



Submission to the Inquiry into the *Commercial Passenger Vehicle Industry Act 2017* Reforms

28 June 2019

The Transport Workers' Union of Australia

1 About the TWU

The Transport Workers' Union of Australia (**TWU**) represents tens of thousands of men and women in Australia's aviation, oil, waste management, gas, road transport, passenger vehicle and freight logistics industries.

With over one hundred years' experience representing the workers who conduct Australia's crucial passenger and freight transport tasks, the TWU has been proactive in advocating for the establishment and improvement of industry standards which advance the lives and safety of transport workers, their families, and the community at large.

2 Introduction

The TWU welcomes the opportunity to contribute to the 'Inquiry into the *Commercial Passenger Vehicle Industry Act 2017 Reforms*' (**Inquiry**).

The taxi and hire car industries in Victoria, and indeed across Australia, have played a vital role in our urban transport history for over 100 years. They have long provided Australians a crucial complement to regular scheduled services provided by other forms of public transport, and have been (and continue to be) particularly valuable for elderly, disabled, and less mobile people for whom traditional forms of public transport may not be suitable.

Globally, however, traditional taxi and hire car industries have been dramatically disrupted in recent times with the emergence of ridesharing. Australia is no exception, and, in 2012, the industry was radically and irrevocably changed with the entry into the Australian market of Uber.

Whereas taxi and hire car industries across Australia were (and had been for decades) subject to tight government regulation on the bases of quantity, quality, and price – as well as, in some jurisdictions, such as NSW, with respect to the wages and conditions of drivers – Uber (and the rideshare companies that followed it) were allowed to enter the marketplace, and compete in it for some years, unencumbered by any regulatory obligations whatsoever.

To begin with, this was simply a result of Uber employing its usual *modus operandi* when entering a new market – namely, to disregard entirely all existing legal and regulatory frameworks, and to snap up market share by undercutting existing operators who have no option but to play by the existing rules.

However, the sluggish regulatory response by governments across the country provided tacit approval for Uber (and, later, the rideshare companies which followed it into the Australian market) to continue this practice undisturbed for years.

In 2015, some three years after the entry of Uber into the Australian market, the ACT (followed shortly by NSW) was the first jurisdiction in Australia to reform its regulatory frameworks to bring in ridesharing (with all jurisdictions now having established rideshare regulatory regimes in one form or another). This delay was perhaps unsurprising, given that, rather than encouraging the

states and territories to adopt proper transition strategies, even the (then) Prime Minister, Malcolm Turnbull, was instead busy applauding Uber for its “agile” business model (apparently notwithstanding the fact that the same business model appeared to involve complex tax avoidance strategies which saw the vast bulk of Uber’s Australian-generated sales revenue shifted into offshore structures, was based on the exploitation of a growing number of vulnerable workers, and was causing thousands of small businesses operating in the taxi and hire car industries to buckle).

In any event, whilst undoubtedly a complex issue for policymakers, the fact is that the combination of Uber’s flagrant disregard for the existing order and slow regulatory and policy responses by government ultimately resulted in devastating outcomes for the taxi and hire car industries. It is these outcomes and injustices which the *Commercial Passenger Vehicle Industry Act 2017* (Vic) (**the Act**) reforms were aimed, in part, at addressing.

While the reforms go some way to levelling the playing field for all operators in the commercial passenger vehicle industry (**CPV industry**) (including rideshare), a truly level playing field will not be realised unless and until there is enforceable, industry-wide regulation with respect to the rights and working conditions of CPV industry workers. The TWU submits that these further reforms are urgently needed both at a state and federal level.

3 Operation of the CPV Reforms

3.1 The Reforms

The *Commercial Passenger Vehicle Industry Bill 2017* (Vic) (**the Bill**) was introduced into Parliament on 23 February 2017, and passed through the lower house without amendment on 9 March 2017. The Bill was intended to implement the legislative changes needed to bring to bear the first stage of reforms announced by the Andrews Government on 23 August 2016.¹

In May 2017, the Bill was referred by the upper house to the Economy and Infrastructure Committee for consideration and report. Following two days of public hearings with 12 stakeholder groups appearing, the Committee’s report was tabled in Parliament on 8 June 2019.² As a result of the Committee’s report, the Bill was amended in a number of key respects (including as to the cost of the levy, which was ultimately halved). The Act came into operation on 2 July 2018, thereby replacing the existing law governing the CPV industry under the *Transport (Compliance and Miscellaneous) Act 1983* (Vic).

¹ See, Parliament of Victoria, *Parliamentary Debates*, Legislative Assembly, 23 February 2017, 398 (Jacinta Allan); The Hon Daniel Andrews MP, Premier, ‘Victoria Leads the Way with Safer, Simpler, More Flexible Trips’ (Media Release, 23 August 2016), at p 2.

² Legislative Council Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into the Commercial Passenger Vehicle Industry Bill 2017* (2017).

The overriding objective of the Act was to introduce uniform regulation over the CPV industry and, significantly, to legalise ridesharing services.³

The bold vision of the Victorian Government, as articulated by the (then) Minister for Public Transport (now Minister for Transport Infrastructure) during the second reading of the Bill, was that the reforms would be a “*major step toward an industry that competes on a level playing field*”, which would result in “*Australia’s first fully open and competitive passenger vehicle industry*”⁴. It was also the Government’s expectation that by levelling the regulatory playing field, including by eliminating existing taxi and hire car licences and introducing a single form of commercial passenger vehicle licence, consumers would benefit through increased competition due to an increase in the number of service providers in the market, which would in turn drive improvements in service quality and place downward pressure on fares as a result of there being less costs for operators.⁵ It remains to be seen whether these lofty ambitions, particularly with respect to fares, have eventuated.

With respect to the reforms themselves, the enactment of the Act brought reforms to the CPV industry in three key areas.

First, the Act replaced the definition of ‘taxi-cab network services’ with a new definition of ‘booking service’ to enable the regulation of services which facilitate bookings using computer programs and applications – that is, ridesharing platforms – which were not otherwise covered by the existing regulation.⁶

Secondly, the Act replaced the existing licencing system with new licences at an administrative cost only, thereby revoking existing taxi and hire car licences. Vehicles used to provide commercial passenger services were thenceforth registered as a single category of ‘passenger vehicle’.⁷ In addition, all CPV industry drivers were required to apply for and be granted accreditation by the Commercial Passenger Vehicle Commission.⁸ The Act has also moved to deregulate fares for all but unbooked services.

Thirdly, the Act implemented a \$1 per trip levy to fund the Government’s financial assistance package for the existing industry. The \$1 levy has applied to all taxi and hire car trips, including rideshare, since 1 July 2018. The providers of booking services are liable to pay the levy, however the Act allows this cost to be passed on to consumers.⁹

3.2 Operation of the Reforms

³ Ibid, at p 1; see also, *CPVI Act*, s 1.

⁴ Parliament of Victoria, above n 1, at p 398; see also, Explanatory Memorandum, Commercial Passenger Vehicle Industry Bill 2017 (Vic), at p 1.

⁵ Ibid.

⁶ Explanatory Memorandum, above n 4, at p 3; See also, *CPVI Act*, s 7.

⁷ See, *CPVI Act*, Pts 3 and 4.

⁸ See, *CPVI Act*, Pt 5.

⁹ See, *CPVI Act*, Pt 11.

The Economy and Infrastructure Committee is required to report by 30 October 2019 regarding the operation of the CPV industry reforms.

The TWU has limited information to submit on the operational impacts of the reforms brought in by the Act. However, some general comments may be made.

Something unquestionably needed to be done to address the injustices wrought on the existing taxi and hire car industries by the introduction of Uber, and ridesharing more broadly. The existing industry, as noted, was (and had been for decades) regulated. It may be assumed, given the very existence of strict government regulation in these industries, that the absence of such regulation would result in poor outcomes for the community at large. In that light, it is interesting that the decision was taken by the Victorian Government (and, indeed, most Australian state governments) to do away with the existing regulation rather than to bring Uber inside the pre-existing regulatory tent. It is not to say that it was the wrong decision, but it goes to show just how well Uber is able to leverage consumer support to pressure governments to make adjustments to accommodate its existence, rather than to enforce long standing regulation. The TWU hopes that this pressure will not be brought to bear to prevent the Government from tackling the next stage of reforms which are so critically needed.

The elimination of all forms of existing taxi and hire car licence fees in favour of a single form of CPV registration was a key plank in the Government's attempt to level the playing field in the CPV industry as a whole. Unsurprisingly, as indicated by the Inquiry's terms of reference, there are now greater numbers of taxi and hire car licences. It will be interesting to see whether there is any data around increased congestion or emissions as a result of the increased number of cars operating in this market. However, of concern to the TWU is the impact an oversupply of CPV industry services inevitably has on the earning capacity of drivers. The TWU will submit (below) that this should be managed through further reforms.

With respect, finally, to the levy, it was stated by the Government in its response to the report of the Economy and Infrastructure Committee's Inquiry into the Bill, that it would provide financial assistance to the existing industry not because it was legally required to, but because it was "*the right thing to do*".¹⁰ With respect, for the Government to have revoked the licences it had sold to taxi and hire car operators for decades without any form of compensation would have been unconscionable. Granted, the value of those licences had inflated well beyond the price set by Government (most recently just under \$25,000) as a result of private trading on the market (up to a peak of around \$500,000, before dropping rapidly following the introduction of rideshare), however the slow reaction of Government to regulate for rideshare effectively destroyed the value created under the rules of its own tight regulatory framework for the taxi and hire car industry. Thus, it was appropriate that the Government implement a compensation package.

The question was then how that compensation package ought be funded – namely, by the taxpayer, industry, or consumers. In the end, it appears as though the consumer has largely footed the bill, with the levy having been passed on by CPV operators in almost all cases. It will

¹⁰ Victorian Government Response to the Report of the Economy and Infrastructure Committee on the Inquiry into the Commercial Passenger Vehicle Industry Bill 2017, 21 June 2017, at p 5.

be interesting to see whether this has had any impact on the Government's expectation of lower fares overall.

Whilst the TWU welcomes the payment of compensation to existing taxi and hire car licence holders, more needs to be done. From the perspective of those existing licence holders, it appears clear that the compensation which has been paid by the Andrews Government to date (being \$100,000 per licence for the first licence, and \$50,000 each per licence for three subsequent licences to a maximum of \$250,000) has not been adequate, with Victorian taxi and hire car drivers recently joining a national class action to sue Uber for destroying their livelihoods by entering and operating in the market in complete disregard of existing regulations and accreditation processes.¹¹ Beyond raising clear questions about the adequacy of the compensation being offered to the existing industry by Government, this class action should also prompt reflection on whether deregulation was the appropriate response to the issues brought about by the introduction of rideshare to the Australian CPV market.

It is the TWU's submission that, as a result of the introduction of rideshare, there are deep and systemic issues in the CPV industry which cannot be cured simply by applying the band aid solution of (quite likely inadequate) compensation for existing industry. Rather, the CPV industry must be regulated to ensure: one, that there is a truly level playing field on which industry operators can fairly compete; two, that consumers are provided safe and high-quality services; and, three, very importantly, that those working in the industry are guaranteed fair and safe working conditions.

4 Avenues for Further Reforms

4.1 The Need for Further Reform

The Inquiry's terms of reference note that the Economy and Infrastructure Committee is required not only to report on the operation of the CPV reforms to date, but also to investigate further reforms "*to ensure Victorians benefit from the best functioning CPV industry possible*".

It is the TWU's submission that further reform is needed in order to genuinely level the playing field for the industry over the long term, and to ensure fairness for all participants.

In particular, the Government must urgently move to regulate conditions and remuneration-related matters for workers across the whole CPV industry.

The TWU recently had the opportunity to make a submission to the 'Inquiry into the Victorian On-demand Workforce' (**On-Demand Inquiry**),¹² and applauds the Victorian Government for being

¹¹ See, eg, 'Uber faces landmark class action', Workforce Issue 21485, 3 May 2019; 'Maurice Blackburn expands Uber class action case to NSW, Qld & WA', Workforce Issue 21313, 28 November 2018; 'Uber facing economic torts test case brought by taxi drivers', Workforce Issue 21255, 19 October 2018.

¹² Transport Workers' Union of Australia, *Submission to the Inquiry into the Victorian On-Demand Workforce*, 20 February 2019.

the first Australian jurisdiction to take active steps towards regulating work in the on-demand economy.

The TWU relies on that submission, which it does not intend to repeat here. However, some issues of particular relevance to ridesharing (particularly taking into account preliminary findings from a national survey by the Queensland University of Technology, University of Adelaide, and the University of Sydney into digital platform work which have been released in the interim), and potential avenues for further reform will be discussed below.

4.2 The Nature of Rideshare Work

The Nature of Rideshare Work Compared to the Taxi Industry – The Need for Regulation to Achieve a Level Playing Field

So long as Uber and other rideshare operators continue to operate outside the labour laws currently existing in Victoria and around the Country, there will be no true level playing field for the CPV industry.

By way of explanation, taxi drivers own or lease their vehicles, or are employed.

The relationship between taxi drivers who lease or use vehicles owned by someone else, and the taxi operators who own the vehicles, is one of bailor and bailee. Drivers pay the owner for the use of the taxi, and are entitled to retain, or be paid, a minimum percentage of 55 per cent of the gross fares that accrue when a commercial passenger vehicle is in the possession of a driver. Under the Act, bailors and bailees can enter into 'driver agreements', and the Commercial Passenger Vehicle Commission has jurisdiction to deal with disputes between parties to driver agreements (including by referring the dispute, in some circumstances, to VCAT to arbitrate). VCAT can, amongst other things, determine the terms of any condition of a driver agreement. Of course, if drivers are, on the other hand, employed by taxi operators, they are covered by the minimum conditions contained in the Modern Award.

Whilst it must be said that the protections for taxi drivers in Victoria fall short of those provided under the *Industrial Relations Act 1996* (NSW) (**IR Act (NSW)**) in NSW – which allows drivers to bargain collectively for industry wide 'contract determinations' to set minimum rates and conditions for drivers – they still far outstrip the protections enjoyed by rideshare drivers.

As is well known, rideshare represents a different work model to the traditional taxi and hire car industries. As a consequence, profitability for rideshare drivers looks different too.

Rideshare operators like Uber – which claims to merely provide a connection between car owners and passengers looking to obtain transport services on demand via their digital platform – in fact control many aspects of drivers' work, including the remuneration they receive, the jobs they are allocated, and things like surge pricing and discount promotions. Of course, they can also arbitrarily terminate drivers from their applications at any time with no recourse or avenue of appeal for drivers.

As it presently stands, rideshare companies like Uber clearly have a competitive advantage over traditional taxi operators (as well as good rideshare companies who want to do the right thing by their drivers) because they are not subject to any regulation around payment-related matters – rather they are able to, and do, undercut traditional taxi operators with lower fares which they afford by paying their drivers a pittance. It is the TWU's submission that uniform regulation covering the working conditions for drivers across the whole CPV industry is necessary if a truly level playing field is to be realised.

The Characteristics of Rideshare Workers – The Need for Regulation to Ensure Decency, Safety, and Fairness for Drivers

However, beyond regulation being necessary to achieve that end, it is the TWU's strong submission that regulation imposing appropriate minimum standards for workers across the CPV industry is urgently required in any event in order to address the poor conditions currently experienced by rideshare workers, to stop the wholesale exploitation and prevent a generation of working poor, and to ensure drivers, passengers and general road users can be assured of their safety and do not have to worry about rideshare drivers working dangerously long shifts just to make ends meet.

The TWU has long been vocal about the exploitation of workers in the on-demand economy, and in particular, in rideshare. Rights are being eroded, and, as mentioned, in many cases the driving down of standards is the business model of on-demand entities.¹³ In its submission to the On-Demand Inquiry, the TWU set out findings from a joint TWU and Rideshare Driver Co-Operative survey of 1,153 rideshare drivers in 2018.

The findings of that survey have been enforced by the preliminary findings of a national survey of over 14,000 on-demand or 'gig' workers undertaken by the Queensland University of Technology, University of Adelaide, and the University of Technology, Sydney, released last week.¹⁴

That survey found that 13.8 per cent of Victorians (and 13.1 per cent of Australians overall) had undertaken some form of on-demand, digital platform work, with 7.4 per cent currently doing so. This equates to around 1 in 10 Victorians having engaged in on-demand work at some time, and around 500,000 currently doing so. This number is growing.¹⁵

With respect to on-demand transport services in particular, the report made the following preliminary findings:

- (1) Transport and food delivery work makes up the highest proportion of the type of work currently performed by platform workers, with 18.6 per cent of respondents performing this type of work. The platforms on which people most commonly work

¹³ Andrew Stewart and Jim Stanford, 'Regulating Work in the Gig Economy: What are the Options?' (2017) 29(3) *Economic and Labour Relations Review*, at p 2.

¹⁴ Professor Paul McDonald et al, *Digital Platform Work in Australian – Preliminary Findings From a National Survey*, Research Commissioned by the Victorian Department of Premier and Cabinet, 19 June 2019.

¹⁵ *Ibid*, at p 3.

are those offering transport and food delivery work (with Uber having been used by 22.7 per cent of respondents within the past 12 months);¹⁶

- (2) Transport and food delivery workers are significantly more likely to be younger (between 17 and 34 years of age), to have temporary residency status, and to speak a language other than English at home compared to all on-demand workers. They are significantly less likely to be Australian citizens;¹⁷
- (3) Transport and food delivery workers are more likely to work more regularly,¹⁸ and for longer hours;¹⁹
- (4) In terms of income, transport and food delivery workers are overrepresented in the \$15-\$19.99 and \$20-\$29.99 per hour income categories. It should be noted that these were hourly rates calculated before costs, meaning once expenses like petrol, registration and insurance, and amounts for superannuation and paid sick and annual leave are deducted, those workers would be earning a real wage falling well below the National Minimum Wage (which is currently \$18.93 per hour, due to increase to \$19.49 per hour on 1 July 2019);²⁰
- (5) Of the 15.4 per cent of respondents who considered their work to be 'essential for meeting their basic needs', most were performing transport and food delivery work.²¹ In fact, transport and food delivery workers were much more likely to say that their work generated 100 per cent of their total annual income than any other on-demand workers;²² and
- (6) Transport and food delivery workers are significantly less satisfied with the ability to set the price for their services than other on-demand workers.

What these findings show, in a nutshell, is not only that rideshare makes up the largest proportion of the growing on-demand economy, but that rideshare workers are more likely to be vulnerable (due to their young age, or non-English speaking or temporary resident status), to work more often, and to rely on rideshare work for their entire income. They also report being dissatisfied with their ability to set the price for their services compared to on-demand workers in general, and are more likely to earn less money (equating to an income which falls well below the minimum wage after costs).

The control rideshare companies exercise over the income of drivers is extreme. In fact, workers have no real control over what they earn except as to how many hours they choose to work (the same could be said of casual employees). Despite some rideshare companies providing incentive-based bonus systems ostensibly aimed at providing avenues for drivers to increase their earnings, the Rideshare Driver Co-Operative has told the TWU that such bonus systems are near

¹⁶ Ibid, at ps 4 and 15.

¹⁷ Ibid at p 18.

¹⁸ Ibid, at p 5.

¹⁹ Ibid, at p 20.

²⁰ Ibid, at p 19.

²¹ Ibid, at p 5.

²² Ibid, at p 30.

impossible to achieve, such that they do not really feature as a viable means by which drivers can actually expect to increase their income.

Further, with a greater supply of CPV industry operators now in the market as a result of the Act's deregulation of the existing licencing and registration structures, this inevitably means more unpaid waiting time for drivers, and less overall income.

Taking the above into account, it must be accepted that any argument which insists that rideshare workers are not in need of protection by way of minimum standards is absurd, inaccurate, and shameful.

This is a view strongly shared by rideshare workers. Backed by the TWU, rideshare workers have protested as recently as 8 May 2019 as part of a global day of action over poor rates and conditions. Such demonstrations can be expected to continue unless and until these issues are dealt with.

Conclusion Re the Need for Further Regulation

While governments continue to fail to act to address the exploitation of workers which is so clearly occurring in the rideshare industry and the on-demand economy at large, Unions are left with the job of trying to lobby companies to commit to ethical and fair labour practices. The TWU has been active in this space, and has achieved memorandums of understanding with Coles and Airbnb – both of whom want to explore the opportunities this sector brings, but to do it fairly, safely and responsibly – with respect to the rights and conditions of the on-demand workers directly engaged by them and those who may be indirectly engaged through their networks.

The TWU will continue doing this work, and the companies which come to the table may be commended. However, once again, the companies who are willing to voluntarily come to the table and who want to do the right thing remain at a competitive disadvantage compared to those companies who have no interest in doing the same unless and until they are forced to by an enforceable, prescriptive framework of regulatory labour standards applying to every worker in the CPV industry.

Leaving it up to the good conscience of companies does not work.

Uber has been operating in Australia for seven years. The evidence around the exploitation, inadequate pay, and poor conditions for drivers continues to mount. If the Victorian Government wishes to achieve a truly level playing field for all participants in the CPV industry, and at the same time address the exploitation and poor working conditions faced by rideshare drivers, it is time for Parliament to safely and fairly regulate working conditions for drivers across the CPV industry.

4.3 Key Components of a Future Regulatory System

The TWU would like to see industry wide regulation which provides for the following:

- (1) The provision of minimum labour protections for rideshare workers, namely, appropriate compensation payments, paid leave entitlements, superannuation, safe working conditions, workers' compensation, compensation for capital investment and equivalent employees ordinary-hour entitlements (in other words, the same basic minimum protections already enjoyed by most of the Australian workforce);
- (2) Transparency for rideshare workers around how their work is monitored, controlled, and remunerated;
- (3) An opportunity for rideshare workers to contribute to a collective voice through access to collective bargaining mechanisms and the ability to be represented by an industrial organisation;
- (4) Access for rideshare workers to dispute resolution processes, including conciliation and arbitration, through an independent body; and
- (5) Adequate and appropriate resourcing to ensure regulation is enforced, and to invest into rideshare driver education, rights, obligations and training.

It is the TWU's submission that the five foregoing points represent the core principals which must be provided for in any future regulatory system if the goals of levelling the playing field for all industry participants, ensuring a high level of service and safety for consumers, and providing decent and fair work for drivers are to be realised.

4.4 Models for a Future Regulatory System

Whilst, globally, we have now seen many examples of companies like Uber being banned from operation in various jurisdictions and for various reasons – for example in London in September 2017, for a lack of corporate responsibility²³ - it appears, from the general trend towards deregulation happening across Australian jurisdictions, that ridesharing is here to stay for the foreseeable future at least.

Whilst the question of how to design a regulatory model which would best deliver the key regulatory components referred to above is no doubt complex, it is the TWU's submission that there are existing models which show that it can be done.

The Seattle Example

We have seen jurisdictions globally embrace the right of rideshare workers to representation by their trade union, and to bargain collectively with rideshare companies. For example, in Seattle in December 2017, where the Teamsters won a landmark City Council Ordinance which permits for-

²³ <https://www.theaustralian.com.au/business/technology/twu-calls-for-urgent-uber-review-after-london-ban/news-story/a89ecd5e450d0492953dcb46c8b8243b>.

hire drivers to unionise and collectively bargain for better compensation rates and other contract terms.²⁴

The New York City Example

Further, we have seen jurisdictions grapple – very successfully – with the complicated question of how to implement a workable system of ‘minimum payments’ for rideshare drivers whilst keeping the industry viable. For example, New York City has very recently implemented a trip and utilisation-based earnings standard for rideshare drivers, making it one of the first (if not the first) city in the world, certainly in the United States, to introduce a ‘minimum wage’ arrangement for rideshare drivers.

In December 2018, the New York City Taxi and Limousine Commission (**TLC**) adopted rules to protect driver earnings. Beginning 1 February 2019, ‘high-volume for-hire’ services (being those services that dispatch more than 10,000 trips per day – namely, Uber, Lyft, Juno and Via), which companies were previously paying drivers less than \$US17.22 per hour, became subject to a new pay standard.

The pay standard has three components which combine to provide drivers a minimum take home pay for each trip after covering expenses – namely, time, distance, and utilisation. The time component of the formula ensures drivers are compensated for all time spent on the road (including the time in between trips which they were hitherto not paid for – as is the case in Australia). The distance component ensures all major expenses borne by drivers are covered. And the utilisation component represents the share of time drivers spend with passengers and incentivises companies to more efficiently utilise their driver pool to reduce driver downtime and stop oversupply issues (including by, potentially, limiting the number of drivers accessing their apps – having the added benefits of reducing the number of vehicles on the road thereby having benefits for congestion and emissions).

The rules do not set the passenger fare or establish a minimum wage *per se*, rather they regulate the minimum amount the largest rideshare companies must pay drivers for each trip.

An economic report commissioned by the TLC prior to the implementation of the standard found that 85 per cent of the city’s rideshare drivers earned less than the proposed earnings floor of \$US17.22 per hour, and that this was in large part because the industry depended upon a ready availability of idle drivers to minimise passenger wait times. However, it was predicted that the proposed policy, which would have the effect of increasing driver net earnings (after expenses) by 22.5 per cent, or an average of \$US6,345 per year, could be fully paid for by combining an increase of 2.4 minutes in driver trips with passengers per working hour, with some reductions in

²⁴ Stone, Katherine, ‘Unions in the Precarious Economy: How Collective Bargaining can Help Gig and On Demand Workers’, *The American Prospect*, 21 February 2017, available at <https://prospect.org/article/unions-precarius-economy>.

company commissions. It predicted that fare increases would then be small (five percent or less) and average wait times for passengers would increase by around 12 to 15 seconds only.²⁵

Early results published in June 2019 show that, since the rules came into effect in February up until the third week of May 2019, drivers were paid an additional \$US172 million (indicating substantial compliance with the new standards by rideshare companies).²⁶ A full evaluation of the first six months of operation of the new standards is expected to be released by the TLC soon.

The New South Wales Model

Closer to home, we have successful examples of industry-wide regulation of work relationships falling outside the typical 'employer-employee' example.

For example, in NSW, the working conditions of owner drivers and bailees are regulated under Ch 6 of the IR Act (NSW). Chapter 6 empowers the State's Industrial Relations Commission (**NSW IRC**) to make 'contract determinations' across industries, which operate much the same way as awards for employees, but simply provide minimum pay and conditions by way of complex cost models which aim to provide cost recovery for owner drivers (and, in certain circumstances, to bailees). It also empowers the NSW IRC to deal with industrial disputes involving owner drivers or bailees, to register enterprise level contract agreements or contracts of bailment, and to deal with unfair contract terminations and goodwill disputes. The 'Chapter 6' model has existed in NSW in one form or another since the 1960s, and has enjoyed a remarkable degree of industry-wide and bipartisan political support over that time. It is an example of a robust and well-established system administered by a highly experienced tribunal, which has long successfully balanced the needs of vulnerable owner drivers (who, as a result of their high dependency upon those with whom they contract, are prone to exploitation) with the freedom of transport operators to contract. It is a model which provides for sustainable competition by ensuring that the intensely competitive transport market in NSW operates in the context of sustainable, certain rate structures fostered by minimalist industrial protections. It has contributed tangible productivity and efficiency benefits to transport companies and the industry as a whole, not least because of the avenue it provides for the quick and efficient resolution of industrial disputes through the IRC.

There is no reason why such a model could not be employed in Victoria and extended to include the entire CPV industry, including rideshare. Indeed, NSW Labor committed, prior to the recent NSW State Election, to expand the coverage of Chapter 6 to cover rideshare and other on-demand workers working in the transport and food delivery area should it have won government.

A Possible Basis for a Victorian Model

²⁵ James A Parrott and Michael Reich, *An Earnings Standard for New York City's App-based Drivers: Economic Analysis and Policy Assessment*, Report for the New York City Taxi and Limousine Commission, July 2018.

²⁶ Taxi & Limousine Commission, Driver Pay Updates, 11 June 2019, see at <https://www1.nyc.gov/assets/tlc/downloads/pdf/comm_presentation_20190425_4.pdf>.

Indeed, Victoria already has a model which could perhaps be used as a basis and expanded upon to regulate working conditions across the CPV industry. In particular, the Victorian *Owner Driver and Forestry Contractors Act 2005* (Vic) which enacted legislation last year to give owner drivers protections from unfair business practices and access to low-cost dispute resolution. While there are some shortcomings to this legislation which would need to be addressed in order to support a regulatory framework which provides for the core regulatory components set out earlier, for example, it doesn't allow for sector bargaining like NSW, and lacks recourse to an independent tribunal for the conciliation and arbitration of disputes and standard setting, it is still able to establish rights for workers and may provide a basis from which to expand.

Conclusion Re Models

All of this is to say that the ask of an industry wide framework to regulate work across the CPV industry is not pie in the sky. It is complex, but it is not impossible. We have models that already exist in this country which could be replicated by a government that is brave enough to tackle this issue. And we can also see innovative thinking around the world which shows that complex questions around such things as minimum pay rates can be successfully grappled with, bringing a more level playing field for industry participants, greater safety and service outcomes for consumers, and decency and fairness for workers. It can be done, is has been done, and it is being done.

Again, the TWU applauds the Victorian Government for being the first Australian government to begin looking to the regulation of work in the on-demand economy, and encourages it to continue to push forward in this area.

5 Concluding Remarks

The TWU once again applauds the Victorian Government for taking some first steps towards levelling the playing field in the CPV industry and to offer some partial compensation to the existing industry for the damage to their businesses caused by the introduction of rideshare.

However, urgent regulatory reform is needed, both on a state and federal level, to address the deep and systemic issues apparent in the CPV industry following the introduction into the market of rideshare. In particular, a framework for uniform, industry-wide regulation on working standards and conditions must urgently be legislated for.

To this end, the TWU applauds the Victorian Government for considering further avenues of reform to make the CPV industry fairer by way of this Inquiry, and more broadly for being the first Australian jurisdiction to begin looking seriously at the need to regulate work in the on-demand economy through the On-Demand Inquiry.

On-demand work, and particularly work via rideshare platforms, is growing. The conditions and remuneration received by workers is clearly inadequate. If a truly level playing field for CPV industry participants is to be realised, and workers are to be protected from exploitation by rideshare operators moving forward, the Government must urgently move to regulate minimum protections for rideshare workers across the CPV industry.