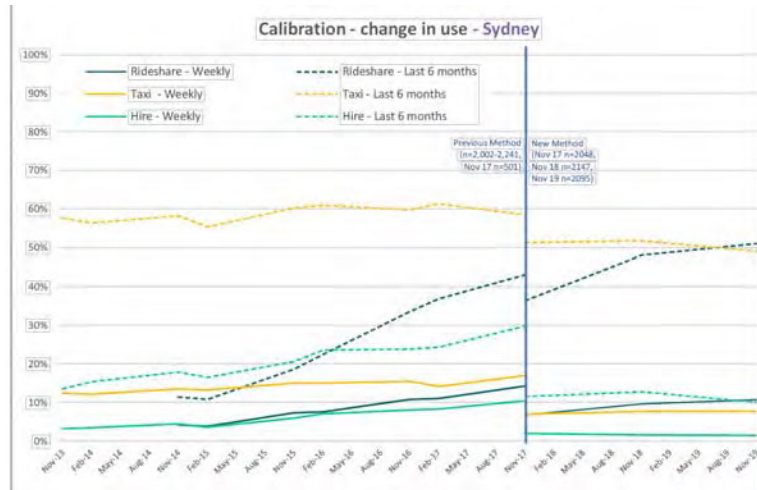
This new, best practice regulatory framework will allow **competition** and services that better meet consumer needs. The Government is aware, however, that regulatory change will bring about further transformation on top of that already brought in by the digital disruption that led to the advent of ridesharing. Constance

We have heeded the NRMA's advice that in its regulatory response the Government must be "mindful not to impose burdensome requirements that could hinder **competition**, stifle innovation or effectively encourage a noncompliant black market". Constance

We have heeded the NRMA's advice that in its regulatory response the Government must be "mindful not to impose burdensome requirements that could hinder **competition**, stifle innovation or effectively encourage a noncompliant black market". Constance

IPART customer survey

IPART has provided its consultant report which is a continuous discrete yearly survey of passenger satisfaction with various Point to Point transport options since November 2013 with a calibration change to accommodate the rideshare Point to Point providers. This calibration change is taken from the unprotected pdf is quite problematic. Ride share provision was legalized in December 2015; the calibration is in November 2017 as demonstrated by the graph below.



It is quite clear that the dramatic rise in ride share use as a percentage has been calibrated down. It is unfortunate that there are no numbers. However, it is quite clear with or without calibration that ride share is providing more point to point transport services than traditional taxis. Calibration is not a statistical term that I am aware of, it is usually a mechanical term.

Perhaps this calibration is because the pdf document that I downloaded from the site is unprotected and the graph has been altered by someone more subtle than I has changed the document.

IPART has issued a media release that has the rather misleading title "Annual Survey of Point to Point Transport Use 2019"⁶⁸ which on review is a customer survey administered over 10 minutes. With 74 questions⁶⁹ giving the respondent about 8.11 seconds to answer each question; including the usual easy ones of age group, gender, postcode, work status and income group with some quite complicated questions involving memories of between six months ago; or 7-12 months ago which appear to have been used to compile this transport survey. It is assumed that customer surveys of experience of over a year before are not placed in the quota for compilation of results.

There is an incentive given for completion and the instructions say it should be finished in ten minutes, stress inducing for those who are a bit slow. It is well documented that stress is a negative influence on clear recollection.

This transport survey is a number of customer surveys with an incentive of some type. It has no hard data on the use of ride share vs Taxi in providing Point to Point transport. It is constructed by percentages, but no numbers have been made available. It is a perceptive survey "Since 2012 IPART has surveyed NSW residents annually about their use and perceptions of taxis and other forms of point to point transport."⁷⁰

Sampling is most important, random samples will generate a true reflection of a population's perception of a subject that is statistically valid. Samples can be random or weighted⁷¹ or fill a pre-determined quota.

⁶⁸ <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> Accessed 18th February 2020

⁶⁹ Page 87 <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> Accessed 18th February 2020

⁷⁰ <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> Accessed 19th February 2020

⁷¹ <https://www.forbes.com/sites/serenitygibbons/2019/04/27/why-your-customer-surveys-are-probably-inaccurate/#7ebb908f65bf> Accessed 19th February 2020.

The problem with quotas is that they decrease randomness which is the strict scientific standard for statistical analysis; non randomness or skewed samples will the confidence level. The surveys have quotas by age and sex which negates any pretense of randomness and decreases the customer survey's statistical utility. It would be interesting to know what those who were over quota had to say.

The same Forbes article above says quite clearly that "Questions can be biased in a number of ways, including leading your respondents, loading questions with meaning, including multiple questions in a single entry, phrasing questions unclearly, or providing limited response options. Any of these can sabotage the reliability of your results."⁷²

Under time pressure when confronted with tables of questions the respondent may default to randomly choosing one of the leading alternatives presented or the alternative, they perceived will be the most likely.

Other points about the length of surveys and repetitive questions about similar services lead to instinctual answers rather than true reflections of perception. Confirmation bias in the structure of questions will most definitely cause inaccuracies in polling perceptions. A rigorous critical review of the number and style of the questions used suggest quite strongly that the results must be taken with great deal of caution.

Then there is memory. The survey relies on memory to be accurate over something as trivial as a taxi ride or as significant as a rideshare experience after up to twelve months after the event.

Rideshare is very new to Australia and perceptions of newness colour perceptions positively. The new smell in a car or a polish makes its perceived speed faster. Or perhaps it is the context of the journey that colours perception as many other perceptions are coloured by the context. As Albert Einstein said "Put your hand on a hot stove for a minute and it seems like an hour. Sit with a pretty girl for an hour, and it seems like a minute."⁷³

For reference I have included as Appendix A an edited Wikipedia article that could lead to errors of memory, the basis of the 'transport use survey'. Transience of memory is well known to all and well documented but as we all know leads to faulty recall of perceptions.

Problems of bias and misinformation are quite common in describing perceptions and bias to wards a well marketed, social media savvy organization is quite likely to be positive when compared to the smaller networks of taxi operators. Also, the confusion within the survey of value for money that is interpreted as cost is rather difficult to interpret as each rideshare company gives steep discounts to buy market share. Each discounting rideshare entrant will have a perception of less cost. The heavily discounted fares will be a positive in whatever value matrix construct is used to assess value. This value construct is reinforced by some apps displaying a taxi fare that is considerably inflated, cementing the already established conformational bias of discounted rides with a number of rides early in the transport relationship. Providing inflated fare estimates to app users for Taxi costs only reinforces the perception that Taxis are of lower value.

Time slice errors could change the results considerably in either way and hence make any assessment of waiting times inaccurate. If you are waiting outside in the rain for three minutes it may be recalled as a long wait as opposed to talking with a pretty girl while waiting for fifteen minutes could be remembered as almost instantaneous arrival of the summoned Point to Point transport.

⁷² <https://www.forbes.com/sites/serenitygibbons/2019/04/27/why-your-customer-surveys-are-probably-inaccurate/#7ebb908f65bf> Accessed 19th February 2020

⁷³ https://www.azquotes.com/author/4399-Albert_Einstein/tag/time Accessed 20th February 2020

Then there is the statistical problem of disorders of the brain causing memory errors. Such respondents were not excluded from the survey which is unfortunate as 1.5% of the population suffers from schizophrenia⁷⁴ but of greater potential to skew the incentivized results is the effect depression has on memory, 6.25% of Australians are suffering from depression at the time of the survey⁷⁵. This indicates that about 7.75% of respondents would be clinically unable to give a report of their perception accurately, if they could actually recall those trivial incidents.

There are many other more effective ways of gauging customer satisfaction available to the several government agencies and the ride share companies who should have enormous amounts of data about Australians use of rideshare services. The star system of Uber comes to mind. Perhaps a more data driven assessment will be made in future determinations.

Sherlock Holmes said. "Data! Data! Data!" he cried impatiently. "I can't make bricks without clay."

The Australian Taxi Drivers Association would be an excellent curator of a SMS rating system on drivers, it needs the government to fund this endeavor instead of relying on a flawed survey method that has outlived its usefulness and lacks immediateness.

⁷⁴ <https://www.garvan.org.au/research/diseases/schizophrenia> Accessed 20th February 2020

⁷⁵ <https://www.beyondblue.org.au/media/statistics> Accessed 20th February 2020

Appendix A

Transience

Transience refers to forgetting what occurs with the passage of time.^[3] Transience occurs during the storage phase of memory, after an experience has been encoded and before it is retrieved.^[3] As time passes, the quality of our memory also changes, deteriorating from specific to more general.^[3] German philosopher named Hermann Ebbinghaus decided to measure his own memory for lists of nonsense syllables at various times after studying them. He decided to draw out a curve of his forgetting pattern over time. He realized that there is a rapid drop-off in retention during the first tests and there is a slower rate of forgetting later on.^[3] Therefore, transience denotes the gradual change of a specific knowledge or idea into more general memories.^[4]

Problem of bias

The problem of **bias**, which is the distorting influences of present knowledge, beliefs, and feelings on recollection of previous experiences.^[9] Sometimes what people remember from their past says less about what actually happened than about what they personally believe, feel, and the knowledge they have acquired at the present time.^[9] An individual's current moods can bias their memory recall, researchers have found.^[9] There are three types of memory biases, *consistency bias*, *change bias* and *egocentric bias*.^[9] **Consistency bias** is the bias to reconstruct the past to fit the present.^[9] **Change bias** is the tendency to exaggerate differences between what we feel or believe in the present and what we previously felt or believed in the past.^[9] **Egocentric bias** is a form of *change bias*, the tendency to exaggerate the change between the past and the present in order to make ourselves look good in any given situation.^[9]

Misinformation effect

The [misinformation effect](#) refers to the change in memory due to the presentation of information that is relevant to the target memory, such as [leading questions](#) or suggestions.^[10] Memories are likely to be altered when questions are worded differently or when inaccurate information is presented. For example, in one experiment participants watched a video of an automobile accident and were then asked questions regarding the accident. When asked how fast the automobiles were driving when they *smashed* into each other, the speed estimate was higher than when asked how fast the automobiles were driving when they *hit*, *bumped* or *collided* into each other. Similarly, participants were more likely to report there being shattered glass present when the word *smashed* was used instead of other verbs.^[11] Evidently, memory recollection can be altered with misleading information after the event.

Schematic errors refer to the use of a [schema](#) to help reconstruct parts of an experience that cannot be remembered. This may include parts of the schema that did not actually take place, or aspects of a schema that are stereotypical of an event.^[16] Schemas can be described as mental guidelines (scripts) for events that are encountered in daily life.^[16] For example, when going to the gas station, there is a general pattern of how things will occur (i.e. turn car off, get out of car, open gas tank, punch the gas button, put nozzle into the tank, fill up the tank, put the nozzle back, close the tank, pay, turn car on, leave). Schemas make the world more predictable, allowing expectations to be formed of how things will unfold and to take note of things that happen out of context.^[16] However, schemas also allow for memory errors, in that if certain aspects of a scene or event are missing from memory, people may incorrectly remember having actually seen or experienced them because they are usually a regular aspect of the schema. For example, an individual may not remember paying the waiter, but may believe they have done so, as this is a regular step in the script of going to a restaurant. Similarly, a person may recall seeing a fridge in a picture of a kitchen, even if one was not actually depicted due to existing schemas which suggest that kitchens almost always contain a fridge.^[16]

Time-slice errors occur when a correct event is in fact recalled; however the event that was asked to be recalled is not the one that is recalled. In other words, the timing of events is incorrectly remembered.^[23] As discovered in a study by Brewer (1988), often the event or event details that are recalled occurred within a short time proximity to the memory required to be recalled.^[23] There are three possible theories as to why time-slice errors occur. First, they may be a form of [interference](#), in which the memory information from one time impairs the recall of information from a different time.^[24] (see **interference** below). A second theory is that intrusion errors may be responsible, in that memories revolving around a similar time period thus share a

common theme, and memories of various points of time within that larger time period become mixed with each other and intrude on each other's recall. Last, the recall of memories often have holes due to forgotten details. Thus, individuals may be using a script (see **schema errors**) to help fill in these holes with general knowledge of what they know happened around this time. Since scripts are a time-based knowledge structure, which puts details of a memory in sequence to make it easier to understand, time-slice errors can occur if a detail is mistakenly placed in the wrong sequence.^[24]

Emotion

The emotional impact of an event can have a direct impact on how the memory is first encoded, how it is later recalled, and what details of the event are accurately recalled. Highly emotional events tend to be recalled easily due to their emotional impact,^[45] as well as their distinctiveness relative to other memories (highly emotional events do not occur on a regular basis, and thus are easily separated from other events that are more commonly met). Emotional events may affect memory not only because of their distinctiveness, but also because of their arousal on the individual.^[46] Studies have found that prime or central features of such highly emotional events tend to be accurately recalled, whereas subtle details of the events are not remembered, or are remembered with vague consistency. Memory errors related to highly emotional events are influenced in ways such as:

- Whether the event was positive or negative in nature - The nature of the event can affect memory, negative events tend to be remembered with greater accuracy than positive events.^[23]
- Implicit theories of consistency and change - This term was coined by Ross (1989), and is used to describe the phenomena of memory change based on the belief of how the person felt at the time of the event compared to their current feelings about it.^[23] In other words, the memory of one's emotion towards an event can change depending on their current emotional state toward the same event. If a person believes their feelings at both times continue to be the same, then the current emotion to "remember" how they felt about the event at a previous time is used. If feelings are believed to have changed, then recall of the emotional involvement in the past event is adjusted to the current feelings.
- Intrusion errors - This term refers to the inclusion of details that may have been commonly experienced in the event, but not by the individual. For example, in the September 11 terrorist attacks, many people may state that they remember hearing about the attacks on the television news, as this was a common way of finding out this information, whereas they may have actually heard about it from a neighbour or on the radio.^[47]
- Mood-congruency - Items/events are better recalled when the mood of the individual at the time of the event and the time of recall are the same. Thus, if the mood at the time of recall does not match the mood experienced at the time the event occurred, there is an increased chance that complete recall will be affected/interrupted.^[48]

Depression

Memory errors can occur in patients with depression or with depressive symptoms. Patients with depressive symptoms have a tendency to experience what is known as the negative triad, which is the perspective use of negative schemas and self-concepts to relate to the external world. Due to this negative triad, depressive patients have a tendency to have a much greater focus on, and recall for, negative details and events over positive ones. This may lead to memory errors related to the positive details of memories, impairing the accuracy or even complete recall of such memories. Depressed patients also experience deficits in psychomotor speed and in free recall of material both immediate and delayed. This suggests that material has been encoded but that patients are particularly impaired with regard to search and retrieval processes.^[56] Diverse aspects of memory such as short-term memory, long-term memory, semantic memory and implicit memory, have been studied and linked to depression. Short-term memory, a temporary store for newly acquired information, seems to show no major impairments in the case of depressive patients who do seem to complain about poor concentration, which by itself can cause simple memory errors.^[56]

Long-term memory, large capacity able to retain information over long periods of time, does however show impairment in the case of depressed individuals. They tend to have difficulties in recall and recognition for both verbal and visuo-spatial material with intervals of a few minutes or even hours creating complex memory

errors in relation to speech and surrounding details.^[56] Individuals suffering with depression also showed a specific deficit in retrieving information meaningfully organized in their semantic memory, conceptual knowledge about the real world.^[56] Therefore, depressive patients can show memory errors for the most meaningful events in their lives, unable to recall these specific moments vividly like someone not suffering from depression might. In the case of implicit memory, when previous information influences ongoing responses, there has been little to no proof of a deficit in relations to depressed individuals.^[56]

Schizophrenia

Memory errors, specifically intrusion errors and imagination inflation effects, have been found to occur in patients diagnosed with schizophrenia. Intrusion errors can commonly be found in the recall portion of a memory test when a participant includes items that were not on the original list that was presented.^[57] These types of errors are linked to problems with self-monitoring, increased positive and disorganized symptoms (confusion within the brain), and poor executive functioning.^[57] Intrusion errors are found to be more likely in patients with positive [schizophrenic symptoms](#), which involve an excess of normal bodily functions (e.g. delusions), versus negative [schizophrenic symptoms](#), which involve a decrease in normal bodily functions (e.g. refusal to speak).^[58] Possible reasons for this are reduced function in the central executive of the working memory, as well as defects in self-reflectivity, organization and reasoning. Self-reflectivity is the ability to recognize and reason about one's own thought process, recognize that one has thoughts, and that those thoughts are one's own and differentiate between [cognitive operations](#).^[57] Self-reflectivity has been shown to be one of the biggest deficits faced by schizophrenics and data suggests that verbal memory intrusions are linked to deficits in the ability to identify, organize, and reason about one's own thoughts in patients with schizophrenia.^[57]

Imagination inflation effects were also common memory errors in patients with schizophrenia. This effect refers to events that individuals have imagined so vividly in their minds that this adds belief to the fact that the event truly occurred, although it did not. Possible reasons for this are increased source confusion and/or decreased source recollection of an event, which shows poor use of [source-monitoring processes](#).^[59] Source-monitoring processes allow one to distinguish between a memory that we may believe has happened because it seems familiar and one that has truly occurred. In the case of schizophrenics, whose abilities to reason through their thoughts is impaired, something that they have imagined and thus, seems familiar can easily be mistaken for an actual event, especially in the case of quick [heuristic processes](#) and snap judgments.^[59] Continuously imagining an action or event makes this action more and more familiar thus making it harder for a patient with schizophrenia to distinguish its source, questioning whether it is familiar because they have imagined it or if it is familiar because it happened. This leads to many memory errors for these individuals who are led to believe by their imagination of the event that it is real, has occurred and thus is stored in their memory for that reason.^[59]

Leading questions

Refers to how wording of questions can influence how an event is remembered. This can result from a [misinformation effect](#) or an imagination inflation effect.^[60] The misinformation effect occurs when information is presented after the events in question have occurred which leads to memory errors in later retrieval.^[61] Studies have suggested that witnesses may misattribute accuracy to misleading information because the sources of misleading information and witnessed information become confused.^[61] Misleading information can be acquired through reading of the newspaper, watching the news, being interviewed or when sitting in the courthouse during the trial. When witnesses are asked to recall specific details of an event they can begin to doubt their memory, which can cause memory errors. Misinformation can manifest itself as a memory leading the individual to believe it as true and witnesses may also begin to doubt their own memories of the event deciding instead that they must be wrong.^[61] Memory errors also occur through the imagination inflation effect. As stated earlier, the imagination inflation effect takes place when an individual imagines an event to the point where it is believed as a memory of an actual event.^[60] During trial, witnesses hear many different possible occurrences of events and are led to imagine these situations. Through imagining and rehearsal of the occurrences, witnesses may begin to see vividness and validity in the stories simply from rehearsal, not factual memories.^[60] This can create problems for witnesses when trying to distinguish between

imagined events and the actual occurrence of the events. Small but largely significant details become easily mixed and these occurrences of memory errors can make or break a trial.

https://en.wikipedia.org/wiki/Memory_error

Appendix B

Coronavirus: No idle threat as cabbies in decimated taxi industry return plates

THE AUSTRALIAN

EXCLUSIVE

By BRAD NORINGTON, ASSOCIATE EDITOR

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Sydney's taxi industry has been hit hard by the economic impact of coronavirus, with more than half of the 5572 metropolitan cab fleet deregistered because of a dramatic slump in passenger demand.

The Australian has confirmed that 2815 taxi license plates leased to Sydney taxi operators were returned over the past three months to NSW Roads and Maritime Services, the issuing authority. Hundreds more Sydney taxis are believed to be working vastly reduced hours or have been "parked" by owners hoping to ride out the crisis and resume business when the economy recovers. Industry sources said Melbourne's taxi services were the next worst affected, with an estimated 40 per cent of the city's fleet taken off the road in the early part of the COVID-19 crisis.

Conditions had since improved in Melbourne as cab operators diversified to areas such as food and parcel delivery, and there had been some pick up in suburban demand for largely unregulated services. Conditions had since improved in Melbourne as cab operators diversified to areas such as food and parcel delivery, and there had been some pick up in suburban demand for largely unregulated services.

David Samuel, a spokesman for 13CABS, said Brisbane's taxi industry had suffered but "not as terribly" as Sydney, where the market was much more dependent for survival on business from the city's airport and entertainment districts, both effectively shut down as part of government efforts to limit spread of the virus.

Mr Samuel said cabs in Adelaide, Perth and Hobart had been affected, although smaller cities were less reliant on corporate travel or entertainment trade. Business came mainly from local fares to shopping centres, and cab drivers returning international travelers to their homes after spells in mandatory hotel isolation.

Nick Abraham, deputy chief executive of the NSW Taxi Council, said his organisation had asked the state government for an aid package that recognised especially dire conditions for taxi owners and drivers in Sydney. Mr Abraham said the main focus of requests for assistance put to NSW Transport Minister Andrew Constance was financial relief from annual CTP insurance premiums, which could cost operators up to \$6000 for each cab, and targeted cash "hardship" funding.

He said taxi services were particularly vulnerable to a shutdown of the economy, but also deserving of help considering they were classified as essential services.

The taxi industry's downturn had left hundreds of drivers out of work, many of them casual workers or non-Australian residents not entitled to government benefits such as JobSeeker or JobKeeper. "They've got no other source of income, but they have to pay rent and put food on the table," Mr Abraham said.

Ali El-Ghoul, a taxi fleet owner with more than 130 cabs in Sydney, said he was forced to return 95 of his leased plates to RMS because of the coronavirus downturn and many other cars were idle at his Tempe depot, near Sydney airport.

"All drivers started returning cars on March 15 — that's when it really hit," Mr El-Ghoul said.

"I still have cars on the road, but it's reduced to just a few. About 200 drivers are sitting at home, earning nothing because there is not enough work for them. I'd estimate I've lost a few hundred thousand dollars since March; we've lost all business for our product."

The NSW government is understood to be close to finalising a rescue package for Sydney taxis, although Mr Constance declined to comment on the impact of COVID-19 on the industry, its submission for help, what options were being considered or a potential timetable for aid. Mr Constance's office referred The Australian to his department. A NSW Transport spokesman said: "It has been an extremely difficult time for so many industries, including the taxi industry.

"We are aware of concerns raised by the Taxi Council and other stakeholders. We are currently in discussions about finding the best approach to providing support for the taxi industry during the COVID 19 pandemic"