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Commercial Passenger Vehicles Victoria
via Engage Victoria website

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RESPONSE TO COMMERCIAL PASSENGER VEHICLES VICTORIA DRAFT MONITORING, COMPLIANCE AND ENFORCEMENT POLICY

The following submission represents the considered position of the Commercial Passenger Vehicle Association of Australia (CPVAA) in relation to Commercial Passenger Vehicles Victoria (CPVV) Draft Monitoring, Compliance and Enforcement Policy, 2019 - 2022.

The CPVAA, formerly the Victorian Hire Car Association (VHCA), is the largest member association registered with Consumer Affairs Victoria representing the peak body for owners, drivers and stakeholders in the point to point passenger transport industry. This includes stakeholders from services provided by taxis, hire cars, rideshare, limousines and specialised vehicles.

The CPVAA is a not-for-profit body established in 2014 with a membership base primarily within Victoria where the association originated. Expansion in other Australian states and territories is in the advanced stages of planning and implementation.

The CPVAA has considered with interest the CPVV draft monitoring, compliance and enforcement policy for the coming period 2019 - 2022. The document describes the role and responsibilities of the CPVV in regulating the Commercial Passenger Vehicle industry and the enforcement framework within which it intends to operate.

The key components of the compliance and enforcement framework and more generally the proposed enforcement approach outlined in the policy are relatively innocuous.

Instead, the overwhelming and underlying view of the CPVAA relates not to what is being proposed but refers to the confidence the industry has in the regulator to perform their duty and implement the policy as outlined.

Our members' experience over the last six years has been that the CPVV have not met their statutory obligations nor convincingly enforced the legislative and regulatory conditions of the industry. This has created a palpable sense of skepticism and distrust across the industry toward the CPVV making it difficult to consider the draft compliance policy with any level of seriousness.

As outlined, the CPVV functions include but are not limited to



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- promoting and monitoring compliance,
- investigating and prosecuting breaches of the legislation, and
- engaging and collaborating with stakeholders to ensure better outcomes.

The apparent deliberate failure of the CPVV to meet these functions in recent years has been a cause of significant financial harm to many businesses and individuals within the industry.

For several years now, the industry has observed a distinct bias toward a multi-national rideshare company. In line with its objectives, the CPVV has indeed promoted competition, however this was achieved in an underhanded manner by failing to enforce the legislation and allowing unfair and illegal market interference. The primary role of the regulator should be to enforce the rules governing the industry and to promote compliance rather than concern themselves with the commercial interests of private corporations.

It should not be the role of the regulator to apply the legislation discriminately across the industry nor is it the role of the regulator to enforce the rules in a discretionary fashion or to pre-empt the passage of legislation. Yet this is what has occurred.

Uber entered the CPV industry unlawfully in Victoria in April 2014. While the regulator issued some fines against Uber drivers, they were ultimately unable to successfully prosecute the drivers for operating illegally. The case of *Brenner v Taxi Services Commissioner* ('TSC'), was won by Brenner on appeal in the County Court of Victoria on 18 May 2016.

One could possibly accept that the regulator remained inactive against many other Uber drivers operating illegally while awaiting the outcome of the appeal and subsequently as a consequence of the outcome of the courts.

However, the legislative loophole with which Uber won the appeal in May was quickly closed in an amendment to the legislation on 9th June 2016. The Transport (Compliance and Miscellaneous) Amendment (Public Safety) Act 2016 gained royal assent on the 15th June 2016.

By turning a blind eye to the illegal operation of Uber following the 15th June 2016 and through to Uber's legalisation on 22nd August 2017 when the Commercial Passenger Vehicle Industry Act 2017 gained royal assent, the regulator was complicit in the widespread non-compliance of the legislation.

As far as we are aware, no further infringement notices were issued by the regulator against Uber drivers during the period in question. Instead, enforcement of the regulations and legislation was directed selectively and severely against those driving and operating taxis and hire cars while illegal operators were ignored and allowed to conduct their businesses outside the legal and regulatory framework.

The inaction of the regulator against Uber sent a powerful message to the general public and encouraged rather than deterred many other contenders to operate illegitimately. For some time, our members have reported that 'Lifts for Cash' services are rife particularly in regional Victoria and their



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continued operation is severely impacting the local and law-abiding industry. The regulator has been informed of this issue and yet is invisible and silent.

Further to this point, prior to the changes in legislation (August 2017) it is understood that the CPVV had approximately 20 enforcement officers at a time when there were approximately 8,000 vehicles and 60,000 drivers. Today, there are over 60,000 vehicles and over 90,000 drivers registered with the CPVV and yet we are advised there are only 8 enforcement officers. Reconciliation of these numbers can lead to one conclusion only – that there is a clear mismatch between the intention of the CPVV and its purpose as defined in the draft policy.

The regulator must be transparent and explain its decisions with reference to its obligations. The public expects legislation to be enforced. The industry expects the laws to be enforced without fear or favour.

The CPVV claims to be independent and impartial and to act consistently, transparently and fairly. This lacks sincerity considering the vast disconnect between what is formally said and the reality of what is and has been done.

Rather unfortunately, the lack of respect exhibited toward the CPVV and the poor relations with industry stakeholders undermines their authority and credibility and has diminished any incentives motivating compliance. The industry genuinely has very low expectations of the CPVV and this will continue for as long as the legislation and regulations governing the industry are not strictly applied.

Yours sincerely

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President