

# TRANSCRIPT

## STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

### Inquiry into the Commercial Passenger Vehicle Industry Bill 2017

Melbourne — 23 May 2017

#### Members

Mr Bernie Finn — Chair

Mr Khalil Eideh — Deputy Chair

Mr Jeff Bourman

Mr Nazih Elasmr

Ms Colleen Hartland

Mr Shaun Leane

Mr Craig Ondarchie

Mr Luke O'Sullivan

#### Participating members

Mr Greg Barber

Ms Samantha Dunn

Mr Cesar Melhem

Mr Gordon Rich-Phillips

#### Witnesses

Ms Bronwyn Lincoln, Partner, Corrs Chambers Westgarth,

Mr Haydn Carmichael, Barrister,

Mr Mark Shehata, Operations Manager, Exclusive Cab Management, and

Ms Eleanor Fitz, Wodonga Taxis, Victorian Taxi & Hire-car Families.

**The CHAIR** — I will reconvene the public hearing and extend a very warm welcome to our witnesses. All evidence, as I am sure you are aware, taken at this hearing is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but if you go outside and repeat the same things, those comments may not be protected by privilege, and you may need lawyers! So be very careful of that.

If I can ask you to address the committee for 5 or 10 minutes, we will then open up for questions. I would also appreciate it if you would give your names and positions and addresses — just a suburb will do — for the official record.

**Ms LINCOLN** — Thank you very much. My name is Bronwyn Lincoln. I am a partner at Corrs Chambers Westgarth. If it assists the committee, I will indicate that our submission will be presented by four speakers, so that might perhaps assist in relation to questions that the committee might have. We may cover different topics, and I will allow my fellow speakers to introduce themselves before they speak.

I thank the committee for the opportunity to give evidence today. I do so on behalf of the Victorian taxi family association, or the VTF, which represents the largest association representing taxi licence holders in Victoria. It is very important to note as a starting point that the VTF is not against reform. We are not here to advocate against reform but to speak to the reforms which have been put on the table and the fact that they are grossly unfair to all of the members of our client. They strike directly at the livelihoods of over 5000 Victorians who hold licences, and the committee has heard earlier today some individual examples of the impact and the toll that the reforms and proposed changes are taking on individuals and families.

The families that we represent have worked hard all of their lives in pursuit of what you might describe as the Australian dream. Many of them do not have high levels of education and many of them have come to Australia from other countries. They have worked exceedingly hard to contribute to the economy and to Victoria and to Australia, and as they raised their families they acquired taxi licences and engaged in the commercial passenger vehicle industry in the hope of starting a small business.

Taxi licences are assets which were issued by the Victorian government. Many of the families have actually held these licences since the 1950s. This is not a new industry, as the committee will know. For our members their view, and you can understand this view, was that if they worked hard and they acquired the asset — many of them borrowed money to buy the asset in the first place — it would give them a chance to actually self-fund their retirement to support their families. Until recent times, until the reforms were announced, actually this opportunity was realised for them, but when the reforms were announced by the government, that changed in an instant. I will just speak in a moment to a particular provision of the proposed legislation, which is almost to the effect of a guillotine coming down in respect of perpetual licences.

So the focus of my evidence is on the proposed section 360, which committee members may be aware is, if I can refer to it, the revocation clause, and the committee has heard evidence about the impact of this from other speakers this morning. The second focus of my evidence is on the absence within the proposed legislation of the provision for any compensation whatsoever for perpetual licence-holders, and that is of immediate and significant concern.

Under the proposed 360, all perpetual licences, which are assets, cease to exist, so it revokes them immediately upon the coming into force of law of the bill. Taxi licence holders who have secured loans against those will expect a call from the bank or the financial institution, and we know anecdotally that where these licences have been provided as security, the banks are already communicating with these licence-holders. So they are getting calls: ‘Where is your security?’. There is no security for the loans. Many of the banks will then look to these people’s houses, so the place where they live is at risk.

Many licence-holders purchased a licence in their superannuation fund, and that is significant, that the asset was sufficient for the purpose of a superannuation investment. Those people are facing retirement without any asset to rely on. But what is even worse than that is the revocation. If I hold a licence today and I have assigned it to a driver, when the bill comes into force I lose that licence. The person who is driving the cab under the licence that was assigned gets a so-called permit to drive. I get nothing. That is akin to me having an apartment, renting it to you, the law changes, you get the right to live in the apartment and I get nothing. That is grossly unfair. It just does not work within our concept of social justice.

The second point that I wanted to address the committee on is the transitional assistance, which we say is arbitrary. We have requested modelling information. We have received none on behalf of our client. If it is appropriately structured and enshrined in legislation, it might constitute a contribution to capital loss, so to the capital value of a perpetual licence. It is nowhere near that at the moment. It is not fair, it is not genuine and it is not compensation for capital loss at any measure. It just does not address the impact of this wholesale restructuring of the industry that is proposed.

Furthermore, in spite of the government announcements to the contrary, this bill that is on the table at the moment contains no reference to compensation — none. Coming here this morning I heard media reports about the bill. The media reporter was under the impression that this bill addresses the issue of compensation. It does not. There is no right to compensation in the bill, there is no reference to the proprietary nature of a licence, there is no reference to any financial assistance and there is no reference to the Fairness Fund.

Our submission, and you will hear from the other speakers, is that the bill must not be allowed to pass as is, and we sincerely ask that the concerns that are put to the committee are taken into account and the appropriate amendments made. I will table at an appropriate time for the committee two letters which Corrs sent to the Minister for Public Transport in April and May which outline our concerns in relation to the bill. I will hand over now to Mark Shehata.

**Mr SHEHATA** — Thank you, Bronwyn. Thank you to all the committee members for allowing me the opportunity to present. My name is Mark Shehata. I am an executive of Victorian Taxi and Hire Car Families, and I am also the operations manager of Exclusive Cab Management. I had the pleasure of presenting to you previously in the other inquiry into ride sourcing, if you remember. For those of you who are unaware, my family have licences and operate a taxi business also.

I am here today on behalf of Victorian taxi families, representing taxi licence holders in Victoria, hire car licence holders, taxi operators and taxidriviers, but above all I am here as a human being. I am deeply troubled with the mental and financial strain that our members are being placed under. As far as I am concerned all issues can be resolved, should we wish, if we have all aspects discussed and agree on a resolution. While it may be difficult to please everyone, we may be able to find some middle ground which can be somewhat of a compromise.

We respect the right of the government to reform any industry and move forward with changes. The industry is open to discussion in coming to an agreement for the greater good of the majority. There may be some confusion as to why licence-holders are concerned with the bill. There is a perception that licence-holders can continue on with their business. Most licence-holders do not operate a taxi business. There is a clear distinction between someone who holds a licence and someone who operates a taxi. They are two separate entities, they are two separate people.

A major concern for licence-holders is the fact that under the proposed bill their licence will be cancelled, effectively cutting their income payment without any compensation. For many years taxi and hire car licence holders have worked extremely hard to build a small nest egg for their family's future and financial independence. Some have worked over 100 hours in order to pay off their debts for obtaining their taxi licence in the first place. A taxi licence was never cheap. At the time, when it cost \$10 000, we must put in reference that a metropolitan house at the same time was also \$10 000. Most licence-holders have debts secured against their homes or licences and will be left in dire straits once the reforms are implemented. Many licence-holders do not have superannuation and rely on the income derived through their assignments in order to support themselves and their families.

I am not a lawyer, so I will not comment on technical legal aspects of this bill. But I will note that a wise man, Mahatma Gandhi, once said, 'There are unjust laws as there are unjust men'. He was talking of laws and men which did not reflect reason, which were discriminatory, which disregarded true facts in favour of arbitrary settlements. Nothing about this hearing today and no member of this committee intends any injustice, yet there is a great injustice before you.

It is hard for me to find better words to describe the error being made by this government than the words of now Premier, Daniel Andrews, himself. Speaking to a large group of licence-holders in a taxi depot in Huntingdale on 21 November 2012, he said, and was quoted in the *Herald Sun* the following day as saying, and I quote:

These hardworking people are the best working people in the taxi industry, and we need to be careful not to be making them unviable ...

I don't think that is going to do anything to deliver better outcomes for passengers, better outcomes in terms of safety or quality.

Many of our hardworking members who live in suburbs like Frankston, Bentleigh, Carrum and Mordialloc were happy when Mr Andrews won the election in 2014. They had heard his very explicit promises to protect taxi and hire car licence holders and therefore decided not to sell their taxi licence at the going rate at that time for \$300 000. This is how licence-holders feel they have been rewarded. Meanwhile, the government has generated untold millions of dollars in revenue each year over decades from these families by creating and selling these asset classes. Walking away from this promise not only devastates families by ignoring decades of hard work and investment by taxi licence holders, it increases sovereign risk immensely.

A more just settlement is within your hands, but a greater justice will not become law unless you reject this bill in its current form and consider amendments. I am deeply concerned about the issues surrounding families servicing debts against taxi licences and also hire car licences. However, they are servicing debts for a proposed cancelled licence, something they will never receive any commercial benefit from in the future.

If the \$2 levy is absorbed by businesses and is not passed on to passengers, this will replace licence fees. This puts the incumbent industry at a significant disadvantage because they have already purchased a taxi licence previously. In effect they are purchasing a taxi licence twice.

There was a large deal of confusion from the State Revenue Office in regard to the number of trips in Victoria. They stated there was only 20 million. 13CABS control, I believe, 50 per cent of the taxi market alone. They stated, in their own words, between 15 and 20 million. I would call it 20 million based on my figures. Add Silver Top to that, that is another 20 million. They control another 50 per cent of the market. Add hire car, another 5 million, let us say; add ridesharing, another 5 million. We are talking between 50 million and 60 million trips every year. Based on those figures the government stands to collect their whole package within three years. It is also indexed at CPI with no sunset clause. We expect that that may be reduced due to the fact of population growth and the growth of the number of fares in a deregulated market. Fares drop, demand goes up, and we will probably get a lot more people using the commercial passenger vehicle industry in Victoria.

I just want to briefly touch on how some licence-holders are being significantly disadvantaged. If you hold more than four licences you are only paid on four licences. Some people that own a lot less licences are getting far more because they hold them in separate entities. If someone holds four licences in separate entities, they would receive \$400 000. Someone who owns 20 licences in one entity would only receive \$250 000. It is just beyond comprehension. I cannot comprehend how they came up with this analogy. I would like to see the modelling, but it has not been forthcoming at this point.

My parents, like many others in this industry, have come here with nothing. They come from countries where property rights are not respected, and in a country like ours I believe that we should show dignity to the people that came here to start a better life. Finally, I would like to thank each and every member of the committee for allowing me the privilege to appear before you. Thank you for your time.

**Ms FITZ** — Good morning and thank you for the opportunity to present. My name is Eleanor Fitz. I am a director of Amalgamated Taxis Wodonga, and I am representing regional Victoria because the cooperative operation of Wodonga taxis is very similar to a number of other networks and regional taxi businesses around the state. I have spoken with colleagues around the state and there is a commonality in terms of how the businesses are operated and information is shared.

In regional Victoria taxi operators are saying that the Andrews government's reforms and the intention of a safer, fairer taxi service have fallen disastrously short for the following reasons: the asset cancellation and licence values, past Victorian governments sold perpetual licences to intending taxi operators and/or investors and the perpetual licences were, by the definition of perpetual, continuous, everlasting, unending. It seems they are not. Perpetual taxi licences have long been recognised as assets, personal property, by the Australian Taxation Office for taxation income, Centrelink for assets valuation and all of the major banks for loans and other financial collateral.

To me a major plank of the government's commercial passenger vehicle bill appears to be intentionally structured for denial and revoking of these assets without due compensation. The revoking of the value of the

licences without full compensation has triggered economic chaos for a large number of taxi operators in regional Victoria and, in reality, across the state. The loss of assignment income will have a significant economic impact.

On a personal level, for my story, I have a husband who is legally blind, who is currently terminally ill and he is going to lose \$22 000 a year with absolutely no redress. It is just taken off us, stolen. It was suggested to us in communication with government departments that he could apply for a new permit and he would be able to work again.

The very prolonged process of deregulation and crafting of the legislation which plans to revoke all of these licences and reduce them to zero value has created great economic uncertainty and, more importantly, substantial legacy debt. People have taken out significant mortgages to buy the taxis as a perpetual licence from a government department who in earlier years regulated licence sales and turnover. Looking back, some years back, in lieu of no fare increases for eight years, previous governments established processes that allowed the government-controlled perpetual licences to be traded on the open market. The Bendigo Stock Exchange was set up to enable trade. It was enabled to put licence values into superannuation, and that has all been taken away. It is being stolen. For the taxi operators in regional Victoria, who in good faith purchased licences, to now have the present-value calculations of the licences invalidated and cancelled without full compensation is questionably poor government business planning, and it is a gross infringement on the human rights of the purchasers of the licences.

There is also right now a direct correlation between the draconian bill and rapacious behaviour by the banks across the state, who are now calling in taxi licence loan customers to discuss their loan structures and to seek restructure adjustments either by recall of loans or by demand for the injection of more collateral against the loans. Some of the Wodonga taxi owners who to date have never been late for a payment, have never missed a payment, are being called by their banks for a 'please explain' of their financial positions. In Wodonga and across the state this is seeing some family homes under threat or on the market as the owners frantically try to save their businesses and themselves from bankruptcy. On a personal level, right now I stand between my son and insolvency. He has a mortgage on his home, and he is going to have a debt of \$200 000 and no business to sell — nothing.

The transition adjustment is generally referred to as compensation and the planning of the transition is flawed. The utilisation of population statistics coupled with distance from Melbourne to determine the payment levels of \$100 000 for metropolitan and urban and \$50 000 for regional does not recognise all of the indications of consumer taxi service usage and spend. To just take numbers, to just use the metrics to come up with the solution, is totally unrealistic. This can be evidenced regionally by the lack of other public transport at night. We have not got bus services, we have not got trains, we have not got other options that are available in metropolitan Melbourne. The lack of public transport sees Wodonga taxis and other regional services undertake twice the short trips of urban taxi services, which in turn sees a parallel annual income, yet they are being penalised by the significant dollar difference between urban and regional taxis for the transition payment.

The next point is that disability and wheelchair-accessible taxi service provision is under threat in regional Victoria. The government has long demanded and relied on the taxi industry to provide transport services for the disabled. Wodonga taxis bought the first wheelchair vehicle in regional Victoria. Historically, regional taxi services have been able to purchase wheelchair-accessible vehicles with 100 per cent loans financed by the high value of the licences. That has now gone, so our ability to use the licence as part of the collateral to buy the vehicle and have it modified is no longer. Linked to this is the very clear fact that pre the Fells inquiry the Wodonga taxi WAT licences were valued at \$340 000 each. They are now valueless.

Because of the government's adoption of the inquiry recommendations and the current government's impending new legislation — and I am talking Wodonga specifically at the moment — these licences are devalued to zero, and this sees a net loss to the owners of the four licences that we have with a previous value of \$1 360 000 against a transition adjustment payment of \$125 000. That is it. It is an upcoming reality that in regional Victoria as many of these WAT-licensed vehicles near the end of their life will not be replaced. We cannot afford it, so it will be reduced services for the disabled within the community. They are now becoming aware of this, and they are not happy. They express their concerns in the strongest ways possible. It is an unrealistic expectation of the government that this very expensive area of transport service provision will be

taken up by new entrants. It is the cost of the vehicles, and it is the cost of the modifications, the fitting of the hoist — all of that — and the additional training of the drivers. All of those things add up.

I would like to move on to the levy. The open-ended, unworkable levy is an overt tax, which in time will see small taxi networks become absolutely unsustainable. Regional taxi services have told me they will not be able to absorb the levy, and the ones I have spoken to have said that they will definitely pass on the cost. The administrative burden of the levy will also require the networks to employ staff they will not be able to afford, and the owner-drivers and the hapless bailee drivers will, via the networks, be caught in the middle as quasi-tax collectors. These same drivers will also have to face the angst of customers, and I have no doubt that violence will erupt. It will come. Antisocial behaviour on Friday and Saturday nights will impact and violence will occur, and there will be life-altering impacts because people will fight against the imposition of the levy. It is hard enough getting people to put up the money for the after 10 o'clock at night prepayment, just to put some money on the dash, let alone add in the levy as well. The general public does not like it, they do not want it and they are angry about it.

In regional Victoria short taxi fares are our norm. We do fares as low as \$4. To put a \$2 levy on that is very significant. The elderly, the unwell, the low-income families, a lot of these people in inclement weather — very hot, very cold, very wet; you name it — will take a bus to the shopping centre and they will get a taxi home to manage all their parcels and shopping et cetera, and to put that levy imposition on is cruel and unjust. It will make taxis unaffordable; they will not take them.

The Fairness Fund to assist taxi operators in financial distress is going to be incomplete until the end of June at earliest. It has to wait until the legislation is passed, and for some operators this much-publicised financial assistance will most likely be too late. They will be gone, they will go under, because their banks are calling in on their loans. Additionally the government has elected not to make the assistance payout an ex-gratia payment, although it was advised that it would be a good thing to do. Whatever dollar assistance is offered will be subjected to crippling levels of taxation, which will impact significantly on legacy debt reduction. So if you get \$50 000 and you have to pay \$20 000 of it in tax, the \$30 000 is not going to do too much for my son against the \$200 000 debt.

So in summary the severe financial, social and emotional impact created by the deregulation of taxi licence value has generated statewide economic loss and debt legacy. The badly planned time lines, the token industry transition payment subsequently rebranded as compensation, which was initially offered over eight years and then from industry pressure amended to two years, has seen many taxi operators and their families suffer unreasonable levels of stress. For some it has led to serious hospitalisations. You heard some of the stories earlier this morning. My son had five weeks in a psych hospital in February and part of March, and he is still on very strong medication and not able to work well.

Bank loans are being renegotiated at higher level interest rates in a climate of reduced business return, and some borrowers to meet bank requirements are selling other assets or, at worst, their homes to add to the collateral of the renegotiated licence loans, and this is when banks are supposedly saying that they are not doing this. My own bank branch manager has indicated he would be happy to write to say he has had a directive from head office to go through the process of revisiting and recalling loans.

Future WAT services have a serious shadow over them, and the regional taxi industry is very aware that the impending services reduction will not be well received and the reductions will impact on the quality of life and living for the disabled. We get it; we truly get it. The bill needs serious revision to meet the government mantra of 'safer, fairer taxi services' and action is needed for real compensation for perpetual licences. That is what I have to say, and I thank you for the opportunity to say it.

**Mr CARMICHAEL** — Chair, members of the committee, my name is Haydn Carmichael. I am a barrister and I appear on behalf of the Victorian Taxi Families Association. Chair, I have observed the proceedings this morning. One cannot but be impressed by the diligence, the thoughtfulness of the participation of this committee upon these important matters concerning, as they do, a transformative proposal in bill form that concerns the interest for all Victorians, where my clients have a significant and historic role in supporting through licensed vehicle operation and commercial vehicle operation an adjunct to the public transport system.

Make no mistake, your endeavours — the checks and balances constituted by your inquiries, your questioning, your examination of the facts and premises that underlie this bill — are a singular check and balance. Make no

mistake, all of those before you trust and rely upon the integrity of this process — its openness to inquiry, its openness to examine the facts that premise this bill. I will demonstrate that there are significant premises which are unrevealed in this legislation, which are unsupported by anything that Fels said and which would appear to contradict apolitical positions of each of the major parties. In particular there is no apparent indication in Fels whatsoever that would justify the revocation of perpetual licence holders for no capital compensation whatsoever. You will look in vain to the Fels inquiry report to find economic justification identified, articulated, expressed or demonstrated to be well founded on evidence for an effect so drastic and so dire in the terms directly explained from people who must be heard today.

I am reminded that a great jurist when addressing an issue of natural justice, which is as you well know the right to be heard by an open mind in an open inquiry, said this: that the law is strewn with examples of cases which were thought open and shut. We are presented in one sense with an open and shut case, after years of reform deliberation in the form of this bill. But it is not yet too late to examine premises which if uncorrected will deliver a profound injustice and an inequity. The jurist said the law is strewn with examples of cases which were thought open and shut yet which upon further consideration and reflection resulted in different judgement.

Mr Bolt today, in response to a question of you, Chair, said something profoundly important to your deliberations: ‘These are matters of judgement’, he said. They are not a formula. If they are, they stand to be tested as judgement, they stand to be examined for the facts that would support the judgement, and if the judgement is all one way, Mr Bolt’s views on this bill remain intact. But I will demonstrate that it is not all one way. There are other ways to achieving these reforms that do not cause an inequity to lawful market participants who have expended their capital in supporting a process that all governments have profited from over time — that is, a licensed system which procured funds in part for government but which provided a mechanism for regulating the industry.

You have heard from Ms Lincoln that nothing about my clients’ position seeks to set to nought the government’s proper concern to realise competitive reforms. The question that I am raising is: where as a matter of fact — and I will tell you, you cannot find it in Fels — can you find any support for the proposition that to revoke perpetual licence rights for no capital compensation whatsoever advances competitive capacity? You will not find it. And in the absence of it, are you in a position to take so decisive a step today as to affirm this bill? The answer must be obvious. It is more than intuitive that there is no factual foundation for a proposition that says take away and give nothing in return but you just continue to compete with all those that have come in having spent nothing at the outset, or not much. Their entry to the playing field facilitated our capacity to continue to fund our competition — not so, but denied by a step that is within the power of government to not take.

There are other routes, and when Mr Bolt said today, ‘These are matters of judgement’, he was saying, with great respect, two other things as I understood it. Judgements can be informed by a multitude of facts. It depends on the facts you are asked or presented with to form the judgement. That is an important matter. When in response, Ms Dunn, to a question of yours concerning assumptions, he conceded squarely and honestly that there were certain assumptions but not others. This does not indicate imperfection in Mr Bolt. It indicates what you, as participants in government process dealing with, in the significance of your high office, the matters of significance, must deal with. You are often called upon, on imperfect information, to make difficult choices. But where the information is so imperfect — such as the question that arose today from Ms Dunn, such as the question of yours, Chair, about the foundation of judgement, about what informed a judgement — and when there are information gaps that emerge as part of the answer, the question arises: well, if that information gap was furnished with fact, would the judgement expressed be different? Would the judgement expressed be different?

What are the key issues here that we might focus upon? An issue so radical, so decisive, so effective to deny former rights relied upon, created and regulated by the system — apolitically, I stress — over many years are on the passage of this bill, were it to go forward unamended, revoked. A guillotine, and no capital compensation whatsoever.

The judgement that I seek is unequivocal of this committee: that the industry reforms which unamended this bill would introduce come at significant capital cost. That fact is incontrovertible. Fels referred to it. Your past deliberations and deliberations of other committees in consideration of taxi reform have needed to address the

historic facts of the valuation of licences, and the significance of the capital investment required to enable participation in this market over time has been evident. So there is a significant capital cost.

Of the question, ‘Ought it be compensated as capital?’, the conclusion that I invite you to draw is that it makes no sense in terms of efficiency, competition or equity arguments that the core participants in the commercial passenger vehicle sector of the public transport system be denied their value of investment or be denied the capital underpinning their competition. I will repeat it: nothing about public policy, nothing about efficiency arguments that have been demonstrated before the committee — nor in questions today, nor in the Fels report — would demonstrate how it is that to deny absolutely by the effect of clause 360 of the bill affecting a revocation without capital compensation at all — —

Nothing about the arguments made to justify that new fact of revocation is supported by articulated developed arguments that indicate that to do so supports the capacity of the market participants whom I represent, whom the Victorian taxi and hire car industry association speakers spoke of, in their competition with new entrants. It is this which apolitically this committee must be most concerned with. We can all be committed to greater participation, greater competition and therefore benefits to consumers and more efficiencies in the entire market. All of us can be committed to that. The question is the route. The question that I am posing is whether there is presently any answer to the question: why this route?

I want to come to what Mr Fels said. His report was of course on implementing reform, a significant step by a profoundly experienced man in competition policy. Critically, going to the question of where this idea about revocation as a necessary element of reform without capital compensation came from, I have said that we look to the Fels report and find no answer. Well, let me tell you the answers we do find. Rather than revocation — in referring, as the report at page 241 does on the top of that page, the report titled *Customers First* — the report says:

Under the inquiry’s proposal, an owner of a perpetual and transferable taxi licence will still be:

will still be —

permitted to operate a taxi

free to sell the licence

free to lease the licence to someone wanting to operate a taxi

and be —

entitled to receive income from the lessee of the licence.

On page 241:

... the inquiry is not proposing that licences will be compulsorily acquired; nor is what owners can do with their licences being changed: they will still be able to lease, operate or sell their licences. Accordingly, calls for compensation in submissions must rest on a diminution in the value of licences.

Well, if the premise changes that there is in effect a revocation, then the question of compensation arises squarely and differently.

The new taxicab licence that was proposed, which is a licence free of all the benefits of the asset values that a perpetual taxi licence holds, was a licence which is fundamentally different, and it was assumed by Fels that the two would operate co-jointly. New entrants would be facilitated entry by a lesser species of licence called a new taxicab licence.

Mr Mulder, when introducing the Transport Legislation Amendment (Foundation Taxi and Hire Car Reforms) Bill 2013, in support of which there was an explanatory memorandum which referred to the Fels report and recommendations, affirmed again that a key foundational element of the reforms was to:

... provide support for the equity and income positions of existing licence-holders.

Page 2, Explanatory Memorandum. Is this bipartisan? Well, there is nothing that I have heard that would indicate on this question as to whether there is foundation and evidence to demonstrate that revocation of

licences for no capital value will advance one jot the competitive position of those holders of licences that are revoked in competition with new entrants. Is it by all measure an apolitical position? Well, the now Premier is reported in the *Herald Sun* on Thursday, 22 November 2012, to have said this at a meeting of taxidrivers. The article says:

Mr Andrews visited a group of licence-holders in Huntingdale yesterday and said he understood their concerns about their equity being washed away.

And this is a quote:

These hardworking people are the best working people in the taxi industry, and we need to be careful not to be making them unviable.

Wise words. For that wisdom to have been the fact in 2012 — foreshadowing the position of Mr Mulder in 2013, affirming the position after long inquiry of Mr Fels — we would need to see some new and significant evidence to justify revocation without capital compensation if what we are wanting to do is to secure the competition of those core heart-and-soul participants in the market already — not those who might come in but those who are there. Where is it to be found? On my best inquiries, I have not been able to find it.

So what is the consequence here? The consequence is absolutely clear that 360 is, as the minister stated in introducing the bill in her second-reading speech, to intend to affect a revocation. Of then the question as to what impact or implication that might have for property rights — which, theoretically different from countries like Russia and so on, Australia seeks to protect and which in any event this Parliament needs to take cognisance of because of the Charter Act — she advanced what can only be described, with great respect, as humbug.

The proposition that was put by the minister was that the government acknowledges that the value of licences has been reduced significantly in recent years and that the revenue that can be obtained from licences has likewise declined. It includes the assertion that, and in the context of the compliance with the Charter Act report, noting section 20 of the Charter Act that:

A person must not be deprived of his or her property other than in accordance with law —

the statement relied upon by the minister said:

This right is not limited where there is a law which authorises a deprivation of property, and that law is adequately accessible, clear and certain, and sufficiently precise to enable a person to regulate their conduct.

Two key criteria: that it is adequately accessible, clear and certain, and yet we have just identified that this revocation proposal has come, it would seem, from the ether, introduced for the first time apparently at around the time this bill was introduced and yet not supported by prior inquiries, at least that I have seen. Secondly, that there is a capacity by reason of the clarity and the certainty of the legislation that a person is able to regulate their conduct.

I can conclude by asking a rhetorical question. When Louis XIV was delivered to the guillotine, it was of little comfort to him to say, ‘There is nothing you can do about your situation’, as he placed himself down upon his knees, nor could he because of the events that occurred. So ask yourselves, with respect, this fundamental question: what can my clients, including the speakers today, do to alter one jot the effect of this threatened revocation in terms of it demolishing, extinguishing, the capital value of their asset? Answer, if it passes nothing.

There is a key issue in this which arises for the consideration of this committee. What can be said is that this legislation represents an unresolved ferment of a lot of thinking and very sophisticated public policy process. Mr Bolt advanced the proposition that this was by far the best of the reform proposals for other states. Two points: revocation is not an essential step in other states, so for it to be an essential element in Victoria, there must be something justifying it. It is hard to find.

**Mr LEANE** — I do not know if it was Mr Bolt that actually indicated that. It might have been 13CABS. I do not know if it was Mr Bolt that said this.

**Mr CARMICHAEL** — I am conscious of the time, and the last thing I want to do in any sense is to misdirect you. So may I take that — —

**Mr LEANE** — Yes.

**Mr CARMICHAEL** — But of the question as to whether and how we get to an answer — an effective public policy outcome — there is a simple point. There is much in agreement between the major parties. Those who are members of the major parties that come from country areas have spoken of particular issues, and what has emerged is that there is a cross-subsidy effect, a cross-subsidy effect that, as in response to your question, revealed that Mr Bolt's department it seems was not asked to answer the question of whether a levy that would not effect a cross-subsidy that might be introduced would be discriminating so as to protect interests. But the extraordinary and slightly sensational conclusion to be drawn from today's evidence is that Victorian country people will be paying more for a longer period than some others, so indicating an imperfect information-gathering, advice-giving policy-producing process. So of the ferment, what can be said? But that is illustration enough that there is more work yet to be done. The benchmark of process of which this committee stands as a check and a balance, that the integrity of the checks and balances that this process brings and enables, such as through the submissions heard today and that you will hear tomorrow, enables consideration anew to be given. The difficult questions it poses and the inconvenience that arises is that everyone, including my clients, want resolution, they want clarity.

The best work of commercial passenger vehicle reform is yet to be done, and is as yet undone. The best work will produce an outcome to which my clients assent their commitment in competition with new entrants. That is the basis for engaging the best possible outcome in Victoria, not in penalising or prejudicing those that have lawfully participated in a market by inhibiting their capacity to fund their competition from the capital they invested historically in. Thank you very much.

**The CHAIR** — Thank you. We have overstepped our time limit, but I am going to extend it a little bit further. Can we keep our questions brief and succinct, and I suggest to any member who has a legal question that we might be able to submit those questions on notice and get a response from our two legal representatives here at some stage in the not-too-distant future. First of all, I have only got one question, and that is: it is clear that there is enormous personal distress on the families of the taxi industry, if I can call them that. Ms Fitz, you have told us about your son. Between the two of you, what are some of the other instances that you have seen of the effect that this has had on people personally?

**Ms FITZ** — Well, I know of two attempted suicides that were foiled, and the people have received counselling and lots of support, but their mental states are very fragile. I know of another operator who has had to divest of just about everything he owns but is hanging on — in his words — by his fingernails to his house. So it is very real. It is very real, and I just do not think it has been understood in any shape or form. Mark?

**Mr SHEHATA** — Thank you for the question. I have seen a large number of licence-holders suffer from severe depression, sleepless nights, unfortunately marriage break-ups, domestic violence, stress, anxiety. It is beyond comprehension what is happening to these people. They cannot cope. I receive in excess — I know this is very hard to believe but it is true — 100 phone calls a day related to this issue here. So it is significantly impacting, first, the mental health of people and, secondly, the financial health of these people's lives.

**Mr MELHEM** — I will ask one question, and I might have some other questions that follow on from that. To me, what I get from your collective representation here is that the biggest issue is the level of compensation. That is the biggest single issue. Is that about right?

**Mr CARMICHAEL** — And the characterisation of it as capital.

**Mr MELHEM** — Yes, just in that bundle. When the shadow minister, Mr Hodggett, for example, was saying the \$494 million by the Andrews Labor government is a slush fund to keep you happy, that is not true, is it? That does not represent because there is not enough to start off with. It is a misleading statement, full stop. Can I then put to you — and I am not sure whether you put in a submission already — what is the solution? I think I have heard some figures where, as we have proposed, the payment of \$50 000 per licence could fix the problem.

**Mr SHEHATA** — To be honest with you, I cannot comment for everyone in the industry, but what I can comment on is the industry as a whole. To pay out \$250 000 per licence, plus a \$50 million hardship package, that would come to \$1.052 billion. I believe one of you asked that question previously and could not answer the question. It was \$1.052 billion, including a \$50 million hardship package. The \$250 000 will not make everyone

happy, I am going to be honest with you; however, it is somewhat of a compromise. I am speaking in my personal opinion. I am not speaking for everyone, because there are some people that paid \$500 000 for a licence. But you are right in one aspect: this is only about the level of transitional payments or compensation or whatever the government wants to call it. That is the only issue here. We are not opposed to the bill. We are opposed to the level of compensation.

**Ms DUNN** — Thank you, everyone, for your presentation. In your presentation, Ms Lincoln, you talked about the bill not passing as is. Mr Shehata, you talked about considering amendments to the bill. I just wanted to get an idea of what they look like. That might be a very big question that you might want to get back to the committee on, and I guess we could incorporate that into the Hansard transcript in some way —

**The CHAIR** — I am sure that will be the case.

**Ms DUNN** — or as a further submission.

**The CHAIR** — I will just check with the secretary of the committee. Can we incorporate the questions on notice and the responses in the Hansard transcript?

**Ms TOPIC** — We can attach them.

**The CHAIR** — Great. Thank you.

**Ms DUNN** — Because I imagine there is no short answer, but if there is a really short answer, take it away and supply us with further info.

**Mr SHEHATA** — I will give a brief, short answer. First of all, compensation on each and every single licence at a fair and equitable level. It is not fair that the first licence is more expensive than the 20th. How does that make any sense? Or the first licence is more expensive than your 30th. It does not make sense. Each and every single licence to be paid out fairly and equitably. I also believe that the Fairness Fund should deliver financial relief immediately. It should not be hindered in any way. Whether the bill passes or not, these people are in financial dire straits; they need immediate financial assistance. There is no benefit to anyone to withhold that money. I believe it should be forthcoming immediately and it should be passed in legislation also.

**Ms LINCOLN** — Might I just add that if compensation of a capital nature is to be paid in respect of a perpetual licence then it needs to be paid when the revocation occurs, not drip-fed over two years.

**Ms DUNN** — Okay. Thank you.

**Mr SHEHATA** — One little thing I would like to add to that is that the taxation issue is of significant importance. When anyone bought a licence they bought a licence with after-tax money. Why is it that now that that licence is being cancelled we are being taxed on the money?

**Mr O'SULLIVAN** — In terms of the time frame there are 1000 questions that come out of it and we obviously we will not get a chance to get into all of those today, but what we have heard from Eleanor and Mark today is quite concerning, as are a lot of the answers in terms of the impact that it is actually having on drivers and their families and those small businesses, not just in the suburbs of Melbourne but also in Wodonga. I am hearing that very much in other parts of the state as well, so it is good, Eleanor, to hear your understanding and your views from a regional point of view which does not always get the exposure that it should. It is as much an issue, and in fact in some instances more of an issue in some of the country areas than what it is in the city, but it is a significant issue right across the state.

One of the questions I want to ask, Ms Lincoln, is that you said that there had been two letters to the minister with some of the issues that had been raised. Has the minister written back to you and responded to those letters and given any comfort in terms of understanding or wanting to listen to those concerns and try to bring about a better outcome for the taxi industry?

**Ms LINCOLN** — No, we have had no response, and I seek to table a copy of those letters now if I might.

**Mr O'SULLIVAN** — When did those letters go to the minister?

**Ms LINCOLN** — 5 April and 8 May.

**Mr O’SULLIVAN** — And no response.

**Mr LEANE** — I have got some questions that I can put on notice that are not on legal but on the industry stance. I do not want to eat into other witnesses time so I will do that.

**Mr BOURMAN** — I am not going to ask anything about fairness because clearly there is nothing that could be characterised as fair about this situation, but I do have some legal stuff which I will put on notice.

**The CHAIR** — Thank you indeed for coming in and giving your evidence today. In the next three weeks or so you will receive a Hansard transcript. If you could proofread that, for obvious reasons, that would be much appreciated. I thank you once again for your contribution today.

**Mr CARMICHAEL** — Thank you very much also. We regret the challenges of time but thank you very much for your attention.

**The CHAIR** — Thank you.

**Witnesses withdrew.**