

TRANSCRIPT

STANDING COMMITTEE ON THE ECONOMY AND INFRASTRUCTURE

Inquiry into the Commercial Passenger Vehicle Industry Bill 2017

Melbourne — 24 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

Professor Denis Nelthorpe, Chief Executive Officer, WEstJustice.

The CHAIR — Professor Nelthorpe, welcome.

Prof. NELTHORPE — Thank you.

The CHAIR — I will tell you now that the evidence taken at this hearing is protected by parliamentary privilege, as you're probably aware. Therefore you are protected against any action for what you say here tonight but if you go outside and repeat the same things, those comments may not be protected by this privilege. If I could ask you to start by stating your name and position and suburb for the record. I'm going to open up for 5, maybe 10 minutes with an opening statement and then we will move to questions. Thank you.

Prof. NELTHORPE — My name is Denis Nelthorpe. I am the chief executive office of WEstJustice which is a community legal centre covering two thirds of West Melbourne. Previously we were three separate legal centres, one of those being Footscray Legal Centre.

I live in the western suburbs in Moonee Valley and I work obviously across the west. In 2011–12 our legal service started probably the only legal centre in the country, started a service to assist taxi drivers and we did that because we became aware of very significant exploitation of drivers, particularly in relation to the insurance arrangements and then as we conducted further case work it became clear that there were a range of exploitations that were grossly impacting the driver population. That was in relation to things like basic payment arrangements, the so called 60/40 split, many of them weren't being paid that, the insurance arrangements where it wasn't their vehicle but they were being forced to pay insurance premiums, and in particular, the excesses on accidents and then after making those payments were basically left for dead with judgments and some of them were being bankrupted. As we continued the work we started to realise that many owner drivers didn't own anything, they were actually leasing both the car and the licence and that they had some of the same problems. We also assisted a significant number of African owner drivers who had taken out wheelchair taxi licences in what was clearly a botched option of the licences which caused enormous difficulty.

The CHAIR — They're out of here. Please continue, thank you.

Prof. NELTHORPE — Right. Now, we did most of that work before the Fels inquiry was announced by the previous state government but by the time the Fels inquiry came along there was one overwhelmingly obvious proposition that couldn't be avoided and that was that the fair or the returns from the taxi industry were not large enough to support three different entities trying to take a share of that funding. The pie wasn't large enough to support licence owners or vehicle operators and drivers so we made submissions to the Fels inquiry really based on the proposition that by the time that inquiry had been called, the industry was in serious trouble.

There were obvious difficulties and those difficulties related in my view almost exclusively to the fact that the licence they knew had reached such incredible levels that by the time the owner or the purchaser of that licence paid the interest on the licence, tried to make a return on it, then you had the owner of the vehicle who might be separate trying to make it and finally the driver, all three could not possibly get a fair deal out of that transaction. We made submissions to the Fels inquiry that there should be a change in the 60/40 rule down to 50/50. We argued and worked with both the insurance industry and the taxi industry to try and introduce proper insurance arrangements.

Victoria for a variety of reasons was the only state in Australia where there was no real insurance on the taxi industry and despite the changes introduced by the previous government, that is still a problem and we are working with the Victorian Taxi Association and the Insurance Council to try and solve that. So I think when we're looking at this legislation the starting point for me was that things were — there was a real problem back in 2011–12. Now, we then worked with the regulator of the Victoria Taxi Association in trying to make some of those — or work through those sort of reforms. I might add, it's also interesting that when you look back at the Fels inquiry submissions very few of them even mentioned Uber.

Uber really wasn't a major factor in that review and the best way of showing that is that the knowledge test that was introduced might have been a good idea if Uber hadn't have appeared, but because of the timing at the very

time the knowledge test was introduced, you could actually transfer straight over and drive for Uber and so if you failed the knowledge test, and I might add the knowledge test was also completely botched, almost no one could pass it and so it meant that most people just transferred over and went to Uber.

Now, we also saw a significant number of small licence holders who were in financial difficulty so about, I don't know when it was, 18 months ago perhaps when the first \$4 million hardship fund arose we assisted about a dozen people, a dozen licence owners to make application, some of whom were successful and we also entered into negotiations with their creditors which is something WEstJustice does across the range for a lot of our clients. When the more recent fund was announced the department contacted us and asked us whether we would run a major program to assist licence holders.

We ultimately took about 1000 calls, responded in depth to 500 of those, held about 200 first instance face to face interviews and assisted about 150 make their applications. Our teams wasn't just with the lawyers and volunteers of the legal service. We had financial counsellors and a social worker and the social worker is here with me tonight. It's worth noting that out of those 150 we think about 130 have significant financial difficulties, or certainly have finances that I wouldn't want to have.

We also had a significant number who were referred by a social worker for personal or relationship counselling, financial counselling, mortgage stress counselling, but that's a program only available in the outer west and we had that project, if the program had been more widely available there would have been more and we had some 16 applicants who were followed up because of serious concerns about their welfare. If you don't want to say exactly what that fear was, but it was a very serious concern. Now, we've had discussions with the four major banks about the financial circumstances of a lot of those clients and we've asked them not to take action anyone that we notify them of.

That's difficult because we were only taking instructions initially to help with the application. We had discussions with the minister's office and the department and we believe that we are going to be funded to run a small, and I emphasise small, service for those who are most in difficulty. We're not offering and can't offer to assist everyone, so those that have, for instance, investment properties that are at risk will have to go and see their accountant or a financial planner. But those who are faced with, or have already lost their home, we will hopefully be able to assist in some way. Now, when it comes to finally the legislation my comment would be we cannot sort out their finances, nor can the licence holders sort out their finances until they actually know what they're getting.

We can't get them to go and see accountants to work out a whole lot of subsequent questions. Where there are a whole - they can't sort out their personal lives and clearly a significant number have either lost relationships or have serious personal issues that in my view will not be resolved until there is some finality and I think the legislation will go some way to that and I would also that the sort of insurance issues that we have been trying to resolve can't be - the Victorian Taxi Association and others in the industry don't have time to turn their mind to those sort of issues until we deal with the fundamentals around how we deal with these licences.

That's a summary of the work we've been doing, the work we will continue to do and why we think the legislation - and by the way, you know, if I had been the one running how they sort of structured the transition payments or some of those funds, I'd have probably done it differently, but I'm not wearing it. I think it would have been better to probably focus most heavily on the most recent purchases. I think those who've had the licences the longest have actually, as Mr Fels said, had a pretty good return on the investment. Those who bought it in the last seven to ten years have clearly, and the most recent ones, have obviously copped it pretty bad and, you know, there's no getting around that and it has put their houses at risk.

The CHAIR — Thank you very much for a very comprehensive opening comment. It has been suggested to us yesterday that this legislation may well be unconstitutional. Have you had any thoughts on that from a legal perspective?

Prof. NELTHORPE — Look, we've tried to remain relatively neutral on the politics of the legislation. What I would say is this is a bit like saying, you know, Kodak might have thought there were unconstitutionality in legislation governing their new competitors. Ride-sharing is here to stay. There are segments of the population like the younger ones who are going to use it. What we need to do is sort out the best solution we can for the problems we have and I'm really not sure as a lawyer, I'm not sure that resorting to the fine print to find a short term way of interfering with this. Obviously it would be better if the legislation survives a constitutional challenge. But ultimately I'd say to those who want to challenge it in that way, your licences might end up worth nothing if you wait long enough. These payments are not - for instance, if you bought one in the last three years or four years, these payments are not going to cover your losses, there's no way, I don't think. But I actually think that the mental health issues, the relationship issues and the financial issues need to be brought to a head.

The CHAIR — Do you think the compensation transition payment, call it what you will, is adequate?

Prof. NELTHORPE — I think the difficulty is that it's a one size fits all. So it's probably overly adequate if you bought the licence a long time ago and it's inadequate if you bought the licence more recently, but I can understand why it was done that way. It's also hard to answer that question until you see how the hardship fund deals with those people who on the face of it, let's say the transition payment is 100,000, you bought it for 500,000, then if the hardship fund hands some of those people or regards some of those people as being entitled to 400,000, then no, that would probably would set it back to where it needs to be. As I said, I would have preferred to sort of slant it towards who purchased most recently, but I can understand why they didn't.

The CHAIR — I note that there is no mention of compensation in the legislation, but if there were to be a reference to that compensation in the legislation, should it be on a sliding scale, the likes of which you're perhaps suggesting?

Prof. NELTHORPE — I think there would certainly be a justification for having a sliding scale but if it's a choice of delaying, the longer you delay that legislation the worse things will be. Can I give this example, about 20 years ago a well-intentioned state government initiative around the country that sold Ministry of Housing properties to the tenants went belly up. One of the things that was to put to me and one of the legal services I was running at the time was we should run a class action. Now, there was one running in Sydney, it had all the most incredibly complex legal problems in it and a bit like the bushfire one, it bounced between the Federal and High Court for about three years. It took ten years. My comment at the time was, by the time they got a solution a fair proportion of the borrowers would have either have died, disappeared or gone bankrupt and my fear is that the longer this goes, the same fate will occur, that at some point there's a need for finality.

The CHAIR — Thank you. Ms Dunn.

Ms DUNN — Thank you, Chair, and thank you, Denis for your presentation tonight. I was just interested, you talk about being in discussion with the big banks in terms of not taking action. I'm just wondering how those banks responded to that suggestion, did you have success?

Prof. NELTHORPE — Yes, but in part because if the banks were to take action against some of our clients right now what they might actually do is bring in other players like the taxation debt. They might actually reduce their capacity to recover, so it's not necessarily a smart thing to do to pursue them right now. But I would add I've also — it's been difficult because we're not yet funded, I don't want to go and offer the banks that I'm going to do something we can't do, but I have said to some of them that if they were to take 100 cents in the dollar of the funds being handed over, it wouldn't be a great look. So for instance, we have a client who's lost their house, they still owe 200,000. Now, the question is going to be if they get 200,000 from the various amounts and the bank says we want the whole 200,000, I would have thought the public would be pretty unhappy about paying \$2 a ride for that outcome. So one of the issues here is can we try to ensure that regardless of what the debts are, that the licence holders do actually get some benefit from this and not much point no matter how much money you give if it all ends up with the four majors, that's not going to help anyone.

Ms DUNN — And in terms of I think you said, you know, you talked about you were down to assisting I think 150 people with applications, I wasn't sure whether 130 of that had what you described as significant financial difficulties, is that correct, of that?

Prof. NELTHORPE — Yes, you interpreted correctly.

Ms DUNN — I'm just wondering, I think you went on to say that — I wasn't sure whether they are all facing home losses?

Prof. NELTHORPE — No.

Ms DUNN — Or some of them are of that 130?

Prof. NELTHORPE — Some will be. The difficulty is that, in preparing the hardship application was not the same as trying to determine the state of their financial circumstances. So, they're all different. We certainly have some clients whose homes are at risk, and we have some clients who've already lost them. But when I look at the debts, for instance, I mean, I've looked at a couple of them and thought, how were you able to borrow that much money when you don't actually appear to own anything? But then again, I see that a lot in my work. So, all I will say is that 130 certainly seem to have some very significant debts to the financial institutions.

Ms DUNN — Yes. Okay. That'll do me for now. Thanks, Chair.

The CHAIR — Mr Elasmar?

Mr ELASMAR — Thank you, Chair. Thank you, Professor. WEstJustice is an organisation to give free advice, and thank you for your time being here. My question is, you just mentioned there's a lot of people under hard financial shape. Would your organisation give an advice to us as a government as soon as possible to pay these people?

Prof. NELTHORPE — I believe that an early resolution of this is in everyone's interests, yes.

Mr ELASMAR — Thank you.

The CHAIR — Mr O'Sullivan?

Mr O'SULLIVAN — Thank you, Chair. Thank you, Professor. Just, my question's sort of an open-ended one, but I'd like you to, sort of, be fairly succinct, if you could, in answering it. We've heard yesterday and, in parts, today, that this legislation's got a whole range of holes in it in terms of how it impacts, particularly the taxi industry. What would be the three things that you would do to fix it?

Prof. NELTHORPE — Well, I think the first thing to note is that my understanding is that this is actually, there's another tranche of regulation or legislation that needs to follow, because I'm certain things like some of the insurance arrangements will be in that. I do think, ah, trying to ensure that the state recovers some of the compensation. The only thing that I think would be seriously worth considering is whether there should be more of a sliding scale on the payment of the transition payments. I do have to say I have some difficulty with the idea that some, and, you know, I think everyone has to accept that there have been changes to the industry that could not have been anticipated. So, someone who bought a licence three to four years ago or five years ago, could not have anticipated what has happened. So, I think I'd have to say I have some difficulty seeing those people treated in the same way as someone who obtained a licence for \$40 000 forty years ago and has had a return on that licence for forty years. That would be the one thing that I would probably have a look at, I have to say.

The CHAIR — Mr Leane?

Mr LEANE — Yes, thanks. I don't know if I've even got a question, but I just wanted to say that Mr O'Sullivan says that he's heard this bill's got a lot of holes in it, and I think people hear — —

Mr O'SULLIVAN — You were here yesterday, weren't you?

Mr LEANE — People hear different things.

Mr O'SULLIVAN — Well, you were here yesterday.

Mr LEANE — But what I've heard from your evidence is that we did have a number of people telling us, similar to yourself, saying to the Legislative Council, get on with it. Get on with the legislation. Fight it out in there. If people want to move amendments and are successful, that's the way it works. So, as far as the people you represent, you want to see us do our job and actually open up facility for them to be assisted. Is that?

Prof. NELTHORPE — I think for those people who are in the most difficulty, which would be by and large the recent purchasers, the passage of the legislation providing certainty so that, and, look, the outcomes of debt negotiations may not be great. I mean, I'm not pretending that we're gonna sort of go and rescue everybody by any extent, but I also think that there are personal relationships, family relationships that are worsening by the day, and the passage of the legislation will at least bring a degree of certainty to those people. And I actually think that's important.

Mr LEANE — Thanks.

The CHAIR — Any further questions? Yes, Ms Dunn?

Ms DUNN — Thank you, Chair. Going back to those 130 people, or even the 150 applications you've assisted with, are they generally on the whole people who are single licence holders?

Prof. NELTHORPE — Look, there were a variety of people who we assisted. I will say there are people we assisted who wouldn't normally attract assistance from a legal centre. But there were a significant number, my guess is that there are at least 50 to 80 who are in significant difficulty, and if we applied our normal legal centre rules they would well and truly qualify for our assistance.

Ms DUNN — Yes. And, on the whole, do they only have one taxi licence, or not necessarily?

Prof. NELTHORPE — Look, there are some that will have maybe two or three who acquired them in, I would've thought relevantly naive circumstances. We certainly, perhaps I could say this, we encouraged anyone who had a significant business, in terms of both the number of cabs or the number of licenses, to go to their accountant, because we thought they would know more about their, and we also said because legal centres don't normally deal with family trusts and that sort of thing, we said if you've used an accountant, set up a family trust, you probably should get the accountant to help you fill it in, because they'll know more about it than we do.

Ms DUNN — Yes. That's fair enough. And I just wondered, in terms of, because you're organisation has assisted through that process, whether you had any observations about the ease or difficulty in relation to those hardship applications?

Prof. NELTHORPE — Yeah, two that I think are worthwhile. Even some of the applicants who had significant assets but who were from migrant backgrounds, had enormous difficulty filling in those forms, and we were more than happy to assist. But I also have to say that we had some applicants who were advised to leave material and information out of the applications deliberately, and we were put in the position of saying that we wouldn't swear the stat dec because of what they'd told us. I think that was probably unfortunate as well.

Ms DUNN — Yes. Thank you for that. Thank you, Chair.

The CHAIR — Any further questions? Professor, thank you very much indeed for being here tonight. We do appreciate your time very, very much indeed. You'll be receiving a copy of the transcript in the next few days. If you could have a read of that and see if that's all as it should be. I'm sure it will be, but if you could do that we would appreciate it, and thank you so much indeed for your time and your effort tonight. Thank you.

Prof. NELTHORPE — Thank you for the opportunity to address you.

Witness withdrew.