

**REPORT ON PROCEEDINGS BEFORE**

**SELECT COMMITTEE ON THE IMPACT OF TECHNOLOGICAL  
AND OTHER CHANGE ON THE FUTURE OF WORK AND WORKERS  
IN NEW SOUTH WALES**

**Virtual hearing via videoconference on Monday 18 October 2021**

**The Committee met at 9:45.**

**CORRECTED**

**PRESENT**

The Hon. Daniel Mookhey (Chair)

The Hon. Wes Fang  
The Hon. Shayne Mallard  
The Hon. Mark Pearson  
The Hon. Adam Searle  
Mr David Shoebridge

\* Please note:

[inaudible] is used when audio words cannot be deciphered.

[audio malfunction] is used when words are lost due to a technical malfunction.

[disorder] is used when members or witnesses speak over one another.



**The CHAIR:** Welcome to the virtual hearing of the inquiry into the impact of technological and other change on the future of work and workers in New South Wales. Before I commence I acknowledge the Gadigal people of the Eora nation, who are the traditional custodians of the land on which the Parliament sits. I pay respect to Elders past, present and emerging of the Eora nation and extend that respect to all First Nations people who are present or who are watching.

Today's hearing is being conducted as a fully virtual hearing. This enables the work of the Committee to continue during the COVID-19 pandemic without compromising the health and safety of members, witnesses and staff. As we break new ground with the technology, I ask for everyone's patience through any technical difficulties we may encounter today. If participants lose their internet connection and are disconnected from the virtual hearing, they are asked to rejoin the hearing by using the same link as provided by the Committee secretariat.

Today we will be hearing evidence from the Point to Point Transport Commissioner as well as the Chief Commissioner and Commissioner of State Revenue. Before we commence I will make some brief comments about the procedures for today's hearing. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the virtual public hearing. Therefore I urge witnesses to be careful about comments you may make to the media or to others after you complete your evidence.

Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could answer only if they had more time or with certain documents at hand. In those circumstances witnesses are advised that they can take a question on notice and provide an answer within 21 days.

Today's proceedings are being broadcast live and a video recording will be available on YouTube afterwards. Also, a transcript will be placed on the Committee's website once it becomes available. Finally, a few notes on virtual hearing etiquette to minimise disruption and to assist our Hansard reporters. I ask Committee members to clearly identify who questions are directed to and I ask everyone to please state their name when they begin speaking. Could everybody please mute their microphones when they are not speaking? Please remember to turn your microphones back on when you are getting ready to speak. If you start speaking whilst muted, please state your question or answer again so it can be recorded in the transcript. Members and witnesses should avoid speaking over each other, so that all can be heard clearly. Also to assist Hansard, I remind members and witnesses to speak directly into the microphone and avoid making comments when your head is turned away.

**ANTHONY WING**, NSW Point to Point Transport Commissioner, sworn and examined

**The CHAIR:** Commissioner, would you like to start by making an opening statement?

**Mr WING:** Yes, thank you, Chair. I will just briefly outline my role and some of our recent achievements over the last year. I was appointed as Point to Point Transport Commissioner on 1 July 2019. As the regulator for the point to point industry, I am responsible for authorising service providers, issuing taxi licences, managing compliance and enforcement, and making recommendations for passenger and driver safety in New South Wales.

What is point to point transport? In New South Wales, point to point transport is any commercial passenger service in a vehicle other than a bus—for example, taxis, traditional hire vehicles and rideshare services. Point to point law is about passenger services. It does not cover delivery services. It also does not cover workplace arrangements. With regard to my compliance approach, safety is my priority, and regardless of a business' size or their service delivery model, I apply the law to all service providers, large or small. I expect all service providers to make sure they are effectively managing and improving the safety of their services in a practical way.

Audits are one of the means we use to oversight industry. Safety audits, along with targeted campaigns, on-street compliance, advisory visits, investigations and enforcement, are key to ensuring the point to point transport industry is safe for both drivers and passengers. During audits my team assesses the service provider's compliance with our laws as well as the identification of risks to safety and implementation of appropriate control measures. Compliance actions are taken as appropriate, which may include issuing warning letters, improvement notices, prohibition notices or penalty notices.

I also publicise safety messages to the broader industry drawn from compliance activities. However, there are statutory limitations in point to point transport legislation on my ability to disclose information such as an audit report itself. One of the key reasons that these limitations were incorporated into legislation is to prevent disclosure of information, such as audit reports, that could prejudice the commissioner's ability to perform their functions or undermine current and future investigative processes.

Finally, with regard to the extent of the commission's achievements in the last year, during the 12 months to 30 June 2021, in addition to all the additional work we have had to do as a result of COVID, my compliance officers carried out 61 safety audits and 78 advisory visits; 1,349 taxi vehicle compliance checks and 1,736 hire vehicle and rideshare compliance checks; and they issued 184 improvement notices and 25 prohibition notices. A further 1,194 penalty infringements were issued by my authorised officers and New South Wales police for individual breaches of the point to point transport law. Thank you, Chair and the Committee.

**The CHAIR:** Thank you, Commissioner. I might kick off with questions arising from your opening statement. How many audits did you say you did over what period of time?

**Mr WING:** This is the last financial year. So the 12 months to 30 June, it was 61 safety audits and 78 advisory visits.

**The CHAIR:** And of them, are you able to give us a breakdown between rideshare and taxis in that respect?

**Mr WING:** I do not have an exact breakdown but I could get you a breakdown between taxi service providers and booking service providers. Rideshare, as you know, is not defined in our Act. But, yes, I can get you a breakdown between taxi and booking service providers.

**The CHAIR:** That would be very helpful, Commissioner, if you could. What were the results of these audits?

**Mr WING:** One of the things we do, the way an audit works, is we are looking at compliance with the obligations that are placed on service providers under the Act, and I am happy to go through those at some point, if helpful. We are also looking at whether they have identified risks properly and whether they have [inaudible] in place. Of those safety audits and from our work, we issued 184 infringement notices during the year. We considered that people needed to take steps to improve the effectiveness of controls around some of the risks that were identified.

**The CHAIR:** Do you have a form of prohibition notice or anything akin to a prohibition notice?

**Mr WING:** We have a prohibition notice, yes. The improvement notices are generally issued where there is an improvement that needs to be made to some safety measure. They are generally given a period of time to do it within. A prohibition notice is issued where the authorised officer thinks that there is an immediate risk to health and safety and that something needs to not happen immediately or until something is dealt with. That need not require any improvements to the system. Sometimes there might be something completely extraneous, but that also exists and those notices can be issued, and 25 of those were issued in the last financial year.

**The CHAIR:** Have you commenced any prosecutions?

**Mr WING:** Yes. I think we have run about 10 prosecutions since I commenced. Prosecutions are initiated either where the facts warrant it or where there may not be other alternative means, such as penalty notices or perhaps penalty notices have not been effective.

**The CHAIR:** Have any of those prosecutions been about organisations that might be relevant to our terms of reference?

**Mr WING:** I could give you a couple of examples if that is helpful, and then I guess you can decide—

**The CHAIR:** Specifically, have you launched any prosecutions against Uber, DiDi, Ola? I guess they would be ones that would be most of interest to us.

**Mr WING:** We have just recently prosecuted a couple of affiliated taxi providers for a breach of safety duties under the law and they were issued significant fines by the court. But otherwise I would say the most likely thing is not the service providers, but we have also used prosecutions to crack down on certain activities where fines were not working but which would have involved rideshare as well as hire care drivers.

**The CHAIR:** We are talking about specifically the platforms independent of people who are providing the services through the platforms.

**Mr WING:** Okay, well in that case, we have not issued prosecutions against Uber, DiDi or Ola.

**The CHAIR:** On notice, do you mind providing us with a list of the court cases that you have brought and when they were settled?

**Mr WING:** I am happy to do that. They are probably on the website, but I am happy to do that.

**The CHAIR:** Can I just turn now specifically to a press release that you issued on 12 August 2021? Did you issue Uber with 13 improvement notices and another \$200,000 in fines as a result of the recent safety audit?

**Mr WING:** Yes, that is right.

**The CHAIR:** When did you commence that audit into Uber?

**Mr WING:** At this point it was a bit over a year ago and it ran for about a year. We determined at the outset that we wanted to do a thorough and full audit of their systems and to make sure that we understood their systems and whether they were effective in doing what they said they were going to do. It probably took a little bit longer than it would have in a non-COVID era because there were periods when we simply could not interact. But yes, that was the period of the audit.

**The CHAIR:** And did one of the areas of concern you found include the failure of Uber to report a number of notifiable occurrences to you as soon as practicable?

**Mr WING:** When we audited we found a number of areas that, as I think we said in our press release, while they do have extensive safety systems, they need to be fully effective in doing what they say they are doing. One of the areas where we have concerns is that we found that they did not appear to be reporting all notifiable occurrences. Notifiable occurrences are certain matters that need to be reported to the regulator as well as being addressed by the service provider. We found that they were not identifying all notifiable occurrences. They then did a backward analysis and reported a whole lot of extra notifiable occurrences that had not been reported. They reported them but at that point they were quite late and we issued them with fines as well as giving them a future direction to fix their notifiable occurrence reporting system.

**The CHAIR:** What were the nature of the incidents they did not report to you?

**Mr WING:** There is a number of categories of incidents that need to be reported to us. While the majority of them were minor traffic incidents, for example, or they may have been things such as rear-end collisions, which may not have been the fault of the driver but they should still be reported because they are a

mechanical issue, there were also within there some others which I guess we categorised as ones we immediately wanted to be looked at, which is one of the reasons for the issuing of fines for being late in reporting them, and that includes matters such as serious mechanical failures in vehicles and incidents which have been reported to police.

**The CHAIR:** I would like to go to my colleagues but, Commissioner, did Uber fail to report to you sexual assaults?

**Mr WING:** I have to be very careful here because they are all alleged, of course.

**The CHAIR:** Alleged sexual assaults.

**Mr WING:** They failed to report to us certain matters which had been reported to police, which would fall under the category of sexual misconduct.

**The CHAIR:** And how many of those are we talking about?

**Mr WING:** There were about [audio malfunction] well, they could be categorised as sexual misconduct, which were reported to police which were not reported to us in time.

**The CHAIR:** Over one year or 18 months?

**Mr WING:** They went back about 18 months, yes.

**The CHAIR:** So 12 over 18 months were not reported to you?

**Mr WING:** I would have to find the exact time for which their analysis went, but yes, that would be the case.

**The CHAIR:** Did you ascertain whether or not they were reported to the police approximate to the time when the alleged assaults took place?

**Mr WING:** One of the concerns we have for late reporting is of course that makes it more difficult for us to follow up with police to assure that proper action has been taken. That is the difficulty we face, of course. That is one of the reasons for requiring notifiable occurrences to be made in a reasonable amount of time and why for those ones it seemed appropriate that they should be fined for not making them in a reasonable amount of time.

**The CHAIR:** Did you find equal levels of non-reporting from any other platform independent of the drivers?

**Mr WING:** We have not fined anyone else for non-reporting of this nature to that extent. That is not to say—I do not want to make any comments which ever say that anyone has or has not done anything, but—

**The CHAIR:** Sure, but you have not fined anyone else with the same—

**Mr WING:** We have issued other fines for not reporting notifiable occurrences, but these are the largest that were fined, yes.

**The CHAIR:** I will go to Mr David Shoebridge.

**Mr DAVID SHOEBRIDGE:** Thanks very much, Commissioner. What was the longest delay of those type of failures the Chair was asking you about from Uber in terms of reporting to you that a notifiable matter had occurred which should have been reported to police? What was the longest delay from Uber?

**Mr WING:** I do not have an exact time, but let us say it could have been in the order of 1½ years.

**Mr DAVID SHOEBRIDGE:** One and a half years.

**Mr WING:** If they had failed to identify them in the first place and then picked them up later, those would have been perhaps, yes.

**Mr DAVID SHOEBRIDGE:** Could you provide us more detail on notice about this?

**Mr WING:** Yes, of course.

**Mr DAVID SHOEBRIDGE:** Thanks. Could I turn to the passenger service levy? How much has been collected in total in the passenger service levy so far?

**Mr WING:** Up until 30 June it was \$210,755,383.

**Mr DAVID SHOEBRIDGE:** And in the period from June to now, do you have any update?

**Mr WING:** No. Revenue NSW will not yet have published that quarter's figures.

**Mr DAVID SHOEBRIDGE:** Sorry, could you remind me again, up to 30 June it was—

**Mr WING:** It was \$210,755,383.

**Mr DAVID SHOEBRIDGE:** What has happened to that \$210 million?

**Mr WING:** It will have been remitted to Treasury to hold on account.

**Mr DAVID SHOEBRIDGE:** It has just gone to Treasury, so it is sitting in Treasury. Has it gone to anybody who has suffered financially as a result of the changes?

**Mr WING:** It was raised to cover the costs of providing industry assistance primarily for taxi licensees. Assistance was paid out by the policy department of Transport for NSW, so I could only give you a high-level overview of it, but they paid out significant amounts as a result of an assistance package following the first stage of reforms and the Government has recently announced that there will be a further assistance package. But they have not [audio malfunction] and I am not privy to the amount.

**Mr DAVID SHOEBRIDGE:** Do you know how much has been paid out so far in industry assistance?

**Mr WING:** Can I get onto the policy department and get back to you on that?

**Mr DAVID SHOEBRIDGE:** All right, thanks, Commissioner. What is the anticipated revenue for the passenger service levy this year?

**Mr WING:** I may have some figures for the revenue for last year, although I would point out that it is likely to be a lot stronger this year, assuming we do not have any further COVID lockdowns. In the 2020-21 year, \$52.63 million was collected. But I am not sure that you could use that as an anticipated measure for this year, given that it is a long period when the industry could not operate.

**Mr DAVID SHOEBRIDGE:** So the \$210 million had been the accumulated payment all the way up to the end of last year for a number of years. Is that right?

**Mr WING:** Yes, that is right.

**Mr DAVID SHOEBRIDGE:** And last year was in the order of \$56 million?

**Mr WING:** I think \$52.6 million.

**Mr DAVID SHOEBRIDGE:** Fifty-two million dollars. Can you tell me what the budgeted revenue is for this year? You are not able to do that?

**Mr WING:** I do not have that figure off the top of my head. I would have to check Treasury papers.

**Mr DAVID SHOEBRIDGE:** Could you provide it on notice?

**Mr WING:** Yes, of course.

**Mr DAVID SHOEBRIDGE:** And particularly if there had been an update, given the rather tempestuous year that we have had, could you provide that, rather than just the budget paper figure?

**Mr WING:** Any update. Yes, obviously it is a very difficult thing to do, given that last year was so difficult for the industry.

**Mr DAVID SHOEBRIDGE:** Has Uber fully complied with its obligations for payments of the passenger service levy?

**Mr WING:** Yes, they have.

**Mr DAVID SHOEBRIDGE:** How much has Uber paid?

**Mr WING:** I can tell you they are the most significant taxpayer. I am bound by secrecy laws under the Taxation Administration Act, which is not actually my Act. I am not able to divulge individual taxpayers' payments.

**Mr DAVID SHOEBRIDGE:** Again, I am now going to ask you if you could—I am going to press it—provide us with the amount that Uber has paid for the passenger service levy. Commissioner, I am happy for you

to take that on notice and seek some advice on it: the conflict between your obligation to provide answers to Parliament and your purported secrecy obligations under the taxation Act. Do you want to take it on notice?

**Mr WING:** Mr Shoebridge, I am happy to take that on notice. As you will appreciate, I will need legal advice on that.

**The Hon. WES FANG:** Point of order: I think that it is appropriate that if the Point to Point Commissioner has concerns about the legality, he be given the opportunity to seek advice and then—

**Mr DAVID SHOEBRIDGE:** That just happened. You are describing what happened.

**The CHAIR:** I will rule. As a result of the commissioner making the decision to seek advice, we do not have to have a complicated question about whether or not the Parliamentary Evidence Act overrides secrecy. We will allow Mr David Shoebridge to move on.

**Mr DAVID SHOEBRIDGE:** I note that you conducted a number of audits of compliance with the passenger service levy. Can you provide details about what happened on those audits, Commissioner?

**Mr WING:** Yes. We also [audio malfunction] providers to look at their returns and make sure that they are making the appropriate returns and paying the levy. There have been cases where we have, as a result of those audits, revised the amount that service providers have to pay. It is a continuing oversight process.

**Mr DAVID SHOEBRIDGE:** When you say "revised", let us try and remove as many euphemisms as we can. You did a bunch of audits, there was significant noncompliance, there was underpayment, and you required the underpayments to be rectified. Would that be a less euphemistic description of what happened, Commissioner?

**Mr WING:** I would not say there was significant and widespread noncompliance, but the rest of it I would agree with, yes.

**Mr DAVID SHOEBRIDGE:** I did not say "significant and widespread"; I just said "significant". So would that be right?

**Mr WING:** I am saying that we did audits and in some cases we found that companies needed to pay more or services needed to pay more. Yes, we told them to rectify that and they rectified it.

**Mr DAVID SHOEBRIDGE:** What was the scale of the underpayments that you discovered, the average, from the audits?

**Mr WING:** I do not have an average. The largest would have been in the order of \$200,000 over some period of time; others might have been a few thousand. Some people were paying too much.

**Mr DAVID SHOEBRIDGE:** An underpayment of \$200,000 is a failure to disclose 200,000 trips, is it not?

**Mr WING:** Yes, essentially. Yes, exactly right.

**Mr DAVID SHOEBRIDGE:** That is a bloody big non-disclosure. Would that be a fair summary of it? And if you do not like my description of a "bloody big non-disclosure", how would you describe it?

**Mr WING:** I would say it is the amount that we told them they needed to pay.

**Mr DAVID SHOEBRIDGE:** Failing to disclose 200,000 passenger trips, I cannot conceive of how that could be accidental. Are you saying it was accidental and excusable?

**Mr WING:** Those are two different words. In this case what had happened—

**Mr DAVID SHOEBRIDGE:** How would you describe an entity failing to disclose to you 200,000 passenger trips?

**Mr WING:** In that case what had happened was the entity had purchased software from another provider to help them run their passenger service levy and it appeared that the people that they had doing it in fact did not fully understand how to use this software. So they simply failed to provide a whole lot of evidence, a whole lot of data. So we went back to them and said, when we got through it, "One, you need to fix your ability to use this software", which they have done, "and, two, you have back payments due."

**Mr DAVID SHOEBRIDGE:** Who was it?



**Mr WING:** In this case it was a large taxi company.

**Mr DAVID SHOEBRIDGE:** Who was it?

**Mr WING:** Okay, well, I think I can probably disclose that. It was GM Cabs which had been making underpayments.

**Mr DAVID SHOEBRIDGE:** Did they explain to you how it was that they had had such a comprehensive failure?

**Mr WING:** When my auditors looked at it, it seemed—from discussions and also looking at it—that their people in charge of making the reporting had simply not understood the software that they had purchased from someone else.

**Mr DAVID SHOEBRIDGE:** What proportion of the trips was it that failed to have been disclosed? They had failed to disclose 200,000; in that same reporting period, how many had they actually undertaken?

**Mr WING:** Now we are back into the taxation secrecy provisions. Do you want me to take that on notice?

**Mr DAVID SHOEBRIDGE:** I am going to press for an answer, Commissioner, and you may want to take it on notice again.

**Mr WING:** I will take that one on notice as well.

**Mr DAVID SHOEBRIDGE:** Commissioner, finally, can you give us a list of the audits you had and the results of the audits, including the scale of the noncompliance?

**Mr WING:** The passenger service levy audits?

**Mr DAVID SHOEBRIDGE:** Correct.

**Mr WING:** [Inaudible]

**Mr DAVID SHOEBRIDGE:** Lastly, Commissioner, given the scale of noncompliance you found in your 24 audits, can you give us any assurance that there actually is an effective compliance regime in place to ensure this levy is collected?

**Mr WING:** There is an effective compliance regime in place and \$210 million has been collected already.

**Mr DAVID SHOEBRIDGE:** You have got one entity that missed 200,000 passenger trips. Apart from random audits, what are you doing to make sure that there is compliance in place?

**Mr WING:** We do random audits and we also follow up where people have—and this is the most likely area—where people have not been putting in returns or have been putting in returns based on an estimate which has not changed for some time. As you have seen, these audits pick up things where there is an issue and a back collection of those.

**Mr DAVID SHOEBRIDGE:** That concludes this line of questioning, Chair.

**The CHAIR:** The Hon. Adam Searle or the Hon. Wes Fang?

**The Hon. ADAM SEARLE:** Mr Wing, can you hear me?

**Mr WING:** I can, thank you.

**The Hon. ADAM SEARLE:** In relation to these audits you have conducted, what sort of policy or process do you undertake to select, for want of a better word, the subjects or targets?

**Mr WING:** Just for clarification, are we talking about safety audits at this point?

**The Hon. ADAM SEARLE:** Yes, all audits that you are authorised to conduct under your statutory charter. So, yes, safety audits, but also the other forms of noncompliance we have been discussing here with you this morning. Do you just accidentally stumble across these in the course of someone maybe making a complaint to you or do you actually do proactive audits to make sure that the regime is being implemented in real life?

**Mr WING:** We do both. We have a rolling schedule of audits. We have a risk-based analysis of the industry, looking at the various things which might create risks, and we have a rolling schedule of audits based

on that. On top of that, if we receive complaints or we find incidents or my on-street compliance staff see incidents, that may also bring forward an audit or schedule an audit of a company as well.

**The Hon. ADAM SEARLE:** Does your organisation have a policy document or a set of documents that set out how you conduct this and how you select targets or subjects for audits?

**Mr WING:** We have a risk-based approach. I will have to check whether that has been published on the website or not.

**The Hon. ADAM SEARLE:** Commissioner, whether it has been published on the website or not, if your organisation operates subject to written policies, could we see those?

**Mr WING:** Yes. Can I take that on notice?

**The Hon. ADAM SEARLE:** You certainly may. In relation to prosecutions, again do you have a prosecution policy, a document that sets out the considerations that you would apply in determining whether or not to actually launch a prosecution or to take some other kind of compliance action?

**Mr WING:** We do. We have a compliance policy—which I think is published on the website, but I will check that anyway—taking into account matters such as the seriousness of the matter, the times that it occurred, and whether or not there is a need here for specific or general deterrence to others. We would also take into account a range of other factors.

**The Hon. ADAM SEARLE:** If it is on the website, obviously you can draw that to our attention. But if it is not and it is a written policy, I would ask that you share that with the Committee if you are able to. Again, I am happy for you to take that on notice.

**Mr WING:** Yes, of course.

**The Hon. ADAM SEARLE:** Mr Chair, those are my questions.

**The CHAIR:** The Hon. Wes Fang, the Hon. Shayne Mallard or the Hon. Mark Pearson? Otherwise I am happy to return to the safety audit. The Hon. Wes Fang, do you want the floor or do you want to wait?

**The Hon. WES FANG:** I am happy if you want to continue the questioning.

**The CHAIR:** Commissioner Wing, can we go back to the safety audit into Uber that we were discussing previously? We have got the sexual incidents that were not reported and the mechanical incidents that were not reported. Were there any other incidents not reported? What are the categories of the other incidents that were not reported to you?

**Mr WING:** They need to report incidents which are in a number of categories. One of those is mechanical failure, which could be as a result of a minor accident or a major accident which causes the vehicle to be unable to travel on. They need to report to us matters that are reported to police. They also need to report to us any incident or accident which results in someone having to attend a hospital. Whether or not they have to stay there, if they have to attend a hospital they need to report them to us as well.

**The CHAIR:** How many of those incidents of people having to attend a hospital were not reported to you?

**Mr WING:** I do not have the exact [audio malfunction]. A small number, yes.

**The CHAIR:** A small number. What are you talking about?

**Mr WING:** [Inaudible]

**The CHAIR:** Sorry, Mr Wing, your connection just went a bit out there. I missed that.

**Mr WING:** I am sorry. I was saying I do not have an exact number here but there were a few of them, yes.

**The CHAIR:** Ten? More than 10?

**Mr WING:** It may have been around that order of magnitude.

**The CHAIR:** Did you ever ascertain why Uber was not reporting these to you, all these incidents?

**Mr WING:** As a result of our initial audit, we identified that they seemed to have matters that should have been reported in their systems which had not been reported. For whatever reason—and it is their job to fix

it—for whatever reason, their systems did not appear to be picking them up. It may be that they were miscoded by the person who took the report; it may be that their systems simply were not looking for the right terms. But, for whatever reason, that is not an excuse. We essentially directed them that they needed to work out what is going on and fix it.

**The CHAIR:** In some of the public commentary that surrounded this, it was unclear whether or not these incidents were known to Uber's management and then not reported or whether they were not known to Uber's management. Were any of these incidents known to Uber's management?

**Mr WING:** We do not have any evidence that they were known to Uber's management and deliberately not reported. It would seem far more that their systems were not effective at picking up those incident reports, which should be reported.

**The CHAIR:** Did you check on that specifically as to whether these matters were known to them, or not?

**Mr WING:** We did not have any evidence that that was the case. All the evidence was that the systems were not being effective.

**The CHAIR:** Sure, but can you check?

**Mr WING:** We would have asked why they were not reported to us and my auditors would have looked into the systems to see why they were not reported to us, and that appears to be the reason.

**The CHAIR:** Can we infer therefore that the matters that were reportable to police were unlikely to be reported if they were not properly picked up by the Uber software or Uber protocol?

**Mr WING:** I think you can infer, in fact, that a number of matters which were reported to the police were not reported to us in a timely manner, and for that reason—

**The CHAIR:** And there were matters that were reported to police but were not reported to you?

**Mr WING:** Well, they had not been reported in a timely manner and therefore when they were reported that was late and they were issued fines as a result.

**The CHAIR:** I appreciate that, Commissioner, but there is an element of, I would not say contradiction in what you said, because previously you had said that you were not sure whether or not it was made aware to management. But if Uber was in a position to provide a report to police but not to you, the implication would be that they had some knowledge of it.

**Mr WING:** Oh, I see. No, the confusion here is that mostly the complainant to the police would, in fact, be the person who was the subject of any alleged misconduct. So it might have been the passenger or the driver who made the report to police, rather than the company.

**The CHAIR:** Have you had any dialogue with the police about whether or not any of these incidents were investigated by them?

**Mr WING:** Where we get a report of a matter that has been reported to police, we follow up with the police. The police obviously are investigating the incident itself, but our interest is to know whether the company is appropriately responding, or the service provider is appropriately responding. My compliance team will talk to the police to get background on the matter. Obviously, one of the reasons why we think it is important that they report in a timely manner is that we can follow up with the police in a timely manner.

**The CHAIR:** Do you have any form of a protocol with New South Wales police for the exchange of information between the respective agencies?

**Mr WING:** We have a high level protocol with the police, yes.

**The CHAIR:** On notice, are you able to provide us with either that protocol or at least a description of that protocol?

**Mr WING:** Either the protocol or a description, yes, certainly.

**The CHAIR:** Thank you. Can I turn to the next category of what your audit found? Did you find that despite the systems that they had in place, over a two-week sample period 37 per cent of drivers had more than 12 hours of continuous driving time, with some cases up to 17 hours continuous driving time?

**Mr WING:** Yes. What we were looking at in that audit—I mentioned before just what the obligations are on service providers. All service providers are expected to do what is reasonably practicable around safety of drivers and passengers. They are required to have a safety management system; they are required to meet a number of specific requirements about the eligibility of drivers and the maintenance of vehicles. But we also hold that their safety management system should cover other things, and we made it clear to the industry that that includes things such as fatigue. One of the things we are looking for in these audits is do they have a fatigue policy and an effective fatigue management system?

What we found in this case is we looked at the fatigue management system—my auditors looked at the fatigue management system to determine whether or not it was effectively applying their policies. And our concerns at the end of it was the general policy was that people should not spend more than 12 hours' driving time. That is appropriate and consistent with most similar industries and elsewhere in this industry. But our concern with the way the system was working was allowing people to not do more than 12 hours' driving time logged onto the system and yet still spend more than that time on the road. We were able to find that looking through other data that Uber had. So in our opinion they should be able to find that too and make some controls over that. Certainly we found that some people were driving more than 12 hours and in a few cases up to 16 or 17 hours.

**The CHAIR:** Are drivers in the point to point industry subject to the national fatigue laws?

**Mr WING:** No, they are not subject to national fatigue laws but they are subject to these laws, which require appropriate oversight. And that is one of the new things, by the way, under this legislation. Under the old laws, only the drivers had the obligation. Under the new law, we expect the service providers to take responsibility for it.

**The CHAIR:** A chain of responsibility has been the governing process for a lot of transport law now, going back nearly two decades. It is a very good thing. For what it is worth, I accept that they are not subject to the national fatigue laws, but the national fatigue laws would make it clear that, equally, drivers have to take certain measures—they cannot drive more than 12 hours without specific accreditation. It is good that they are aligned. But this is pretty egregious: 37 per cent of drivers within a two-week period driving more than 12 hours a day. It is pretty alarming, don't you agree?

**Mr WING:** Our view is that it is a matter that they need to fix and we have issued them with directions to fix it. I guess part of the way it has worked, and our discussions with them were, that their systems check whether a person has been driving for 12 hours for them and then requires after that to check out and not log in for eight more hours. But our view is that this is one of those areas where technology is changing. It is going very much to the terms of reference of your committee. It may be that historically when all these guidelines were established people did not switch around between providers. But our view is that it is not a question of controlling fatigue only with the amount of driving within your system but once you know someone has been driving more than 12 hours, however, then we would expect some controls around that.

**The CHAIR:** Uber seems to disagree with your findings. They said publicly that they are disappointed they were not allowed to respond to the audit's findings before it was finalised and they say that the audit contained some errors it planned to clarify with the commission. We will take it step by step. Did you show Uber the audit before you finalised it?

**Mr WING:** We were in contact with them over a year. We showed them the report, I think, a couple of weeks before we made anything public about it.

**The CHAIR:** I just want to be clear, Commissioner. I am not suggesting that you are under any obligation to do that, by the way, but I just want to be clear as a matter of fact and give you an opportunity to respond to what they said publicly. Your evidence is that you did show it to them a couple of weeks before.

**Mr WING:** We did, and we were in contact with them over a year about this matter.

**The CHAIR:** They then go and say that it contains errors it planned to clarify with the commission. Have they identified the errors that they say you made?

**Mr WING:** They are discussing it with my staff, but they did not like the outcomes. They could, of course, have appealed it at any time. There are appeal mechanisms in place under this law. Of course, I am, as a regulator, subject to appeal. They did not appeal. They have told us that they accept the directions they have been issued and are working to implement them.

**The CHAIR:** On notice, can you identify what are the errors they say you have made and give us any status report as to what your staff are up to in terms of their engagement?

**Mr WING:** You are asking me what is the current—

**The CHAIR:** If there is any dialogue going on between the commission and Uber since the audit, if you can just provide us on notice a description as to what that dialogue is and specifically identify what Uber says you got wrong.

**Mr WING:** I think we can certainly give a description of what it is, since Uber has accepted the directions. I am not sure there is anything though at this point they are saying that we have got wrong, but I can certainly give you a description of—

**The CHAIR:** I appreciate that. But they said publicly, "For example, the driver fatigue finding is misrepresented, referring to 'continuous driving time', when it actually includes the cumulative time a driver may be online, offline and then online again throughout the day." Do you wish to respond to that?

**Mr WING:** Okay. That is an issue that they raised at that point in time. I think, as I just mentioned, one of the concerns we have is that the obligation on service providers is not about not having more than 12 hours of driving time on their platform, it is about controlling fatigue.

**The CHAIR:** Are you confident that today every rectification that Uber needs to do to ensure that 37 per cent of drivers are not driving more than 12 hours continuous driving time are in place? Is this still happening?

**Mr WING:** We directed them to do that and my staff are working with them to make sure that happens, yes.

**The CHAIR:** But can you give us an assurance this practice has ended, or are they in the process? What is the remediation that they have to do to stop drivers from driving more than 12 hours?

**Mr WING:** The direction is to fix the problem, okay? The direction is to take steps to rectify the problem. They can come up with any number of ways to do it, but we know of one effective way that it is used elsewhere in the industry. So there is at least one effective way. And it is common practice elsewhere, including with other [audio malfunction] simply to take the step that regardless of whether they have driven 12 hours for you continuously or 12 hours plus usually there is an expectation of a break in there, at some point after 12 or 13 hours since they first logged on, they are simply logged off and it does not matter whether they have reported 12 hours on your platform or not. You can see that is essentially the old concept of the shift moving to an information age, and that is a practice that others put in place to control the situation. So we know there is at least one practice that they can put in place.

**The CHAIR:** Have they put that practice in place?

**Mr WING:** They have been directed to do it and they are working on it now.

**The CHAIR:** How long do they have to do it?

**Mr WING:** We gave them several months. We recognise that it may require coding changes to the driver app, so they will need a reasonable amount of time to do that.

**The CHAIR:** But when? On notice, can you tell us when did you give them that direction and what date that they have to comply?

**Mr WING:** We gave them several months to comply with all the directions and to do a final quality assurance on everything. So I can probably take a date on notice, yes.

**The CHAIR:** Thank you. Did you ever ascertain why drivers are driving more than 12 hours and some up to 17 hours?

**Mr WING:** We did not interrogate individual drivers, if that is what you are asking. But our concern is, regardless of their reasons, we do not want a system that allows that to happen.

**The CHAIR:** Sure, but we are inquiring into the reasons why that might be taking place. Do you have any view, given this is not a one-off incident? It is 37 per cent of drivers that are doing this; it is more than one in three. Firstly, would you describe that as systemic?

**Mr WING:** I would describe that as a problem with the effectiveness of that system and they need to fix it.

**The CHAIR:** Yes, but I am asking you would you describe it as systemic? If more than one in three drivers are breaching within a two-week period, what should we infer from that?

**Mr WING:** I think you should infer that it is not just a matter of one driver here. There is an issue and we have told them this and directed them around it: "There is an issue with your system which is allowing drivers to drive for periods of time, which is a concern for us with regards to fatigue. We think you need to fix the system." It is not just a matter for an individual driver to fix.

**The CHAIR:** We have had other people come forward with evidence that says the reason why drivers breach fatigue in rideshare is because they are not paid properly, they are underpaid, and that effectively in order to earn an effective economic income they need to drive more. On the basis of what you have seen, it seems like we should agree with that.

**Mr WING:** My view on this one is that the obligation is placed on the service provider to control the problem, and in a sense it is not an excuse for them to say that drivers do this or drivers do that. They need to take appropriate steps to control the problem at the service provider level.

**The CHAIR:** But if drivers are needing to work this long in order to earn an income, they are likely to continue to try to work that long. Is that fair?

**Mr WING:** Whatever the reason is, there needs to be a system that prevents it.

**The CHAIR:** But are you looking into any of these reasons or are you saying the obligation is purely on the platform?

**Mr WING:** You are asking me about workplace arrangements. I think I said in my opening statement that we do not have any oversight of those, but I think there is a direct obligation. Yes, we would say there is a direct obligation on the platform to run an effective control system and not just leave it up to the individual drivers.

**The CHAIR:** Commissioner, I will just press one more time—and, just to be fair, we have had multiple evidence from academics and others who say low pay to drivers results in drivers driving longer—does the commission have any evidence either to support that conclusion or to reject that conclusion?

**Mr WING:** We do not have any oversight of workplace arrangements. I am not debating the experts you have discussed with. I am just saying that regardless of the reasons, there is an obligation on the service provider to take appropriate steps to control fatigue.

**The CHAIR:** I might pause there and invite questions from other Committee members. There is the other matter with the safety audit that otherwise I would raise questions about. But I want to pause for the Hon. Shayne Mallard, the Hon. Wes Fang, the Hon. Adam Searle or the Hon. Mark Pearson or anyone else to ask any questions if they so wish.

**The Hon. ADAM SEARLE:** I am fine, Mr Chair. I have got no questions.

**The CHAIR:** The Hon. Shayne Mallard?

**The Hon. SHAYNE MALLARD:** Good morning, Commissioner, and thank you for your submission and being online today to talk to us. I just want to go through some background. Your position was created by the State Government as a response to the deregulation of the taxi industry and the arrival of rideshare services.

**Mr WING:** Yes, it was the creation of the new Point to Point Transport Act, which commenced in late 2017, and I was appointed on 1 July 2019.

**The Hon. SHAYNE MALLARD:** Which Act was that?

**Mr WING:** The Point to Point Transport Act.

**The Hon. SHAYNE MALLARD:** Before you were appointed, I guess before we had the sort of revolution of the deregulation of the point to point transport with the arrival of the platforms Uber and others, how was the earlier point to point transport industry regulated in the context of your work, monitoring complaints, compliance and so forth? How did it work before?

**Mr WING:** Prior to the new Act—and in those days the regulator was the then Roads and Maritime Services—there were obligations on safety operations around drivers and owners and operators of vehicles and they had a series of safety obligations. What has changed is that the new laws place obligations directly on the people at the top of the tree—the service providers. One of the issues with the old laws was sometimes there were

things that were much better controlled by service providers than by drivers. Fatigue, that we have just discussed, is an exact example of one of those. What the old laws did not do and the new laws do do is actually apply obligations to the people at the top—the service providers themselves. So the kinds of audits that we are currently doing on service providers could not really occur under the old laws.

**The Hon. SHAYNE MALLARD:** I recall in the old days there was a council in the city that would always get complaints from taxi drivers themselves about the inspectors at the ranks targeting the individual who might be driving or operating a vehicle at the time and getting fined. Is that the way it used to be and we have moved under the new Act to focusing on the big bosses, the service providers?

**Mr WING:** Yes, but we still have on-street compliance teams. I still have inspectors in the ranks now. They are often in the rideshare waiting areas as well, the holding areas; they are out on the street. But on top of that we also now are looking, as you said, at the big bosses, yes.

**The Hon. SHAYNE MALLARD:** From the earlier days we were pretty much dominated by the monopoly of the taxi industry to where we have this deregulation situation today. Has the participation in rideshare, the operators, grown exponentially over the last decade?

**Mr WING:** We have certainly seen an increase in service providers in recent years, in the number of service providers and the amount of customer choice as a result—both an increase in booking service providers and taxi service providers, by the way, and a dramatic increase in the number of trips that people are taking. Pre-COVID it had risen to about 75 million trips per year, which was up from somewhere in the 50 millions—55 million or so beforehand. We have also seen—and Transport for NSW does this, they do customer satisfaction surveys across most public transport and taxi rideshare and hire car modes—quite a steep increase in customer satisfaction for all modes: rideshare and taxis. So we are seeing quite an increase in what customers can use and do use and their satisfaction with it. As I said, now there are approximately 2,000 service providers in this industry and they range from very large providers such as Uber and 13cabs through to regional taxi companies, through to a large number of small providers who may have one vehicle and, for example, be running a hire car or a tourist service somewhere or they might be running a wedding car. There is a very wide range of people in in this industry.

**The Hon. SHAYNE MALLARD:** So consumers are consuming more of these rideshare services than historically. We are getting a taxi or an Uber to dinner and things like that more than we used to.

**Mr WING:** Yes, it is just that there has been a significant increase in the number of trips people are—

**The Hon. SHAYNE MALLARD:** It is probably related to lack of parking and congestion on the roads. That is certainly the reason why I do it. That is interesting. Have you got any sort of historical data that you can compare back to before the Act. My colleague the Hon. Daniel Mookhey seemed to be focused on the regrettable sexual assaults—and I know they happened, they have always happened and they should not happen, but that is part of the danger of this whole process—and other issues of complaint? We were talking about fatigue. Can you give us a historical perspective? We talked about 12 alleged assaults not reported. Can you put that in the context of a historical situation at all?

**Mr WING:** You will appreciate that obviously any historical data will tend to be taxi focused, but the new laws are the same for everyone. They have moved from being only putting obligations on drivers and the owners and operators of vehicles are placing obligations on service providers. The bureau of criminal statistics—

**The CHAIR:** BOCSAR, Bureau of Crime Statistics and Research.

**Mr WING:** Thank you—has published historical data on taxis which goes back but also up to now, and there has been a fall in assaults under the recent laws and under our time administering the laws. As I say, that represents a period when obligations have started being put directly on service providers to run a safe system.

**The Hon. SHAYNE MALLARD:** And then because there are more providers [disorder].

**Mr WING:** [Disorder]

**The Hon. SHAYNE MALLARD:** Thank you for that.

**The CHAIR:** I was just going to ask to supplement that data request by asking if you can provide that broken down by booking service providers, taxi service providers, that would be useful, since the new laws commenced.

**Mr WING:** You mean the BOCSAR data?

**The CHAIR:** All the notifiable incidents that you have received—just the number by year of notifiable incidents by booking service providers as a whole and I guess taxi service providers since your commencement. Is that possible?

**The Hon. SHAYNE MALLARD:** For the different categories you mean, not the companies?

**The CHAIR:** Yes.

**Mr WING:** Just booking service providers total versus taxi service providers total?

**The CHAIR:** Yes. In terms of data request, while you are here, Commissioner, can we also get the number of drivers that are registered to provide services through booking service providers as well as taxi service providers? Do you have that data?

**Mr WING:** What we know is the number of drivers who applied for a passenger transport [PT] code on their licence, which means that they meet commercial medical standards, that is approximately 130,000 at the moment. Obviously they are not all driving at any time; in fact, very many were not driving during COVID. That is the number who have the licence code which shows that they meet commercial medical standards.

**The CHAIR:** Are you able to provide us, firstly, the trend data on how many people have the PT code in each of the years since the creation of your office of people who have that PT code?

**Mr WING:** It is the same data on the PT code year by year. Yes, of course.

**The CHAIR:** And, equally, if you do have any information about active versus inactive over the same period, that would be really useful as well.

**Mr WING:** I do not think we would have that, but I will include it as part of it.

**The CHAIR:** And then whether or not you can, from any of your audits or otherwise, discern the numbers that are providing services through Uber, DiDi, Ola, taxis. That would be useful because obviously those companies keep that information commercial in confidence. Or even if you cannot do it, the level of the platform at least, the numbers that are in rideshare versus the numbers in taxis, that would be useful.

**Mr WING:** I am not sure it is a meaningful number because people can and do drive for both taxi and rideshare platforms.

**The CHAIR:** We are just eager for whatever demographic analysis you can provide us on the workforce in the industry. And then do you have the numbers of cars that are eligible to be used in rideshare?

**Mr WING:** To be eligible to be used in rideshare, they would have to meet certain standards, but they do not require a specific numberplate or licence code. So I do not think I would have the exact—

**The CHAIR:** But they do require a specific compulsory third party [CTP] policy or disclosure for the purposes of CTP, do they not?

**Mr WING:** They would require the appropriate CTP. If there are detailed questions about that, I would probably have to refer those to State Insurance Regulatory Authority [SIRA].

**The CHAIR:** Could you? If we could find out the number of cars in New South Wales that have the specific rideshare CTP disclosure [inaudible] proxy over time as well. We will go to the Hon. Mark Pearson.

**The Hon. MARK PEARSON:** A quick question, and you can take it on notice. Has it been considered at all for there to be surveillance devices installed for the time Uber drivers or other drivers are using their vehicle, looking at the issue of safety and security?

**The CHAIR:** Cameras.

**The Hon. MARK PEARSON:** Yes, cameras.

**Mr WING:** All safety measures are considered from time to time. The change in technology is one which could really affect the camera question, there is no doubt about that. I am happy to take it on notice, but I will say that, yes, we do from time to time consider whether the advances in technology mean that cameras may be feasible in the future.

**The Hon. MARK PEARSON:** It certainly made a big difference in the taxi industry when it became virtually mandatory. Thank you very much.



**The CHAIR:** Thank you, Commissioner, for your time with us this morning. You have taken a number of questions on notice, for which you will have 21 days from the date of receipt of the transcript to provide us with an answer. The secretariat will forward you all of the questions you have taken on notice. We appreciate your time with us this morning.

**(The witness withdrew.)**

**(Short adjournment)**

**SCOTT JOHNSTON**, Deputy Secretary and Chief Commissioner of State Revenue, Revenue NSW, on former oath

**CULLEN SMYTHE**, Commissioner of State Revenue, Revenue NSW, on former oath

**The CHAIR:** I welcome our next set of witnesses, the chief commissioner for taxation in New South Wales as well as the Commissioner of State Revenue. Thank you for taking the time to join us this morning. I invite either the chief commissioner or the commissioner to make a short opening, if you so wish.

**Mr JOHNSTON:** Thank you to the select committee for the invitation to reappear at this hearing to give further evidence. By way of opening statement, I will reiterate the responsibility of Revenue NSW and make a few observations. Firstly, Revenue NSW has responsibility for administering the State's taxation laws. We administer those laws fairly and impartially. Whilst we assist the Government in reviewing those laws and developing any changes, we are ultimately not responsible for tax policy. Tax policy is led by the Treasurer and his department. Therefore, we will not make comment on policy questions. Hence, to the extent that the select committee is investigating possible legislative changes to address issues raised during the inquiry, we are not in a position to make comment.

Secondly, I would like to outline how the Payroll Tax Act 2007 may relate to the gig economy. Basically, under the Act, wages or payments paid by the employer to workers will generally be taxable if the workers are common law employees or the workers, through independent contractors, are nonetheless in an employment-like relationship with the employer. In relation to independent contractors, the Act makes wages paid to such workers liable to payroll tax unless one or more exemptions apply. These exemptions generally relate to circumstances which suggest a non-employment-like relationship, such as where the contractor's services for the employer are of a limited or transient nature or are incidental to the activities of the business.

The kinds of employment models used by businesses in the gig economy may attract the contractor provisions in the Payroll Tax Act or, indeed, the general employer and employee provisions. This means the wages gig employers pay their workers may be liable for payroll tax. Determining payroll tax liability will require consideration of a range of factual circumstances that go to the overall character of the worker-employer relationship. Based on those circumstances, if the relationship is one of employer and employee or one of principal and contractor and no exemption applies, then, subject to the total wages exceeding the payroll tax threshold, the businesses will be liable to pay payroll tax.

The fact that a business enters into contracts with his or her workforce and refers to the workers as contractors will in no way be determinative of the issue. It is the substance and totality of the relationship that matters. We at Revenue NSW understand that determining whether a payroll tax liability exists for these types of relationships in the gig economy may be difficult and complex. On our website, we have made available 11 revenue rulings dealing with determining the employer-employee relationship and the contractor provisions and the exemptions that might apply. We have also issued a commissioner's practice note dedicated to the contractor provisions, providing more examples and easy to follow diagrams of when exemptions would apply and the records that employers are recommended to keep justifying these exemptions. Finally, we have also issued videos on our website dealing with topics, such as the contractor provisions and, more generally, the application of payroll tax in New South Wales.

If any employer is ever in doubt about their payroll tax obligations, they can always ring Revenue NSW and speak to one of our experienced staff. Therefore, we have provided a significant amount of guidance to assist taxpayers in navigating the contractor provisions and generally complying with their payroll tax obligations. Finally, I would like to say something briefly about our approach in applying all the legislation we administer. Our approach is to encourage and assist clients to comply with the law by providing information, education and tools to help them understand their obligations and grants to which they are entitled; to treat all taxpayers fairly by applying legislation in a harmonised manner to ensure a level playing field; and to detect and deter non-compliance by concentrating on area of high risk.

In respect of compliance, our risk-based approach is designed to focus activities on areas of highest potential for non-compliance. We use data analytics and risk assessment processes to identify taxpayers who may be non-compliant and specialist analytical software to review taxpayer data that we have obtained from a number of sources. The question of whether a person is a contractor or an employee is an area of compliance risk across many industries, including gig businesses. It is also one that businesses can often get wrong. Gig economy businesses view their workers as independent contractors and are not paying payroll tax on the payments made to

them. Recent decisions in Australia and overseas have been a mix of employee and independent contractor determinations, which makes our compliance audits complex. The agreements under which gig economy businesses engage workers are constantly changing. Agreements for engaging workers differ across businesses operating in the gig economy, meaning that each separate arrangement needs to be examined to determine if there is a payroll tax liability. That concludes my opening statement.

**The CHAIR:** Thank you, Chief Commissioner, for the thoroughness of that. We will commence questioning. I say at the outset, Chief Commissioner and Commissioner, that we have invited you for two hours, but it is unlikely that we are going to require all of that time in the format that we are in. I know that myself and others intended to ask you questions about certain documents, but it is not practical to do it in the current format. I flag that and say at the outset that should we end earlier, we mean no offence and we do appreciate the time that you have taken on a second occasion to make yourselves available to the Committee.

**Mr JOHNSTON:** I am sure no offence will be taken if we finish early.

**The CHAIR:** You may enjoy your freedom. It is the season. Can I ask you, Chief Commissioner, to provide us with an update as to where you are in terms of certain investigations that you were making reference to at your last hearing? I know from your constant refrain that you are limited by the statutory secrecy provisions in the Tax Administration Act. I will ask you an open-ended question to allow you to formulate a response that you think you can give us about where those investigations are up to.

**Mr JOHNSTON:** We took at the previous hearing, on notice, the number of entities that we had been investigating. The response that we provided in, I think, early July was that we were currently auditing 13 entities. That remains the number that we are still working through. We have completed nine and we have got an additional 13 that we are auditing. We have had a reduced focus on compliance and auditing over the past several months, as you could imagine, due to a range of things happening and other supports we are providing through COVID, but also working with the businesses around their ability to provide the right input to these functions. They remain ongoing. The progress for the last four months or so has been slower than planned.

**The CHAIR:** To be clear, you have completed nine audits or investigations. Is that right?

**Mr JOHNSTON:** That is correct.

**The CHAIR:** In relation to the companies or subject matter of our terms of reference?

**Mr JOHNSTON:** Sorry, I was referring more broadly to businesses that might be referred to as a gig economy business. You named a list of businesses. Many of those are included amongst that group, but we do not define our audit program by the businesses in the Standing Order 52. We have a look at the risk-based framework that we have and approach our work accordingly.

**The CHAIR:** If you are ever tempted to adopt our SO 52 framework as the basis of your audit program, let us know. I am glad we could be of some assistance. But to be clear, you have completed nine audits and have commenced 13 more since?

**Mr JOHNSTON:** There were 13 in train before. There are currently 13 in train, and they have been for a period of time. My response to the question on notice previously quoted that same number.

**The CHAIR:** Of those nine, have any of them led to the issuance of any additional notices of assessment for unpaid payroll tax?

**Mr JOHNSTON:** I would have to take that on notice, just to be clear in terms of where they were based on the timing of my response. But there has been issues of assessment provided [disorder].

**The CHAIR:** I will go straight away to a matter which has surfaced in the public domain since we last had the opportunity to discuss because I think it is pertinent to what we are doing. Is it the case that in February of this year you issued additional notices of assessment to companies trading as Uber?

**Mr JOHNSTON:** We have completed that audit. Yes, we have provided notices of assessment. The matter is continuing in discussions with that business.

**The CHAIR:** Chief Commissioner, I am conscious of your statutory secrecy provisions, albeit I formally do not concede that would inhibit your ability to answer. In order to allow this questioning to go to a place which does not trigger a dispute, I am just going to refer to what is in the public domain, which is an ABC story from 8 September 2021. You can understand that is where questions are being sourced from. You can

provide your response accordingly. Is it the case that you issued notices of assessment to Uber totalling \$81.5 million of unpaid payroll tax?

**Mr JOHNSTON:** We have issued a notice of assessment. I am aware of that article that you have mentioned. I could not speak specifically to the value of that assessment, but it is a significant amount.

**The CHAIR:** I will read it to you and you tell me whether you think this is factually wrong. This is what the ABC reports:

They reveal that on September 12, 2018 Revenue New South Wales issued a payroll tax audit against the company, and in February this year issued tax bills against the group totalling \$81.5 million. This is for amounts the state considers Uber owes through June 30, 2020 and the accounts note that "the Group has filed an objection to each of the assessments".

Is that accurate?

**Mr JOHNSTON:** I do not have the assessment in front of me, but that would be broadly accurate. I have no reason to believe that is not accurate—that amount. Rather than being bogged down into the value, which I do not have in front of me and have some concern about sharing—the point being we have provided an assessment to Uber. Many of the facts in that article appear correct from a Revenue NSW perspective.

**The CHAIR:** Just to be abundantly clear, I believe the ABC has sourced this from documents that Uber itself has filed publicly. It is disclosed in their accounts. The report then goes on to say that Uber has triggered the appeal process in respect to that. Are you in a position to provide us with any evidence about where that appeal is up to?

**Mr JOHNSTON:** Not other than it is continuing to progress.

**The CHAIR:** Step me through what the appeal process is under the Act.

**Mr JOHNSTON:** Commissioner Smythe, do you want to step through that?

**The CHAIR:** Commissioner Smythe is on mute.

**Mr JOHNSTON:** We cannot hear you.

**The CHAIR:** Commissioner Smythe might need to unplug again. I have a suspicion, Commissioner Smythe, that unless you tell your software that is where you are getting your microphone from, it will not pick it up. Tech support—we are here to help. I think we can hear you now.

**Mr SMYTHE:** How is that?

**The CHAIR:** Yes. Thank you.

**Mr SMYTHE:** Apologies for that. I am going to try to move as little as possible to not impact the microphone. The process is that once a notice of assessment is issued to someone, people generally have 60 days to make an objection. They will come back to us and object. The objection is considered independently of the initial assessment, so it goes to a different part of Revenue NSW. Technical experts will review the information provided, understand any arguments that they have been provided and then they will make a further decision. Once that decision is made, a letter determining the objection is issued. The next steps for a party who is dissatisfied with an objection—sorry, an objection may be allowed in whole or in part or disallowed in whole or in part. Where a taxpayer is unhappy with the results of that objection, they have the opportunity to progress the matter either to the tribunal or take the matter to the Supreme Court.

**The CHAIR:** In respect to these particular notices of assessment, are we at the point where any matter has been lodged with either the tribunal or the Supreme Court?

**Mr SMYTHE:** I am not aware [audio malfunction].

**The CHAIR:** Commissioner Smythe, you are coming in and out now.

**Mr SMYTHE:** I personally am not aware of the current status of any objection in relation to that.

**The CHAIR:** On notice, can you provide us with the latest information you have about the status of this particular dispute, especially if it is now surfacing in tribunals and/or Supreme Court matters?

**Mr SMYTHE:** Yes.

**The CHAIR:** Thank you. As a longstanding fan of Revenue NSW compliance, in an ordinary year you would collect \$135 million-ish through your payroll compliance team. Is that about right?

**Mr JOHNSTON:** It would be more than that, actually.

**The CHAIR:** So \$200 million? Sorry, my ability to keep track of your compliance collections by tax might not be as good as yours, Chief Commissioner. Forgive me.

**Mr JOHNSTON:** I think that is perfectly reasonably. Sorry, I am just trying to get used to this new way of working. It is in excess of \$200 million a year.

**The CHAIR:** This is an \$81.5 million bill, which I assume covers two tax years given that the audit commenced 2018. Is that fair?

**Mr JOHNSTON:** Just to answer the previous question properly, it was \$251 million in the last financial year—our compliance efforts.

**The CHAIR:** So I am not too far off. Bear in mind that if this audit covers two years, which is 2018-19 and 2019-20, if it resulted in an \$81.5 million assessment over two years, I can infer—this is not exact, but let us just be conservative here—that it is fifty-fifty per year. Although, it could be higher in some years or lower in the next. Assuming it is \$40 million per year, that is 20 per cent of your compliance activities arising from one audit. Is this the biggest variation to the payroll tax assessments you have issued as a result of an audit in the last five years?

**Mr JOHNSTON:** It is a very good question, Mr Mookhey, which I could not answer on the spot. It is a significant—

**Mr SMYTHE:** [Disorder].

**The CHAIR:** Have you ever issued a notice of assessment for more than this as a result of an audit?

**Mr SMYTHE:** Can you hear me?

**The CHAIR:** Yes.

**Mr SMYTHE:** My apologies. I was trying to answer. The first thing, we would need to take on notice. I do not have the details here at the moment as to whether or not the assessment that you are referring to was in fact just for two years. Under our legislation, when we are undertaking audit activity, we will look back up to five years. But one of the interesting things with payroll tax is the position that a particular taxpayer or group may find themselves in one year may change from year to year depending on a change in the arrangements or contractual relationships, particularly with contractors.

**The CHAIR:** I agree with those caveats. But let's even accept that it is \$81.5 million over five years, which I think is the statute of limitations or thereabouts.

**Mr JOHNSTON:** That is right.

**The CHAIR:** That is still a lot of money per year. That is more than \$15 million per year, so it is close to 10 per cent of your annual collections, even if you want to use the conservative scenario. Would you agree that this is a pretty big correction for a taxpayer to receive?

**Mr JOHNSTON:** Yes, absolutely. It is a significant assessment and a very large correction, as you described. Whether it is our largest, I could not speak to.

**The CHAIR:** If you could, on notice, that would be helpful. But can you be clear, is this just the rideshare component of Uber's activities or does it cover Uber Eats as well?

**Mr SMYTHE:** I will take that on notice.

**The CHAIR:** I am going to infer that the reason why you issued this assessment or this correction—it is an amended notice of assessment. Can we term it that?

**Mr JOHNSTON:** Yes.

**The CHAIR:** It is because, as a result of your audit, you concluded that under the New South Wales payroll tax—is it the case that Uber under-reported its head office staff or its direct employees or is it the case that you considered the driver partners or drivers to be either contractors or employees for the purposes of the Payroll Tax Act?

**Mr SMYTHE:** Mr Mookhey, I assure you I am not trying to be evasive, but when we begin by looking into the specifics of a particular audit, there are quite a number of items taken into account.

**The CHAIR:** Sorry, Commissioner Smythe. Your audio is soft and intermittent.

**Mr SMYTHE:** There are a number of items that are taken into account with any given [audio malfunction]. It is because it is an operational matter. That is not information the chief commissioner or myself would have.

**Mr JOHNSTON:** To paraphrase Commissioner Smythe, there are a range of issues why an assessment will be arrived at. Much of that, even though scale is significant—there are technical experts and an operational consideration to how we land on that. We could not speak of the reason why the assessment landed.

**The CHAIR:** Can I just put it to you that you considered the drivers to be contractors or employees for the purposes of the payroll tax?

**Mr JOHNSTON:** Again, I appreciate that this probably does feel like we are being evasive, but I will confirm that on notice.

**Mr SMYTHE:** I believe that would be a fair assumption, subject to confirmation.

**The CHAIR:** So we can proceed on the next set of questions on the basis that that is the conclusion that you reached?

**Mr JOHNSTON:** Which we will confirm.

**The CHAIR:** I am going to pass to my colleagues very shortly, but that actually gets to the core of the terms of reference we have as an inquiry about the effectiveness of payroll tax and about whether the statute provides sufficient clarity. I accept that you have made the point that you are not here to provide policy commentary about future intentions of the Parliament or the Government. But as it applies so far, was it a simple conclusion for Revenue NSW to reach under the existing payroll tax provisions or was it difficult?

**Mr JOHNSTON:** Speaking broadly—Commissioner Smythe might want to answer more specifically—this is a very complex area of compliance for Revenue NSW, in part because of the emerging businesses and the emerging business models that are worked through. We are dealing with different aspects of industry that we might not have previously. Did the legislation enable us to come to a conclusion? Yes. I think we have evidence to show that we are providing notices of assessment. But it is complicated and it takes time. The point of looking at all the factors in totality means it needs some strong consideration. The businesses involved have to engage with us and have a perspective of their arrangements and their appropriateness to pay payroll tax.

**The CHAIR:** Is it the case that the complexity is added to by each taxpayer changing their arrangements year to year as well? It is not just new platforms arriving with new business models. Each platform also changes its business model relatively frequently. Would you agree?

**Mr JOHNSTON:** Yes. It is not static. One year's assessment may be different to the following year's because of business models changing.

**The CHAIR:** I am going to pass to my colleagues now.

**Mr SMYTHE:** My apologies, Mr Mookhey. If I could just add one thing in support of the chief commissioner—

**The CHAIR:** Sure, Mr Smythe.

**Mr SMYTHE:** The challenges that we face here in New South Wales are not only the same challenges faced by all of the other jurisdictions around the country but, as I know you are aware, similar challenges are faced right around the world with regulatory authorities trying to deal with this rapidly changing environment, including fair work decisions in the United Kingdom, similar issues around employers and employees in California and elsewhere.

**The CHAIR:** I am really disappointed, Commissioner Smythe, but you are coming through intermittently. It is going to be very difficult for Hansard to record your answer. I do not know whether you are in a position to change your microphone or not, but we are hearing every second word. On notice, can you provide us with the additional detail that you wish to refer to there? Thank you. Mr Smythe has indicated "yes" in the absence of his audio working properly.

**The Hon. ADAM SEARLE:** Thank you, commissioners, for coming along and giving evidence today. Having listened to your opening statement and looking at Revenue NSW's submission, there seems to be a level of complexity around whether payroll tax is payable vis-a-vis if someone is a common law employee or is it a

contract for service. There are all of these different tests, which can be quite complex. Like Mr Mookhey and others, I am aware of the difficulties arising from the Vabu line of cases and those sorts of issues. Would it be simpler if the legislation simply applied to workers as opposed to employees and various other things of that nature? Reducing the complexity and making the task of applying legislation a much more straightforward affair, would that assist your organisation with effectiveness?

**Mr SMYTHE:** Can you hear me now?

**The Hon. ADAM SEARLE:** We can.

**Mr SMYTHE:** Mr Searle, with respect, that is a very good question. One of the difficulties, though, is this of course moves into a policy area that goes beyond the remit of Revenue NSW as a mere regulator. The only point I would make in relation to that is that, to an extent, principles-based and simplifying legislation can act somewhat as a double-edged sword. While it simplifies the administration from our perspective, it very well may carry consequences that do not exist under the legislation—for example, capturing genuine independent contractors in circumstances where, from a policy perspective, it may not be the intention to levy tax upon them.

**The Hon. ADAM SEARLE:** The test of whether someone is in business on their own account is not always straightforward, but there are indicators: Do they have letterhead? Do they have business cards? Do they provide their own work equipment? All those sorts of things. Again, leaving those considerations aside, simplicity would definitely assist any tax collecting agency with its role. Would you agree with that general proposition?

**Mr JOHNSTON:** I think simplicity is always easier to administer, but does it achieve its policy intent? It can become more challenging or potentially unintended consequences might arise, which is what Commissioner Smythe was trying to speak to. I would suggest, while this is a very fast evolving and complex area for us to navigate through, using the common law provisions that we are and following the development of case law enables us to effectively administer the legislation. But it remains complex and does take some time.

**The Hon. ADAM SEARLE:** Could I ask this question then. I think this was touched on in your submission. Do you have any data or any strong appreciation of how many workers—which is a term I use to cover everybody from whom you collect payroll tax—are covered by the current payroll tax regime? How many of those are employees and how many are other kinds of workers? Do you have a sense of that?

**Mr SMYTHE:** I do not believe that is a level of data that we collect. One of the issues around that being the types of payments that can be subject to payroll tax can at times include payments to directors, for example. It is not something that, to the best of my knowledge, we have a level of detail that we have previously collected.

**The CHAIR:** But there are 52,000 businesses in New South Wales registered for payroll tax on an annual basis or thereabouts?

**Mr JOHNSTON:** Yes, that is correct.

**The CHAIR:** That is out of a pool of generally 750,000 businesses in New South Wales, according to other figures.

**Mr JOHNSTON:** That sounds about right.

**The CHAIR:** We know how much the wages are that are covered because that is how much we collect. Is that fair?

**Mr JOHNSTON:** Yes.

**The CHAIR:** You would have some data on employees. Having read a lot of your reports, Mr Searle's question—you do have some data. You might not have it in an aggregate form, but you would have—

**Mr SMYTHE:** We have access to significant data from other jurisdictions, including the Australian Taxation Office [ATO]. We utilise that for our assessments and our compliance program. I think both of us took the question from Mr Searle as an aggregate view, and it is not something that we naturally—

**The CHAIR:** Are we taxing our friendship if we were to ask you to provide some top level numbers on notice?

**Mr JOHNSTON:** I am happy to take that on notice and see what we can do to provide support to the Committee.

**The Hon. ADAM SEARLE:** Thank you for that. In terms of payments to directors, obviously some directors are what you might call working directors, for want of a better phrase. They are working in the business and they are, for all intents and purposes, an employee of the business. It is not inappropriate that you would be collecting payroll tax in respect of those workers in that situation. So yes, taking Mr Mookhey's suggestion, if you could interrogate the data you have got to provide us some answers on notice, that would be very useful.

**Mr JOHNSTON:** Yes, we will [disorder].

**The Hon. ADAM SEARLE:** Thank you, Chair. Those are my questions.

**The CHAIR:** Mr Fang?

**The Hon. WES FANG:** I have no questions at this point.

**The CHAIR:** I have a couple more questions about this matter and then I think we would want to ask you about the passenger service levy and where you are in terms of those compliance and collection efforts. Returning to the other matters, are you still in liaison with the ATO about enforcement on companies that are loosely described as gig related?

**Mr JOHNSTON:** Sorry, you just broke up fractionally there, Mr Mookhey. Could you just ask that question again?

**The CHAIR:** Do you remain a part of the task force with the Australian Taxation Office that might be looking into these matters to do with gig companies?

**Mr JOHNSTON:** Yes, we continue to. We work nationally with all jurisdictions around these matters and share information.

**The CHAIR:** Last time you made reference that you share with your State counterpart bodies. Is that correct?

**Mr JOHNSTON:** That is correct.

**The CHAIR:** Can you provide us with an update as to whether or not you shared with those other jurisdictions the result of your decision to issue the Uber-related group of companies with a notice of assessment?

**Mr JOHNSTON:** I would have to take that on notice unless Commissioner Smythe has a response. I am not sure.

**Mr SMYTHE:** In relation to your specifics, Mr Mookhey, we take that on notice. Our general practice is we try to liaise and stay in very close contact with all of the State revenue authorities with a view that where there is a business operating in more than one jurisdiction, we make sure that we keep each other apprised of what the approach is from a payroll tax decision. This often bears fruit when we are dealing with multi-jurisdictional audits. Often there may be an audit in one State and that is concluded. The results are then passed on to the other jurisdictions to make a determination on whether or not the same results should follow in those other jurisdictions.

**The CHAIR:** That is useful context. I am specifically referring to the parts of this ABC story that reports on certain tax structures and transfer structures that have been adopted within the Uber group of companies, which basically means they are routing all of their revenue through the Netherlands. Has that had any bearing or impact on the ability of you to collect any revenue that might be owed to us or not?

**Mr SMYTHE:** In a payroll tax context, while the use of international vehicles may have some impact from a grouping perspective, it is less of an issue broadly for gig operators because we look at the receipt—being honest, it depends on the way the structures are being used.

**The CHAIR:** At various times in the past drivers have been contracted directly with the Netherlands outfit. I think that has changed, to be fair. It may have been covered, particularly if you are looking over a five-year period of time. I am wondering whether or not, as a result of the decision to engage drivers with the Netherlands outfit—particularly when Uber was setting up—that may have resulted in an under-declaration wages or, equally, an incorrect assessment as to their status. Are you able to shed any light on that?

**Mr SMYTHE:** To the extent that we would have any knowledge of that, that is something that we would need to take on notice. I can say that I am not aware of any international aspects related to payroll tax in recent times having a negative impact on our ability to collect.



**The CHAIR:** If people who are providing employee- or contractor-like services in New South Wales through an internationally registered outfit, be it a company of the Netherlands or elsewhere, what impact does that have on your investigation and collection powers?

**Mr SMYTHE:** It is a great question. I will try to keep this brief because it is an area that I find quite fascinating from a tax perspective more generally. You can tell from the look on the chief commissioner's face that he is no doubt worried I will launch into a technical aside. The answer really comes down to the willingness of organisations to engage with us. There are a number of tools under the Taxation Administration Act for us to require or request information from international entities. But at the same time, due to our ability to share information with the ATO and other regulators, there are a number of other tools available to us if entities were to be less than forthcoming.

**The CHAIR:** Are those tools in the Tax Administration Act fit for purpose or is there a suite of additional tools that exist in other jurisdictions in Australia or elsewhere that might be of assistance that we should consider recommending we put into the Tax Administration Act?

**Mr SMYTHE:** I believe that the tools we have at the moment are good, but we are constantly reviewing them, as we are constantly reviewing the powers that are exercised by authorities both within Australia and overseas. There are some issues with attempting to enforce tax debts or to try to attain additional information from jurisdictions overseas. While I have dealt with those in many cases—viewing court decisions, for example—it is not something that I have had to deal with directly in recent years.

**The CHAIR:** Chief Commissioner, do you wish to add anything to that?

**Mr JOHNSTON:** No, that was a fair response. There is nothing clearly obvious for us to suggest from experience with other jurisdictions that will make a fundamental difference to what we are trying to do.

**The CHAIR:** If you wish to provide any further detail on notice, please do. We have had other witnesses come to our inquiry in which we have asked them questions about their payroll tax status, for which they have made various claims. I will just put them to you with a view to giving you the opportunity to respond or otherwise. We have had companies like Deliveroo say that they are in compliance with all of their obligations. Have you completed your audit and investigation into them?

**Mr JOHNSTON:** Just one moment, Mr Mookhey. This is another business we have issued assessments to. Our investigation has concluded with Deliveroo. The substance of the assessment, I am not across for this discussion.

**The CHAIR:** I am sure if you were you would not tell me anyway.

**Mr JOHNSTON:** I would be very cautious, as you expect.

**The CHAIR:** But you have completed it.

**Mr JOHNSTON:** Yes.

**The CHAIR:** Equally, what about Ola? Again, have you completed your investigation into them or have you had investigation into them?

**Mr JOHNSTON:** I would have to take that on notice.

**The CHAIR:** What about DoorDash?

**Mr JOHNSTON:** We have not issued an assessment to DoorDash from compliance activity. I can share that. But as I said, our last year or so of compliance activity has been quite fractured due to COVID and the changes that we have had to apply to payroll tax to provide support to businesses. Going through a list of businesses—many of them I will not speak to specifically, other than we continue to look at businesses engaged in the gig economy.

**The CHAIR:** I accept that you might not go into the detail, but given we have asked them questions, I just thought that we should give you the opportunity to comment on their reply if you so wish.

**Mr JOHNSTON:** No comment to that business.

**The CHAIR:** The only other two that I should put to you and give you that opportunity to respond to are HungryPanda and EASI.

**Mr JOHNSTON:** Because we have a significant—again, speaking in the abstract, there are some significant audits underway in this space. I think it is appropriate I do not speak to where we are [disorder].

**The CHAIR:** Again, you may wish to make the same answer, Chief Commissioner, but the other one I forgot to put to you is Menulog.

**Mr JOHNSTON:** Similarly, this is a business which was part of the standing order. We are working with that business currently.

**The CHAIR:** I will pause there and allow Mr Mallard to ask any questions that he might have before I move on to the passenger service levy compliance.

**The Hon. SHAYNE MALLARD:** Thank you, Chair. I am fine.

**The CHAIR:** Chief Commissioner or Commissioner, can you describe how you audit for compliance with the passenger service levy?

**Mr JOHNSTON:** The passenger service levy—we actually do not conduct the compliance effort for that. That falls to the Point to Point Transport Commissioner. Our function for this is the collection of the levy via direct debit, customer bank accounts and debt recovery. We have a very limited functioning in this space.

**The CHAIR:** Have you had to have any debt recovery actions in respect to that levy?

**Mr JOHNSTON:** I would have to take that on notice as to the specifics. I was more prepared for payroll tax discussions today.

**The CHAIR:** To be fair, Mr Shoebridge was asking these questions this morning so I felt that if we have you here, we should put them to you too. Are you in a position to tell us how much you have collected in the last three months?

**Mr JOHNSTON:** I would have to take that on notice.

**The CHAIR:** Fair enough. Equally, we heard about an underpayment by GM Cabs. Have you recovered or collected that money?

**Mr JOHNSTON:** I would have to take that on notice as well.

**The CHAIR:** Do you maintain [inaudible] collection for the next year?

**Mr JOHNSTON:** We would, yes. What that is, I have not got that in front of me [disorder].

**The CHAIR:** Can you take that on notice?

**Mr JOHNSTON:** Yes.

**The CHAIR:** Committee members, do you have any further questions?

**The Hon. MARK PEARSON:** No, thanks, Chair. I am good.

**The CHAIR:** On that basis, as we flagged, we might let you go earlier than intended. Again, we really do appreciate you putting the time aside and making yourselves available in this format. You have taken multiple questions on notice, for which you will have 21 days to provide an answer after the date of receipt. If you get any supplementary questions, you will equally have 21 days to respond. We very much appreciate your time in both sets of hearings.

**(The witnesses withdrew.)**

**The Committee adjourned at 11:45.**