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Commercial Passenger Vehicle Association of Australia

Submission to the Inquiry into the Victorian On-Demand Workforce

The following submission represents the considered position of the Commercial Passenger Vehicle Association of Australia (CPVAA) in relation to the Victorian on-demand workforce as it pertains to the industry of point to point passenger transport - namely taxis, hire cars and rideshare vehicles.

The CPVAA welcomes the opportunity to support this submission in person or to provide further comments in a panel discussion

Background

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.

Gig Transport

The gig and on-demand economy has rattled no other industry quite like the passenger transport sector. The likes of Uber have unscrupulously entered the industry cashed up and aggressive in their campaign to attract both drivers and riders alike. The drawcard for drivers has been that rideshare offers flexible employment and a means to earn a primary or supplementary income with potentially no outlay in capital (providing that they have access to a vehicle) and no skills requirement other than a valid driver's licence. For passengers, the inducements have been seemingly cheaper fares and a booking app with associated marketing appealing to the younger generations.

The ways in which state governments have accommodated the entry of rideshare platforms and their affiliated workforce have varied across the nation and so too have the effects on stakeholders in the transport sector. For the purposes of this submission, the focus will be primarily on the state of Victoria and on Uber as the representative 'gig-player' in this space dominating the market over other digital platforms.

It must be highlighted that the recent legislative and regulatory changes surrounding this industry which were enacted in August 2017 have come about solely because of the emergence of rideshare. The industry had already undergone an extensive review with the Alan Fels Taxi Inquiry in 2012 and the Liberal government at the time subsequently enacted the vast majority of recommendations.

New market entrants forced the most recent legislative transition through aggressive non-compliance and succeeded in changing aspects of the industry to suit their underlying business model putting them at a distinct competitive and cost advantage without the necessary debate and deliberation of relevant issues. This is a case of letting the wolves dictate to the sheep what the rules will be. As such, many of the points below are not exclusively related to the gig sector within transport but have come about solely due to the legislative and regulatory changes made to accommodate gig-players in this industry creating for them a market that is effectively free to enter.

This submission will explore both positive and negative consequences across the transport industry as a result of the emergence of rideshare and the on-demand workforce. These span a number of areas, namely -

- the impact on communities and consumers,
- safety implications for both passenger and driver,
- working conditions and driver remuneration and
- the impact on existing businesses – operators and drivers as well as licence holders who had all been operating lawfully under the previous regulatory environment.

Impact of Gig Transport on Communities and Consumers

Commercial passenger vehicle services provide flexible, convenient options for people to get where they need to go in Victoria. Generally speaking, the gig component of the sector has imparted personal benefits to the consumer by way of reduced fares, shorter waiting times and an overall improvement in the customer experience with an interactive booking app. However, these benefits are apparent only from the surface and in many cases come at a cost to the wider community.

Dynamic pricing

Fares in the rideshare sector are marketed as being reduced compared with traditional taxi fares which are set by the Essential Services Commission. Dynamic pricing, the formula by which Uber calculates fares, purports to motivate the increase in supply at times of high demand. Rather, public commentary points to the alternative view that price surging is in fact blatant and opportunistic price gouging of the consumer.

Price surges are determined by algorithms internal to the app however, there is evidence that drivers are able to manipulate those algorithms by co-ordinating logging off for periods of time to initiate surges that would otherwise not have been created. On the other side of the coin, there are reports of fake surges misleading drivers and encouraging them to modify their behaviour through inducements which do not exist.

While modern economic reasoning spruiks the creation of a business environment which supports commercial freedoms and market incentives, it is difficult to reconcile the uncertainty to the consumer particularly those who may be vulnerable, budget restricted and have no other means of travel. This includes those with physical and mental disabilities as well as the aged.

So too, the ability of corporate entities to mislead their workforce is particularly dubious given the inherent vulnerabilities in the driver demographic. The passenger transport industry is considered to provide an essential service to the community. Ultimately, the introduction of rideshare has offered choice to the consumer although it is clear that the benefits do not translate consistently.

Recommendation 1

> *The CPVAA recommends greater consumer and driver protections in this sector through some level of independent oversight of rideshare pricing.*

Predatory pricing

Another aspect to the fare structure applied by digital platforms is that it does not always reflect the cost of business. It is claimed by many that predatory pricing practices are commonplace and seek to thwart competition until market dominance has been achieved. It would be of great concern to the consumer if ever pricing within the industry was dictated by a large multinational corporation with a clear monopoly across the sector.

The business of passenger transport has always been regarded as an essential community service. There are obvious dangers in opening the industry up to commercial enterprises without reasonable regulations to ensure that the industry not only serves the community efficiently and fairly but that it is a sustainable industry for those who work within it.

Reduction in wait times

The reduction in wait times as a result of the introduction of rideshare is another positive outcome for the consumer. However, this must be considered on balance with the uncontrolled influx of rideshare vehicles contributing heavily to congestion in our cities. This has led to implications surrounding parking availability, particularly in the CBD area where rideshare drivers are using any curb-side space as a rank to wait for their next job.

Ultimately, congestion contributes to higher fare costs as the time taken to travel a given distance increases. Needless to say, this impacts other road users as well, both private and commercial. Rising road use also inflates the cost of infrastructure and has obvious environmental implications.

The question becomes, should governments be incentivising personalised road transportation over public mass transportation in a city growing rapidly beyond the capacity of existing and planned infrastructure?

Safety Implications for Both Passenger and Driver

Self-regulation

When the most recent legislation governing the passenger transport industry was introduced in August 2017 with accompanying changes to the associated regulations, there was a clear shift in responsibility away from government. The prevailing idea is that a reduction in prescriptive regulation and government oversight would be replaced by a model of self-regulation and that somehow, this would also reduce the overall cost of business. Ideally, this would function well if all corporate citizens, and indeed all citizens, are also willing, good citizens.

There is no doubt that the commercial passenger industry was somewhat over-prescribed, however safety should never be compromised regardless of cost or convenience.

Vehicle age limits, roadworthiness and safety

As a condition of the CPV licencing system, there was once an age limit on commercial passenger vehicles set by government. Additionally, there was a requirement that vehicles obtain an annual road-worthy certificate (RWC) through inspections conducted by a licenced vehicle tester. These conditions have now been removed.

Some taxi network service providers such as 13CABS have introduced their own vehicle age limits for those wishing to join their network. Uber also applies an age limit to vehicles on their system. However, this condition is quite separate from any expectation surrounding road worthy or vehicle safety standards, for which there are now none.

Recommendation 2

> *It is the view of the CPVAA that vehicle roadworthiness and safety should be mandated and enforced by the regulator to ensure that passenger and driver safety are not compromised by private commercial and economic considerations. It should be a condition of the commercial passenger vehicle annual permit that a RWC be presented on both application and renewal.*

Livery and vehicle identification

Rideshare vehicles are not obviously identifiable by permanent external livery. The only requirement is that Uber vehicles must display a small sticker on their windscreen which is easily overlooked as well as easily removed and applied. This has led to reports of sinister individuals masquerading as rideshare drivers picking up passengers, who for one reason or another, have not paid attention to the car they have stepped into. This is a clear safety concern for all passengers, in particular those who are drug or alcohol affected and for those whose ability to defend themselves is impaired. There have been cases before the courts for these reasons.

The lack of livery on rideshare vehicles also poses a problem for enforcement officers who can find it difficult to differentiate a commercial passenger vehicle versus a private vehicle for the purposes of applying specific rules and regulations to the vehicle or driver alike.

Reasonably so, all CPV drivers must have a blood alcohol reading of zero while working. However, the ability to apply this law is not straightforward when there is virtually no distinction between a vehicle being driven for commercial purposes in an on-demand context and one which is private in use. Prior to the new legislation, CPVs were easily identifiable by the assignment of a number plate series unique to the industry but this is no longer the case.

Previously, under the historical regulations, it was mandated that taxi vehicles were required to have installed tamper-proof cameras, the contents of which could only be accessed by the regulator and Victoria police. This requirement now only applies to taxis wishing to engage in anonymous rank and hail work. The argument has been that cameras are no longer necessary because bookings are no longer 'anonymous' through the need for passengers and drivers to register accounts with network service providers. This is claimed to diminish opportunities by perpetrators to engage in criminal activity without getting caught. This is all well and good yet despite everything, history shows there will always be some people who choose to behave in ways that contravene the law and, that there is always more than one version of events. An authentic video recording is the only way to ensure that both drivers and passengers are protected by providing the necessary and irrefutable evidence to pursue and support convictions.

Vehicle insurance

Appropriate commercial vehicle insurance is another area of contention. It is unclear whether all vehicles within the commercial passenger industry have the necessary levels of insurance and sufficient public liability coverage to adequately protect consumers and the general public. Many domestic insurers specifically exclude claims for incidents taking place while private vehicles are used for commercial gain.

Given that the lines are now blurred between what is a commercial passenger vehicle and what is a private vehicle, this area is deserving of further exploration. Insurers and the police should have the authority to cross check vehicle registration details with those licenced for commercial use by the industry regulator. They should also be able to cross reference login data with network service providers to check the timing of incidents.

Recommendation 3

> *The CPVAA recommends that a valid Insurance certificate of currency for commercial use be presented to the regulator on application and renewal of an annual commercial passenger vehicle permit.*

Working Conditions and Driver Remuneration

Independent contractor or employee?

Rideshare operators such as Uber self-class drivers as independent contractors. This is a result of the nature of the contract with which Uber engages its workforce rather than the specific details of the relationship it shares with drivers.

Clearly, there is much incentive to maintain this definition to avoid falling within the regulatory framework which would impose minimum wage and workplace conditions in regard to health and safety, workers compensation, taxation and superannuation. The rideshare industry sits within a grey area which should be thoroughly examined to determine whether workers have been misclassified and should be regarded as employees, as has been proven in test cases from other markets around the world.

Taxi drivers have historically come under the bailment system rather than an award rate with no minimum wage, sick or holiday pay and no superannuation. While this system may be archaic, for the most part, in times past and for those drivers intent on working solidly, there was always an opportunity to make a decent living. In many cases, the flexibility of driving and the remuneration would suffice to counter the lack of traditional employment benefits and would entice many to continue beyond the short term. This however relied on the existence of a sustainable and viable industry to ensure the slice of the pie was big enough for all stakeholders to thrive.

Deregulation and barriers to entry

For the purposes of incorporating rideshare services, the most recent changes to the Victorian commercial passenger vehicle legislation have effectively deregulated the industry and this has encouraged an irresponsible flood of vehicles into the market. While there was no prior restriction on the number of taxis and hire cars per se, there was a significant financial barrier to entry which served to confine the number of vehicles servicing the industry. These impediments have now been removed and the only requirement for CPVs is the purchase of a single annual permit to the value of $53.80 and a short application for driver accreditation.

Prior to August 2017, the transport industry comprised approximately 5,600 taxis, 2,700 private hire cars and around 58,000 accredited drivers servicing the state of Victoria. By comparison, since the legislative changes took effect, the industry has exploded to include (as of December 31, 2018) 11,659 taxis (including WAVs), 48,591 hire cars (includes rideshare) and 91,329 accredited drivers. This corresponds to a total increase in vehicle supply of 750% with no real evidence of an increase in demand. The size of the pie has not significantly changed yet these supply figures continue to rise month on month.

The oversupply is clearly a benefit to the consumer, serving to reduce wait times, however this comes at a significant cost to the worker and to the demands on our road system. There is a moral and social argument for a better balance between the desires of the consumer, those people who service them and the community at large.

Where once the transport industry offered a viable income, this is no longer the case across any sector of the industry be it taxi, hire car or rideshare workers, with some suffering more pronounced effects than others. Driver remuneration is at an all time low. There is a race to the bottom where workers, particularly those new to the industry, are increasingly known to accept jobs with little consideration or understanding of the actual commercial cost of performing the work.

Many of the workers within the transport industry are young, transient and vulnerable, often migrant workers on work or student visas. These workers frequently have minimal alternative job prospects and wind up entangled in the on-demand workforce not by choice.

As a result of this demographic, a sub-industry in vehicle leasing has emerged to provide access to vehicles for arguably vulnerable people who do not own a car but have been induced to drive for a rideshare platform. This becomes problematic if the terms and conditions associated with vehicle leasing commit these workers to an unsustainable arrangement and sees their earnings and costs chase one another in circles.

More concerning is that organisations like Uber are partnering with vehicle leasing companies to enable and incentivise drivers to sign on to the platform with ease in a one-stop-shop offering. There are promises of a return but the pay rates are far from advertised.

Further, as there is no requirement for commercial enterprises to disclose the number of trips taken on their platform or the number of registered vehicles on their books, it is difficult for drivers to evaluate economic propositions in order to make an informed business choice.

Recommendation 4

> *The CPVAA recommends curtailing the influx of commercial passenger vehicles into the market through a considered rise in the cost of the CPV annual permit rather than by applying a market cap on vehicles which would be difficult to fairly manage across the different sectors of the industry.*

Driver income

It is widely reported and understood that rideshare drivers earn below minimum wage. This is a direct result of the cheaper fares being offered by rideshare platforms as well as the number of commercial vehicles in supply diluting the workforce. There is no doubt that cheaper fares come at a direct cost to driver income.

Well-known motoring groups such as the RACV have estimated the cost of running a sedan model car for private use at around 65-70 cents per kilometre. Costs are considerably higher for cars used in the point to point passenger industry as a consequence of vehicle wear and tear associated with higher annual distances travelled. This includes services and major repairs. A conservative estimate of running a vehicle for the purposes of providing commercial passenger transport services (30 hours per week or more) is estimated to be closer to 80 cents per kilometre.

Uber does not openly advertise their base rates on their website but it is reported by the RSDU (Ride Share Drivers United) that in Melbourne, current Uber base rates per kilometre (inclusive of all fare components) is about $1.38. Following deduction of Uber’s 27% commission and 10% GST, there remains 87 cents net earnings per kilometre from which the running costs of the vehicle must be sourced. Compounding this is that not all kilometres travelled are paid kilometres. A proportion of the distance travelled will be unpaid kilometres travelling empty to pick up locations or areas of higher activity. Plainly, the margin of profit between operating costs and net earnings is slim creating an underclass of the working poor.

The seduction of rideshare is that it creates a false sense of positive cash flow with every shift ending with money being earned while the expenses of running a vehicle and a business are in many cases hidden and delayed. Wear and tear, servicing and maintenance, registration and insurance, GST, personal income tax and superannuation are not regular expenses and often not considered by vulnerable and naïve business operators. There is little provision set aside for these enduring expenses which only become apparent after some months of operation.

While there is no data available in Australia, unsurprisingly, the annual turnover of Uber drivers in the USA is reported to be as high as 90% in some cases. It is not inconceivable to assume that local statistics may be somewhat reflective of this number. Meanwhile, the delay in drivers realising the poor profitability within the sector supports the burn and churn business model of rideshare. For the most part it is a fallacy that the gig economy provides anywhere near the financial elements necessary to provide enduring and profitable conditions for its workers. It was once described that Uber drivers represent charity workers who drive the middle class around at their own cost.

Also notable is that there is a disconnect between the digital platform and those incurring all the operating costs of providing the service. The platform sets the price for the worker without any input or independent oversight at any level, which is plainly wrong. All Australian workers are deserving of an opportunity to earn at least the minimum wage regardless of the industry in which they work, their background or citizenship status.

Wage theft

Another important point worthy of a mention is that it is the responsibility of rideshare drivers to pay GST for each trip undertaken. While this is not problematic in itself, the way driver earnings are disbursed leaves them short of the GST they collect on each fare and are required to submit to the ATO.

It is reported for example, that a $10 fare would incur $1 GST added to the total. The passenger pays $11, Uber deducts 27% of the total fare (including GST) as commission leaving the driver with $8.03 from which $1 GST must be paid to the ATO. The driver is responsible for paying GST on Ubers cut of the fare yet Uber includes in their commission a cut of the GST by deducting from the total service charge rather than the base fare.

It should be that Uber deducts their commission from the $10 fare giving the driver $7.30 in earnings and leaving intact the $1 in GST for payment to the ATO. Uber is effectively short-changing drivers 2.7% of their earnings.

This is nothing short of blatant wage theft and should be immediately investigated.

Impact on Existing Businesses

Flouting the law

Prior to the emergence of rideshare and the resultant changes to the Victorian legislation in August 2017, taxi and hire car operators, drivers and licence holders had all been operating lawfully under the previous regulatory environment. There were no restrictions on the numbers of commercial passenger vehicles entering the market as the government were selling annual licences over the counter through the regulator at the time. So, there existed legitimate avenues for Uber drivers to lawfully purchase CPV licences and embark on their business venture with Uber. That they did not and were supported and encouraged in this decision by Uber brought about various issues.

The first of which surrounds Uber drivers unlawfully competing with existing members of the industry, in particular the taxi sector. This continued from 2014 since their emergence through to August 2017 when changes to the legislation were finalised paving the way for the rideshare workforce to enter the industry with minimal licencing costs.

Further, the predatory pricing model Uber used and continues to use to gain market share enabled them to penetrate the market in a way that may not have been successful otherwise. This was compounded by the fact that taxis are bound by regulated metered rates determined by the Essential Services Commission which sets a 'just' price on the service based on various vehicle operating costs and other market determinants. Taxis simply could not compete on price to foil any advance in competition.

Together, these factors caused harm to the industry and began a marked reduction in overall driver remuneration in the order of 30-40%. This reduction has been exacerbated since the changes to the Victorian legislation accommodating rideshare which deregulated the industry in 2017. This has triggered a flood of supply in the market to unsustainable levels, while patronage remains relatively unchanged.

Pre-2017 CPV licencing structure

The new legislation brought with it other changes to the historical licensing system which further devastated the industry.

Prior to August 2017, both taxis and hire cars fell under highly government regulated commercial passenger vehicle licencing conditions. Hire car licences, or pre-booked vehicle licences, were non-assignable and could be purchased directly from the regulator (formerly the TSC, Taxi Services Commission, now known as Commercial Passenger Vehicles Victoria, CPVV) for a one-off fee of $40,000.

Rideshare vehicles would have fallen within this category of licencing had operators chosen to comply with the existing law at that time. The cost of legitimate entry into this industry, however, did not suit Uber nor their underlying business model which relies on a constant stream of transitory workers who would otherwise be reluctant to invest in capital.

Taxi licences on the other hand, fell into two general categories, perpetual licences and non-transferrable annual licences. There were approximately 3,500 perpetual licences in circulation in Victoria with the remaining licences distributed as annual permits directly from the regulator for approximately $23,000 pa upfront.

Perpetual licences could be transferred on the open market and were able to be privately leased, the going rate somewhere in the order of $2,000 per calendar month as pegged by the cost of an annual government permit. Approximately 70% of perpetual licences were leased providing many with a revenue stream to service loans, cover living expenses and provide an income in retirement.

Over time, perpetual taxi licences acquired value due to scarcity. As in any investment market, volume impacts price. Through to the initiation of the Fels Taxi Industry Inquiry in 2011, the value of perpetual taxi licences had increased to around $500,000 with a return around $30,000 pa leased. However, following implementation of the Fels industry reforms which resulted in the introduction of unlimited government annual permits at $23,000 pa, the value of licences fell to approximately $300,000. This was reflective of the reduced annual return on privately leased plates as (indirectly) determined by the cost of annual permits available directly from the regulator in competition with the private market.

Since the emergence of Uber in 2014 and their disregard for the licencing system the resale value of perpetual taxi licences on the open market suffered a steep decline. In part, this was due to the unabated advance of Uber and the inability or unwillingness of the regulator to protect existing industry members from unlawful competition. A taxi or hire car licence granted to the bearer exclusive business rights in the commercial passenger vehicle industry. Yet, a commercial passenger vehicle licence had become irrelevant because the laws protecting those rights were being ignored.

Deregulation

Ultimately, the Victorian state government chose to deregulate the industry and in so doing all existing taxi and hire car licences under the previous regulatory structure were revoked and replaced with a single annual permit currently priced at $53.80. This was done without fair and reasonable compensation to ex-licence owners. Instead, the government offered an arbitrary transition package of $100,000 for a first taxi licence and $50,000 for a maximum of three more held under a single entity and nothing at all for other licences. Similarly, hire car licences were paid $25,000 for the first and $12,500 for up to three more.

The passenger transport industry had found itself at a crossroad facing challenges and issues forced upon it by the emergence of rideshare platforms and their disregard for the law. Deregulation of the industry was undoubtedly a bold move and there may have been some merit in taking this action. However, there have been many precedents of government licence buyouts or structural adjustment packages where the government has bought back each and every licence at a set price, determined independently. The fishing industry is but one example. For reasons which are not clear other than fiscal savings for the treasury, the licence owners of the transport industry were not afforded fair and reasonable consideration.

The question of licences as property had been decided by the High Court of Australia. In Federal Commissioner of Taxation v Murray (1998) 193 CLR 605, the majority of the High Court wrote that ‘the licence is property… A taxi licence is a valuable item of property because it has economic potential. It allows its holder to conduct a profitable business and it may be sold or leased for reward to a third party.'

Prior to being cancelled, a taxi licence was considered income bearing property and was able to be held as collateral against borrowings within the banking sector and many were included in superannuation investment funds. The decision by government to cancel these licences without due compensation has left many people in significant financial hardship. Many are paying off loans for a licence they no longer own and from income no longer derived from the licence itself. Others who had established themselves as self-funded retirees have found themselves seeking the pension or selling their homes. The devastation and financial ramifications were far reaching. Generally, when property is forcibly acquired by government it is customary to compensate people for their loss. It is one hallmark of a civilised society.

In no other jurisdiction worldwide has a government savaged and financially crippled the existing transport industry to accommodate Uber and rideshare. Over $1 billion in privately held property was seized overnight. Stripping private property from people to well-accommodate a multinational corporation reluctant to require their workforce to invest in business capital was unheard of, until now.

The emergence of rideshare and the gig economy in the transport sector may have forced decisions upon government to refine the legislation in order to accommodate new ways of conducting business. However, the path of deregulation was a decision unique to the Victorian state government and the choice made to achieve this with regard to recompense for licence holders is unclear in the way in which it was arrived. What is clear is that there has been an attempt at justifying the theft of privately held property in the name of industry reform and progress. This is simply un-Australian and it was unnecessary.

Recommendation 5

> *The CPVAA recommends a retrospective adjustment to the transition package received by licence owners reflective of an independent valuation of licences and buyback of each individual one.*

Summary

In a progressive democratic society becoming globally conscious and more willing to accept inconveniences for the greater good, one would think there would be greater concern for the sustainability of local economies in creating an environment where all Australian workers are treated justly.

Governments legislate and regulate for two main reasons. The first is political, dependent on the Government of the day and their philosophical agenda. The second reason is for safety.

As with all things, convenience and cost must be balanced with our social conscience and above all safety. As a society we have to ensure that we get this balance right, and that we do not allow the political imperatives of the first reason for legislation and regulation to overshadow the second reason; particularly where safety is a major issue for all effected by the legislation. The gig economy has a cost. Unfortunately, as can be seen in the point to point passenger industry, it is at the expense of those who can least afford it.