

## Introduction

13cabs appreciates the opportunity to contribute this confidential submission to the Economy and Infrastructure Standing Committee's Inquiry into the reforms to the Commercial Passenger Vehicle Industry that were introduced in 2017.

13cabs is the largest taxi network in Australia, with our head office and origins based in Melbourne. We are the subsidiary of the Australian ASX Listed company A2B Australia Limited, which provides infrastructure to the Victorian Government for the MPTP service. 13cabs wholly supports this Inquiry and provides this contribution on a well-informed basis from its many years within personal transport within Victoria and elsewhere.

The taxi industry in Victoria has faced continuous uncertainty and disruption over the last decade. Emerging competitors, regulatory change and shifts in consumer expectations have all factored in change to the Commercial Passenger Vehicle Industry landscape.

There are two key areas of focus resulting from the 2017 legislative reform process:

1. The first relates to those incumbent members of the taxi industry in 2017 and how the changes impacted on their businesses and lives. We have no doubt that the upheaval faced by many individuals, particularly holders of perpetual taxi licences will be a central area of focus for the Inquiry.

We will not speak at length on the impacts of the 2017 reforms on these people and their businesses, as we believe there are others better placed to do so. However, we would like to reiterate our firm view that this important cohort of hard-working Victorians did not receive the compensation to which they were entitled, effectively stripping them of assets they worked so hard to attain.

2. The second area of focus is the success of the new regulatory environment imposed by the 2017 reforms in achieving what they set out to do. There is no doubt that significant reform was necessary given the emergence of new, international competitors in the commercial passenger vehicle space. On the basis of their actions, they showed little regard for Victorian law. The Commercial Passenger Vehicle Industry Act 2017 clearly sets out the purposes of the Act, stating:

The main purposes of this Act are—

- (a) to provide for a new regulatory framework for the regulation of the commercial passenger vehicle industry in Victoria, including—

- (i) new safety duties for commercial passenger vehicle industry participants; and
  - (ii) registration schemes for commercial passenger vehicles and booking service providers; and
  - (iii) an accreditation scheme for drivers of commercial passenger vehicles; and
  - (iv) certain protections for:
    - (A) consumers of commercial passenger vehicle services; and
    - (B) drivers of commercial passenger vehicles; and
- (b) to impose a levy on the carrying out of commercial passenger vehicle service transactions:
- (i) to recover the cost of transitional assistance provided to certain participants in the commercial passenger vehicle industry; and
  - (ii) to partly fund the regulation of the commercial passenger vehicle industry.

For the purpose of this consultation, section (iv), (A) and (B) will be the key focus. Furthermore, we will look at how the Act has been put into operation by regulators and the combined resultant and continued regulatory bias toward a particular business model.

## Safety

Part 1, Section 1, of the *Commercial Passenger Vehicle Industry Act 2017* provides:

- (iv) certain protections for—
  - (A) consumers of commercial passenger vehicle services; and
  - (B) drivers of commercial passenger vehicles

This legislation clearly shows the level of disruption to the Victorian taxi industry by the addition of the above sub-section. Providing these protections for Commercial Passenger Vehicle drivers and services can now be shown to have been ineffective.

Regulations borne of the 2017 legislation have not gone far enough to ensure passenger and driver safety. Rather, they have sought to take the path of least political resistance. Resistance framed largely by new market entrants who simply refuse to adjust their business models to comply with prevailing legal frameworks or practical safety outcomes. Rather they have imported a product they have and sought to establish its safety adequacy. Acceptance of this approach has in effect come to represent regulatory bias.

The safety systems provided within taxis include always-on vehicle and passenger monitoring via tracking and audio systems, cameras based on the interior and exterior of the vehicle, strict driver authorisation criteria, record keeping, appropriate insurance and three times per year vehicle inspections. This is a level significantly above that used in ridesharing.

Driver safety is of paramount importance. In the face of drug and alcohol fuelled violence that has risen so dramatically that one only has to look at the introduction of “Lockout Laws” in Sydney, NSW. Taxi drivers ply their trade nightly. The use of visible cameras within and outside the taxi serves both as a deterrent and as an evidence gathering mechanism.

In contrast, the one safety feature rideshare vehicles rely on, the mobile phone is considered a dangerous distraction for drivers and heavy penalties apply for anyone even caught using a mobile phone while driving. There is no obvious safety feature that is unique (and legal) to a rideshare vehicle.

13cabs fully supports safety regulations; ensuring the safety of the Passenger and Driver are paramount. The unwillingness of particular regulators or companies to impose them or adhere to them should not be a consideration to the extent that it frames any policy response to identified risks. Vague statements about safety do not amount to actual, on the road action.

The original 2017 legislation and its subsequent regulations imposed very few safety requirements to vehicles performing 'booked' commercial vehicle or rideshare services.

Electronic records of trips are not safety measures and the notion that an electronic record of travel is enough to ensure safety is outrageous. The lack of a thorough safety regime for these services is unjustifiable when the traditional methods of CCTV has been used effectively since the mid-1990's.

Most public transport infrastructure, including buses, trains, bus stops and train stations, are fitted with various forms of electronic monitoring such as CCTV. Public transport journeys are now captured by electronic ticketing processes often linked to personal accounts, without removing the need to monitor modes of transport in other ways.

There are few if any safety mechanisms imposed upon the rideshare business model. This fact appears to be more born out of convenience and regulatory bias than evidence or common sense and needs to be reviewed as a priority.

Suggesting that access to the 000 service is a sufficient safety mechanism is simply erroneous. As an example, in 2013/2014 The NSW Ambulance Service reported that the Highest 1A priority median response time for potentially life-threatening cases was 7.65 minutes and the median Priority 1 response time was 10.78 minutes.<sup>1</sup> In 2012/13 it was 11.13 minutes. Data for Victoria is expected to be similar. (One can get a taxi faster)

At the very least, surveillance infrastructure is a vital evidentiary tool should something go wrong. Simply knowing where someone was proves very little. Commercial passenger vehicles are not different. 13cabs can see no reason why all commercial passenger vehicles should not be required to be fitted with an approved camera system.

#### **Recommendation**

1. That there be a review of the appropriateness of safety provisions as they relate to ride-share services in Victoria.
2. Ensuring the law applies equally and fairly to all business models in operation.

#### **Regulatory Practice**

The law was changed in 2017 to try and address some of the imbalances that existed due to the emergence of new competitors into the market that simply refused to follow the law. The nature of the businesses meant that local

<sup>1</sup> Ambulance Service of NSW report 2014

regulators had a great deal of trouble holding these businesses to account. As a result, it was determined the law and subsequent regulations needed to change to allow for fundamental shifts in the market (legitimate or otherwise). The political rhetoric of the day focused on the need to create a 'level playing field.' This is still the case, with further work and legislative amendment required.

There is no better example than current review of the 5% non-cash payment service fee. Division 3, specifically sections 122-124, of the *Commercial Passenger Vehicle Industry Act 2017* require the ESC to review the appropriateness of the level of the non-cash payment surcharge.

It is not the role of the economic regulator to pick winners or business models they may prefer. 13cabs are concerned that the approach the Essential Services Commission (ESC) have taken to review of the 5% non-cash payment fee favours a particular business model; that of the foreign rideshare provider, with no recourse to any regulated pricing and opaque but doubtless high fees at any point chosen by those under the model

It is our view that this price review levied only on the taxis sector is no longer necessary given the increase in competition on the CPV market generally. The customer is now able to make any number of choices regarding the service they use. Competition is now a far better regulator of the level of the non-cash payment processing fee than the ESC.

It is interesting to note that when Professor Allan Fels recommended the non-cash payment fee be capped at 5% and monitored by the ESC in 2012 as part of the Victorian Taxi Industry Inquiry, he notably overlooked the following recommendation:

*13.5 Removal of the service fee regulation applying to the processing of electronic payments for taxi fares should occur when competition is more effective in this area.*

It is the view of 13cabs that this easily overlooked recommendation should be recommended by this Inquiry and acted on. Further, if reviews of this fee are to be retained then we can see no reason that our foreign competitors who use different models should be excluded from it as is currently the case.

Regardless of this, the ESC is currently undertaking a review of the non-cash payment fee and, as industry participants, it is our duty to the travelling public to respond. Aspects of this review are concerning and exhibit regulatory bias towards particular business models.

The ESC must assign proper weight to its overarching statutory objective to protect the long-term interests of Victorian consumers regarding the price, quality and reliability of essential services, and assign proper weight to its other statutory objectives, including:<sup>2</sup>

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<sup>2</sup> Please see Schedule 1 for all of the ESC's statutory objectives in the context of this review

- the financial viability of the industry;
- the efficiency in the industry and incentives for long term investments;
- the degree of and scope for competition;
- the benefits and costs of regulation for consumers and users of products or services (including low income and vulnerable consumers); and
- the consistency in regulation between States and on a national basis.

As stated earlier, it would appear the ESC have applied the objectives of the Reserve Bank of Australia's (RBA) Standard<sup>3</sup> to their review. It is important to note that the RBA's standards are further limited than the Commission's. The objectives of the RBA Standard are to ensure that payment surcharges (as defined in that standard) are not excessive and reflect the cost of using the payment methods for which they are charged.

The RBA does not have an express statutory objective to consider the financial viability of merchants generally, or in particular sectors, or equivalent statutory objectives to the ESC.

The RBA itself has expressed reservations about the appropriateness of its acceptance cost model and, in noting the exclusion of the Taxi industry, contemplates that an appropriate rate of return should also be permitted. In discussing the Taxi industry's exclusion from its card payment regulations, the RBA observed that the Taxi industry raises difficult issues, stating that:

*" Given the greater complexity of the card payment process in the Taxi industry and the fact that most aspects of the industry – including Taxi fares – are heavily regulated, it is suggested it may be appropriate to leave regulation of surcharging in that industry to state regulators, who may be best placed to assess such issues as the actual cost or providing payment services in Taxis and the appropriate rate of return for Taxi payment providers"*<sup>4</sup>

Further, the RBA observed that while "a comprehensive definition that encompassed a wider range of costs faced by diverse merchants might be conceptually appealing,"<sup>5</sup> erring on the side of simplicity is likely to lead to an approach to surcharging that is more verifiable and enforceable in practice. In particular, costs that are internal to the merchant are not readily observable to a third party and are likely to be difficult to verify in an enforcement context (and are therefore excluded).<sup>6</sup>

<sup>3</sup> RBA, *Payment Systems (Regulation) Act 1998*, Standard no. 3 of 2016, Scheme rules relating to merchant pricing for credit, debit and prepaid card transactions

<sup>4</sup> Section 4.3.1 of the *RBA Review of Card Payment Regulation May 2016*

<sup>5</sup> Section 5.2.2 of the *RBA Review of Card Payment Regulation May 2016*

<sup>6</sup> Section 5.2.2 of the *RBA Review of Card Payment Regulation May 2016*

From a practical standpoint, the cost of acceptance methodology is not an appropriate model to use when considering in-Taxi electronic payments because the payment terminal provider does not sell (and therefore does not benefit from the sale of) the underlying service being the Taxi fare.

The ESC's statutory objectives mean that it would not be appropriate for the ESC to limit its approach to that adopted by the RBA of capping the maximum allowable, non-cash payment surcharge at the reasonable cost of acceptance and processing in-Taxi non-cash payments.

The ESC's proposed approach of using the RBA's reasonable cost of acceptance approach is too narrow to amount to a proper exercise of its statutory powers, having regard to the need to allocate proper weight to each of its statutory objectives.

Such an approach would fail to take into account the various differentiated business models that are currently used to provide in-Taxi payment processing services. In that regard, while acknowledging the powerful role of the ESC, the role does not extend to determining which out of a range of legitimate business models a service provider must adopt, or how a service provider must deliver non-cash payment processing services.

#### **Recommendation**

1. That sections of the Act and regulations that effectively favor a particular business model (such as Division 3, specifically sections 122-124, of the *Commercial Passenger Vehicle Industry Act 2017*) be amended or removed.
2. Taxi Driver Earnings - Fairly rewarding effort and reflecting market changes

#### **Driver earnings**

For too long now, Taxi Driver earnings have been depressed by political sensitivities and flawed economics, not as a result of market forces. A new threat to Driver earnings has also emerged since 2017. Large multinational competitors are using the vast capital reserves to subsidise trip cost. While this may appear to benefit consumers in the short term, the potential long-term consequences are significant. These companies are being allowed setting unreasonable and sustainable expectations around what a consumer can pay while at the same time ensuring a fair wage for Drivers.

Low earnings fail to reward people fairly for their work. They also compromise the attraction and retention of committed, long-term professionals to the industry, particularly in a genuinely competitive labour market.

Australians have a very strong commitment to fairness. This is reflected in regulation of industrial conditions and are far more generous than other nations we often compare ourselves to, such as the USA. When averaging Taxi Driver earnings on an hourly basis, it can be less than 75% of the national minimum wage in Australia, depending on the jurisdiction in which the Taxi Driver operates.

Whilst Taxi Drivers are traditionally engaged under a unique industrial structure referred to as Bailment, and owner-Drivers are small business people, considering wage growth is a helpful shorthand for changes in both labour productivity, inflation and living costs. Wage growth compared to growth in actual returns from CPV services show Taxi Drivers are not being properly remunerated for their effort.

Taxi Driver returns should also be considered alongside returns to other market participants. Due to the ability of technology to resolve information asymmetry, customers have more choice than ever, and service providers are accountable for delivery. The risk is for platform providers which increasingly control the channel to market can disenfranchise Drivers. This is why efficient competition for labour and labour mobility is so important.

Dynamic pricing at times of high demand can be successful in attracting greater supply at busy times. However, this can serve to reduce the total returns to Drivers of both Taxi and other CPV services. The success of traditional Taxi services and new market entrants is important for Drivers by reducing the market power of multinationals.

Preventing the emergence of dominant market power in the reformed market for CPV services no longer relies on price regulation but on ensuring the efficiency of competition. It is not reasonable to expect Taxi services to be able to efficiently compete with providers of substitute services that have no regulation on fares whilst Taxis have regulated maximums that artificially depress earnings.

Beyond issues of natural justice and equity, a near-term price adjustment is required to Taxi fares to ensure the positive externalities generated by the industry continue to flow to the community. Drivers are absolutely pivotal in ensuring this. Without adjusting fares upward, Driver returns will fall and the ability to attract and retain Drivers will diminish.

For the various reasons outlined above, we believe maximum fares for unbooked CPV services should be increased in Australian jurisdictions to ensure that returns to Drivers are increased in a way that is consistent with both the increases in the general level of costs and economic measures of living costs and productivity.

**Recommendation:**

1. An immediate review of the current the level of Taxi Driver remuneration to commence to ensure that Taxi Driver earnings at an appropriate level.
2. That regulated fares are increased by inflation annually to ensure Driver earnings do not fall behind average movements in Australian wage levels.
3. An immediate review of the pricing practices of rideshare companies operating in Victoria to ensure they are not 'predatory' in nature and set deliberately low deliver anti-