

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

Commercial Passenger Vehicle Association of Australia

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1 Executive summary

The Commercial Passenger Vehicle Reforms of 2017 have given Victorians more choice, shorter wait times and the option of reduced fares in their custom of personalised transport services.

Benefits to the consumer have been realised through an explosion of commercial passenger vehicle numbers due to removal of any financial barrier to entry. A 1,047% increase in commercial vehicles in a little over 18 months has ensured that no person should ever wait needlessly for personalised transportation again.

Booking service providers or the large commercial interests in the industry have also had a big windfall gain. More cars, more fees, more revenue although this is not necessarily linked to increases in clientele.

The success stories of the now deregulated Victorian commercial passenger vehicle industry do not translate well to those in the industry who perform the service and to those who were invested in the licencing structure of the industry past.

There have been profound effects on these stakeholders that must be redressed for the long-term viability of the industry and to achieve a sense of fairness for those ex-licence holders whose private property was compulsorily acquired without adequate compensation.

Small business operators are being pushed out of the industry and drivers have become the working poor in an oversupplied market. Licence owners have been obliterated and for those still operating within the industry their financial losses are carried as a handicap restricting their competitive ability in the new market arena. The legacy of these reforms will carry through their retirement.

This document seeks to provide fiscal solutions to both enable an improved outcome for licence holders and to create a viable and sustainable business environment for ground level industry participants.

This document also addresses potential improvements to the overall professionalism of industry participants, operational considerations to progress the independence and working rights of drivers and safety concerns to protect workers, consumers and other road users.

The following submission represents the considered position of the Commercial Passenger Vehicle Association of Australia (CPVAA) in relation to the Victorian Commercial Passenger Vehicle Industry Reforms of 2017 on behalf of our members driving and operating taxi, hire car and rideshare vehicles as well as ex-licence owners.

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

2 Background

The CPVAA, formerly the Victorian Hire Car Association (VHCA), is the largest member association registered with Consumer Affairs Victoria representing the peak body for owners, drivers and stakeholders in the point to point passenger transport industry. This includes stakeholders from services provided by taxis, hire cars, rideshare, limousines and specialised vehicles.

The CPVAA is a not for profit body established in 2014 with a membership base primarily within Victoria where the association originated. Expansion in other Australian states and territories is in the advanced stages of planning and implementation.

The Commercial Passenger Vehicle (CPV) industry is composed of a number of important businesses that work together to provide point to point personalised passenger transport services 24 hours a day, 7 days a week, all year round, including public holidays. CPVs are the only mode of public transport not funded by government - relying entirely on private investment.

The Victorian CPV industry is regulated by the Victorian Government through Commercial Passenger Vehicles Victoria (CPVV) under the Commercial Passenger Vehicle Industry Act 2017, the Road Safety Act (1986) and the Commercial Passenger Vehicle Industry Regulations 2018, to protect the customer and drivers, and to ensure service delivery and safety standards are met.

3 Industry Past

If for no other purpose, the following details are included to set the record straight.

3.1 Taxi licences in context

The structure of the Commercial Passenger Vehicle (CPV) industry, as it was most recently known, developed over many years with multiple iterations of legislation and regulation. The industry itself was and possibly still maintains the title of one of the most highly government regulated industries. From the age and type of vehicle through to the colour of the door handles, almost every aspect of the industry was at one stage entirely prescribed.

Historically, the rules allowing drivers to drive a taxi were quite stringent and the rules for licence ownership more so. Ownership was once restricted only to those who were active industry participants. It was the case for a very long time that to own a taxi licence you must also drive or operate a taxi. Retirement would necessitate selling the licence and moving on.

By the early 1980s licence ownership restrictions began to wane and certainly by the late 1980s this restriction was entirely removed by the Cain government. This ultimately opened the industry up to investors and created a rental market for a taxi licence.

Investment was actively encouraged by government. In fact, government initiated inquiries and reports prepared at the time supporting the decision to allow licence assignments suggested that there would be many benefits in taking this action.¹ One of which was that it would encourage vehicles to 'work harder' than what was possible for an owner driver who might confine the number of hours spent on the road. This would better serve the public through increased availability of services around the clock. Additionally, it would increase operating efficiency by effectively reducing costs not necessarily by quantum but proportionately through the potential for greater income across an increase in the number of hours the vehicle was on the road.

As well as attracting stakeholders from outside the industry, by inducement, these new rules saw many industry participants now hold on to their taxi licences as part of their financial planning for retirement. Prior to the reforms of 2017, up to 70% of perpetual taxi licences were leased.

Through government intervention, a taxi licence effectively evolved into an income bearing asset and changed the structure and nature of the industry moving forward (Figure 1).

¹ Foletta, B. (1986). *Report of the Taxi Inquiry – Melbourne and Metropolitan Area*. Melbourne, Ministry of Transport.

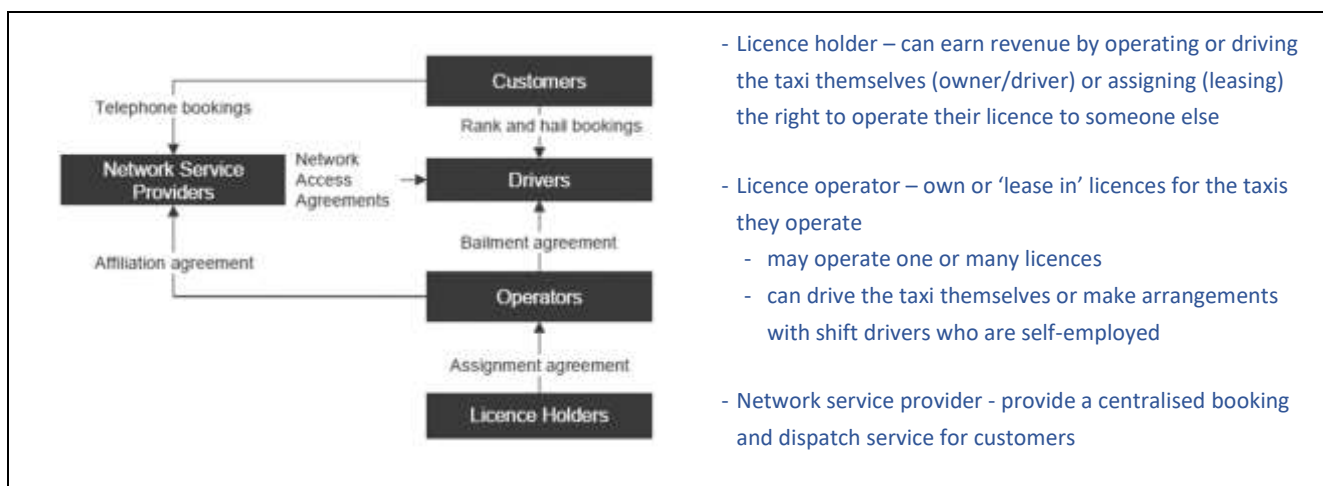


Figure 1: Historical structure of the taxi industry

3.2 Hire cars

Hire cars differ from taxis in that they offer a pre-booked only service and are not able to do rank or hail work. Historically, hire cars tended to be premium, high end vehicles with the fare set by the operator not the Essential Services Commission as for taxis.

Hire car licences were also perpetual. They once traded on the open market for around \$80,000 but then became government issued ‘as of right’ around 2004 for \$60,000 upfront. Following the Fels reforms of 2014, this price was reduced to a one off fee of \$40,000.

3.3 Who said a taxi licence is property?

The idea that a taxi licence is property, an asset, was not a position arrived at by industry stakeholders alone. The general collective from the High Court, government bodies, banks and the like all concurred that a taxi licence was not merely a permit to operate a business in the CPV industry.

A taxi licence had its own market for trade, it held capital value, it returned rental or commercial income and it held financial promise. Entrenched in the lives of those who owned them, a perpetual taxi licence was relied upon in every way any other income bearing property would be considered.

A five dollar note is merely a piece of paper but for the collective agreement that it has value. So too, a perpetual taxi licence was just a piece of paper and by the following examples it was collectively agreed that it was an asset.

1. The question of perpetual taxi licences as property had been decided by the High Court of Australia. In *Federal Commissioner of Taxation v Murray* (1998) 193 CLR 605, the majority of the High Court ruled that:

‘the licence is property... A taxi licence is a valuable item of property because it has economic potential. It allows its holder to conduct a profitable business and it may be sold or leased for reward to a third party.’²

2. In 2006, the Bracks Labor Government created a trading facility for perpetual taxi licences on the Bendigo Stock Exchange.

“This will help ensure high standards of professional conduct to protect buyers - some of whom are from non-English speaking backgrounds or have limited business experience,” Mr Batchelor said. (Peter Batchelor, Transport Minister)³

The stock exchange listing facilitated entry into the market particularly for those outside the industry. Many investors bought in at this time encouraged by the government’s backing.

3. In 2010, the Brumby Labor government conducted a tender process for the release of fixed term government licences. A prospectus was prepared on behalf of the Department of Transport by PricewaterhouseCoopers. Ten-year, fixed term licences were issued by the government at \$180,000 each.⁴

This figure well and truly underpinned the value of a perpetual taxi licence which reached a peak of over \$500,000 around that time.

4. When applying for the pension or any government benefits it is necessary to complete and lodge a Centrelink Income and Assets Form (SA369). Even to this day, this form states -

***Q 57** - Do you (and/or your partner) own any other assets (in or outside Australia) that you have not already told us about on this form? Include: taxi plates.⁵*

5. Financial institutions held licences as collateral for loans.
6. The Australian Prudential Regulation Authority allowed licences to be included in superannuation funds because they were income bearing assets.

² <http://eresources.hcourt.gov.au/showbyHandle/1/11897>

³ https://www.nsx.com.au/news_view.asp?ID=114&fbclid=IwAR3q0B-fJ-3i49uY1Bw9x5Oln7Ra-cw_YsQLplcM2VhMzVpBIWqpa8ssRc

⁴ <http://www.taxi-library.org/melbourne-taxi-overview-2010.pdf>

⁵ <https://www.humanservices.gov.au/individuals/forms/sa369>

7. The ATO recognised licences as property and capital gains tax applied on every sale.
8. The Family Court has approved as equitable divorce settlements in which the wife kept the house and the husband retained the taxi licence.

Given the above indications, not unreasonably, Victorian taxi licences were retained as assets. The productive income and their value formed part of one's financial planning for servicing of loans, day to day living as well as future retirement plans.

Were licence holders delusional?

If they were, they were lulled into a false sense of security and duped and misguided by others far more learned and powerful.

3.4 Fels reforms 2013

Prior to the Fels reforms of 2013 there existed approximately 3,500 perpetual metropolitan taxi licences and 600 peak service licences (green top, annual permit). There were also a number of other licence categories at the time including urban, regional and country.

In 2010/2011, perpetual metropolitan licences reached a value over \$500,000 with a peak purchase recorded at \$540,000. At the same time, the private rental market for metropolitan taxi licences averaged \$30,000 pa (paid in monthly instalments).

In 2011, the Baillieu government engaged Professor Alan Fels to conduct an inquiry into the CPV industry. His final report was delivered in December 2012 outlining 139 recommendations.⁶ All but a handful were adopted and legislated in mid-2013 and fully implemented by 2014.

During the inquiry, Fels travelled to the United States on two occasions to look at their market. At this time Uber and Lyft were both active, Uber had initiated operations in 2009. As a result, one can only conclude that Professor Fels considered such when making his recommendations.

It may interest others to know that since 2016, Professor Alan Fels sits on Uber's global advisory board.⁷

⁶ https://www.parliament.vic.gov.au/file_uploads/CustomersFirstFinalReport2012Summary_H3PbtwHb.pdf

⁷ <https://www.smh.com.au/business/companies/ubers-latest-hire-allan-fels-20160504-gom7la.html>

Following the Fels inquiry, the resulting Transport Legislation Amendment (Foundation Tax and Hire Car Reforms) Bill 2013 stated

These foundation recommendations -

“set prices at levels that promote a measured increase in taxi and hire car numbers, allow an appropriate increase in the taxi driver's share of the fare revenue and provide support for the equity and income positions of existing licence holders.”⁸

The Fels reforms introduced government issued annual taxi permits at \$23,000 pa paid upfront. For the first time, this opened the supply side of the market without restriction.

Annual government permits were set **in direct competition** to the private rental market. As such, perpetual licence assignments on the private market reduced immediately from \$30,000 to \$24,000 pa (on account of being paid monthly rather than upfront).

Concurrently, licence values reduced from \$500,000 to approximately \$300,000 as projected by Alan Fels and reflective of the reduced annual return (indirectly) determined by the cost of annual permits available from the regulator as a competitor to the private market.

While many in the industry thought that the reforms were harsh they were none the less encouraged that there seemed to be some consideration from government regarding the future of licence holders and that the worst was probably behind them.

It served as a blow financially but many ultimately accepted this fate and remained with the industry for varied reasons including sunk costs, heavy reliance on assignment income, historical and emotional connections, and an ethnic demographic who did not have the advantages of an Australian education and qualifications and whose alternatives were extremely limited. No one anticipated that deregulation would be the governments next move and if they had not one person would have thought they would achieve this by stealth and fail to compensate adequately.

Even so, following the Fels reforms, some people could not escape the drastic reduction in their asset value and ended up losing their homes as the shortfall in equity and rental supporting taxi licence loans could not be filled.

Along with the introduction of annual government taxi permits, the Fels reforms also saw private hire car licences reduced to \$40,000 available as of right from the regulator. Rideshare vehicles would have fallen within this category of licencing had operators chosen to comply with the existing law at that time.

⁸[http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs_Arch.nsf/5da7442d8f61e92bca256de50013d008/CA2570CE0018AC6DCA257B79001D3DC7/\\$FILE/571322exi1.pdf](http://www.legislation.vic.gov.au/domino/Web_Notes/LDMS/PubPDocs_Arch.nsf/5da7442d8f61e92bca256de50013d008/CA2570CE0018AC6DCA257B79001D3DC7/$FILE/571322exi1.pdf)

The cost of legitimate entry into this industry, however, did not suit the newcomers nor their underlying business model which relies on a constant stream of transitory workers who would otherwise be reluctant to invest in capital.

It begs the question however, at what point did it suit the business model of any person to buy a licence at \$40,000 or \$500,000 if it were not for the fact that it was required by law?

Wiping hundreds of thousands of dollars off the value of licence assets with the stroke of a pen did nothing for anyone’s business model but no one seemed to concern themselves with this.

By 2016 there existed 3,500 perpetual licences and 2,000 annual government permits. That is, over one third of all taxis on the road were operated under government issued annual permits with their sale and renewal contributing to state revenue. In addition, there were around 1,200 traditional hire cars. Other licencing categories existed but these represent the main ones.

3.5 Illegal operators and failure to enforce the law

Since the emergence of rideshare in 2014 and their disregard for the existing licencing system the resale value of perpetual taxi licences on the open market suffered a steep decline (Figure 2). In part, this was due to the unabated advance of Uber and the inability or unwillingness of the regulator to protect existing industry members from unlawful competition. Additional (illegal) vehicle numbers and poaching of fares also reduced driver takings by 20-40% industry wide through to August 2017 when the most recent reforms were enacted.

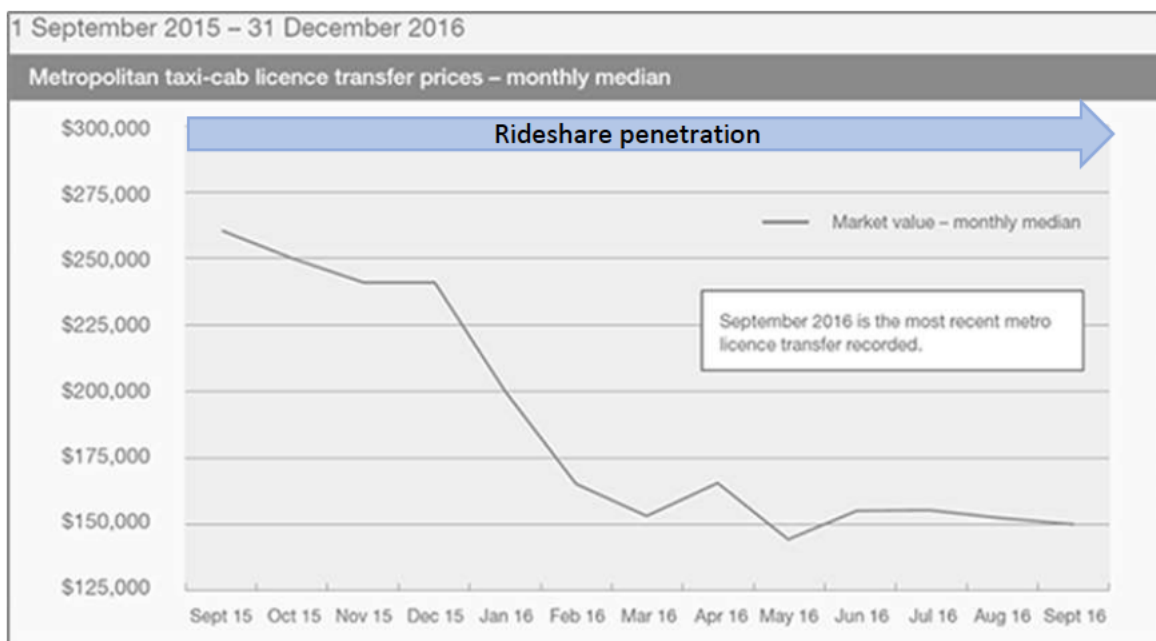


Figure 2: Penetration of unregulated and illegal rideshare precipitated a decline in taxi licence values.

A taxi or hire car licence granted to the bearer **exclusive rights** in the commercial passenger vehicle industry. Yet, a commercial passenger vehicle licence had become irrelevant because the laws protecting those rights were being ignored.

Government failure to uphold the laws and regulations governing the CPV industry directly precipitated the decline of taxi licence assets.

The regulators inaction against Uber drivers operating illegally could be explained as a consequence of a decision of the courts. In an appeal to the County Court in May 2016, the court said Uber drivers had a defence to infringement notices issued by the Commission because certain provisions of the Transport (Commercial and Miscellaneous) Act 1983 (Vic) were unclear.

It is understood and accepted that the Commission was required to act consistently with the findings of the Court and that it may have been reasonable for the Commission to have not expended public resources in issuing and pursuing invalid infringement notices against Uber drivers.

However, the legislative loophole with which Uber won the appeal in May was quickly closed in an amendment to the legislation on 9th June 2016. The Transport (Compliance and Miscellaneous) Amendment (Public Safety) Act 2016 gained royal assent on the 15th June 2016.

Substantive legislation is presumed not to operate retrospectively, however, the question remains why, with this new-found elevated power and confidence to challenge drivers of illegal commercial passenger vehicles, did the Commission choose not to do so?

As far as we are aware, no further infringement notices were issued by the Commission against Uber drivers yet, the Commission continued to monitor compliance with the regulations. This meant that many taxi operators who were found to be in breach of the regulations were issued infringement notices.

Once the legal loophole was closed it remains unclear why the enforcement of regulations continued to be selective against those driving and operating taxis and hire cars while illegal operators were ignored and allowed to operate outside the laws and regulations of the time.

3.6 Reform announcement August 2016

The emergence of rideshare may have forced decisions upon government to refine the legislation in order to accommodate new ways of conducting business. In August 2016, the Victorian government made the shock announcement that the CPV industry would be deregulated. In no other jurisdiction worldwide has a government taken such an extreme measure to accommodate rideshare.

The industry had already undergone an extensive review with the Alan Fels Taxi Inquiry and the Liberal government at the time subsequently enacted the vast majority of recommendations in 2013 with many of these only coming into effect in 2014.

New market entrants forced the most recent legislative transition through aggressive non-compliance and succeeded in changing aspects of the industry to suit their underlying business model putting them at a distinct competitive and cost advantage without the necessary debate and deliberation of relevant issues.

The path of deregulation was a decision unique to the Victorian state government and the choice made to achieve this with regard to recompense for licence holders is unclear in the way in which it was arrived.

The transition assistance scheme offered to licence owners totalled \$332 million. This included arbitrary payments for some but not all licences.

Taxi licence owners were provided \$100,000 for their first licence and \$50,000 for each of up to 3 subsequent licences and nothing for any further licences.

Hire car licence owners were provided with \$25,000 for a first licence owned and \$12,500 for each of up to 3 subsequent licences and nothing for any more.

It should be highlighted that the payments were made based on entity ownership not per individual beneficiary. To illustrate what this means -

- An individual with 4 taxi licences in 4 separate entities received \$400,000 (company, super, trust, individual)
- An individual with 4 taxi licences under one name received \$250,000
- A husband and wife owning 2 taxi licences jointly received \$150,000
- A husband and wife owning one each singly received \$200,000
- A family trust with 6 beneficiaries owning 18 licences received \$250,000
- A husband and wife with 18 licences in 5 separate entities received \$900,000

Some fared better by chance based on the structure of their financial affairs.

The inequity is staggering and widespread, the payment mechanism was simply unfair.

3.7 Fairness fund

The government also announced a support package for industry stakeholders in financial hardship in the form of the Fairness Fund. This was a means tested payment awarded by application with supporting evidentiary documents including tax returns, bank statements and property valuations. The exact criteria and thresholds remain unknown.

The Fairness Fund was initially capped at \$50 million although the government eventually relented to industry pressure and proclaimed that the cap would be lifted. The Fairness Fund ultimately paid out a total of \$55 million.

Many in the industry did not proceed with an application. From over 5,000 licence owners only 1,247 applications were lodged. There were several reasons for this. Many did not know about it (some are still learning about it now), the vast majority of industry stakeholders are from non-English speaking backgrounds, the application form was provided only in English, it was onerous, required extensive documentation, many felt incapable of preparing the application and others simply had no confidence in the process.

Of the 1,247 applications received, around 700 were successful in receiving payments ranging from \$50,000 to \$400,000 (personal communication). However, the CPVAAs personal interaction with numerous recipients indicated many inconsistencies and outcomes which were inexplicable. The results were classified as final without an option for appeal or a substantive explanation of the result.

The Victorian Ombudsman investigated the administration of the Fairness Fund and concluded that taxi and hire car licence holders were given the *'bureaucratic run-around'* and that the Department of Economic Development, Jobs, Transport and Resources had executed its management of the Fund poorly.⁹

Ms Deborah Glass said, *'The department's poor communication, compounded by delay, was unreasonable and would have exacerbated the distress already felt by people who believed the government had taken away their livelihood or life savings.'*¹⁰

To make matters worse, Fairness Fund payments are subject to income tax. Up to half of the amount received would need to be returned to the Federal purse as income tax.

In some cases, payments have pushed people over income thresholds for other government entitlements such as the pension. These people have been put in the position of having to return the pension received over that financial year AND paying income tax on the Fairness Fund payment. One could argue they may have been better off not receiving anything at all and that money being used to assist someone else.

Many owners remain with crippling legacy debts for licences no longer owned and for which they no longer receive licence income to support debt repayments. Others who had established themselves as self-funded retirees are now seeking the pension or selling their homes. The devastation and financial ramifications are far reaching. The industry has been savaged with over \$1 billion in privately held property seized overnight. The implementation of the compensation package was ill thought out on many levels.

3.8 Government precedent

When a government or community decides it no longer needs a group of people and takes actions to strip them of their livelihood, it is customary to compensate them for their loss. It is one hallmark of a civilised society that we don't just throw people on the scrapheap.

⁹ <https://www.ombudsman.vic.gov.au/getattachment/0bdc2768-acb3-49f3-8912-4112ed2bf60e>

¹⁰ <https://www.ombudsman.vic.gov.au/News/Media-Alerts/poor-execution-of-fairness-fund>

Government licence buyouts, or structural adjustment packages, or industry compensation packages, have numerous precedents. In March 2016, the Federal government purchased parcels of groundwater from the Murray-Darling Basin in a process which compensated Queensland farmers. Before that there was the Strategic Water Purchaser Initiative for farmers in Victoria's Murray-Goulburn Region. Applicants could nominate the price they were seeking for their water entitlements.

The Great Barrier Reef Marine Park Structural Adjustment Package provided over \$213 million to fishers and fishery related businesses adversely affected by the Federal Government's 2004 rezoning of fishing areas. Before that was the Commonwealth Forestry Industry Structural Adjustment Package.

There have been Structural Adjustment Packages in the motor vehicle industry and textile, clothing and footwear industries. Nor have buyouts and packages been limited to people working in an industry. In 2004 there was a handgun buyback where Victorian handgun owners received \$21 million in compensation. When in 2015, the commercial solarium industry was outlawed in Victoria sunbeds were bought back by the government.

In the 1990s, the taxi industry was deregulated in the Northern Territory. Peak value was paid to each and every licence. Subsequently, the government leased licences annually to industry participants in order to recover funds.

A \$27 million compensation package announced in 2015 by the Andrews Labor government proposed to cease commercial net fishing in Port Phillip Bay.¹¹ This package served to compensate only 43 licences. The mechanism for determining fair payment for licences involved an independent valuation by the Victorian Valuer General. The compensation payments were said to have ranged from \$350,000 to up to \$1.6 million for a licence.

In case the comparison has been missed, that would be \$27 million for 43 fishing licences versus \$332 million for over 5,000 CPV licences. On average each fishing licence was paid \$628,000, while the average payment for each CPV licence amounted to \$66,400.

The decision by the Victorian Labor government to deregulate the taxi industry rendered taxi licences valueless. What then is fair compensation for licence holders? The Government payment of \$100,000 for the first licence and \$50,000 each for a further three more is clearly and simply a round number plucked from thin air. There is no science behind them. Secondly, if \$100,000 and \$50,000 are arbitrary numbers, paying zero for subsequent licences is even more arbitrary.

A proper and independent valuation and a capital buy back applied to all licences as seen in other industries and in other scenarios would have avoided the unfair way in which the reforms of 2017 have been executed. Treatment of a licence as the property that it is would have justly applied a value to each and it would have prevented the inequity of payments to individuals due to entity ownership. Payment as capital proceeds

¹¹ <https://www.theage.com.au/national/victoria/27-million-compensation-package-to-phase-out-commercial-net-fishing-in-port-phillip-bay-20151022-gkg0rz.html>

would have also avoided income tax implications for many people who received fairness fund payments. A fair payment in the first instance would have significantly reduced the need for the Fairness Fund.

The justification provided by government as an explanation of the design and quantum of the transition package was that this industry was different to how the Port Phillip net fishing industry was treated because people could continue on and still operate their taxi business, whereas the fisherman were required to cease operations.

This is nothing short of facetious when it is well known that approximately 70% of plates were leased. Licence owners who were not operating a business but were instead renting out their plate had nothing left to continue on with. More so given that the legislation granted newly created CPV licences to the lessee not the owner of the plate. The assistance package transitioned licence owners to poverty and nothing more.

An asset is an asset which is an asset. It's value should not be linked to whether or not the owner operates a business, whether there are other assets owned, the duration of ownership, or the historical return on investment.

3.9 No compensation clause

The government sold CPV licenses in respect of which it received money, and in respect of which, no party ever contemplated the removal or cancellation of those licenses. There has been prior discussion surrounding Section 90 of the Transport (Compliance and Miscellaneous) Act which details that no compensation is payable by the government in the case of suspension, cancelling or revoking licenses. Of course, this section simply means that the government cannot be compelled to issue compensation to a license holder. The details of the no compensation clause are addressed here to dispel some of the misinformation that has circulated on this topic.

The Transport Regulation Act 1958, which was superseded by the Transport Act 1983, **did** have a compensation clause. Compensation described in the 1958 Act is compensation for every licence singly and would involve arbitration if disputed.

The 1958 Act applied at a time when taxis operated in defined zones across Melbourne and the compensation clause was in place to allow control over supply vs demand in each area. Put simply it was used as an option for operational adjustment in vehicle numbers. The Transport Act 1983 abolished these zones combining Melbourne within one metropolitan district and thereby removing the need underlying the original compensation clause.

Instead the 'no compensation' clause was introduced in the Act of 1983. It was always understood and in fact the Hansard will attest that the cancelling of licences was, at least in the political mind set, to be used for punishment in cases where licence holders were in breach of their accreditation criteria. The no compensation clause for cancellation of a licence was intended to be applied singly as a punitive measure for the purpose of removing suspect individuals from the industry without the reward of offering a refund. It was not intended to be applied *en masse* for the destruction of the industry at large.

In any case, the 'no compensation' clause is irrelevant in the instance of the reforms of 2017 as the clause only applies for a 'decision or determination' made under that part of the Act and does not include the passing of a new law. That is an 'enactment' and is what occurred when the Commercial Passenger Vehicle Industry Act 2017 gained royal assent and revoked all existing CPV licences.

3.10 Compulsory property acquisition

The provision of section 51(xxxi) of the Constitution of Australia provides that the acquisition of property by the Commonwealth must be on just terms. However, the Federal Constitution defers to the Victorian constitution which is silent in this area and overrides the Federal terms. There may not have been a formal or legal requirement for the government to compensate licence owners. However, in this case the theft of privately held property is inconsistent with earlier described historical precedents in scenarios not dissimilar to this. Attempts at justifying these actions in the name of industry reform and progress is mischievous. This is simply un-Australian and it was unnecessary.

3.11 Licence revocation and deprivation of Human Rights

The Human Rights concerns with the reforms were raised initially by the Scrutiny of Acts Committee (SARC). The Committee identified that s360 of the proposed insertions to the Transport (Compliance and Miscellaneous) Act 1983 involved a revocation of existing perpetual licences. These were to be replaced with a licence with no resale value.

This amounts to a deprivation of property, which pursuant to s20 of the Charter of Human Rights and Responsibilities Act 2006 (the Charter), has to be justifiable. As such, the reforms, the Bill and Regulations should not have been before the parliament without a proper Override Application pursuant to s31 of the Charter.

The Minister's response to the SARC asserted that the Charter should not apply for three reasons - ¹²

- *Because the licences are perhaps not property.*

There is no doubt in law that the licences were property. As stated above, this was determined by the High Court.

- *In support of the above position, the Minister claimed that other jurisdictions have supported this principle, relying on a case from England, *Lough v First Secretary of State* [2004] 1 WLR 2557.*

¹²https://www.parliament.vic.gov.au/images/stories/committees/sarc/Alert_Digests/Alert_Digest_No_4_of_2017.pdf

However, the Minister's letter misrepresents the impact and facts of that case. Lough was a planning case. Neighbouring residents challenged the decision in the High Court claiming a breach of the human right to private family life. Lord Justice Pill (with whom the rest of the Court of Appeal agreed) held that a loss of value in itself does not involve a loss of privacy or amenity and it does not affect the peaceful enjoyment of possessions.

Diminution in value is not deprivation of property. The example provided by the Minister is simply irrelevant in this context but was never challenged by SARC.

- *The Minister asserted that the Deprivation of Rights is in Accordance with Law.*

Section 7(2) of the Charter sets out requirements for legislation to remove a human right.

The legislation and subsequent regulations most fundamentally breaches s7(2) because of who receives a new taxi licence. Under s34 of the amending Act, a new section 360 was inserted into the substantive Act. Section 360(a) provides that –

Every licence to operate a taxi-cab assigned under section 150 to an assignee within the meaning of 15 section 150 and in force immediately before that commencement is revoked and the assignee is taken to be granted a new taxi-cab licence;

Assignments are generally temporary (as opposed to transfers). As a result, if a licence-owner had assigned or leased their licence, whether for a day, a year or a decade, the lessee and not the owner of the licence receives the new taxi-cab licence. The original owner is entirely deprived of all property interest and receives no compensation. Ownership was gifted to the tenant.

At the time, acting on behalf of the industry, the CPVAA (formerly the Victorian Hire Car Association, VHCA), engaged Mann Lawyers and legal counsel, Mr James Barber, to raise these matters with SARC.¹³ This was not addressed and there was no further scrutiny of the Bill or the Minister's response.

It is difficult to accept SARC's role in scrutinising legislation yet be accepting of any answer provided in response to their questions regardless of relevancy or accuracy. The role of SARC is to scrutinise legislation which it did reasonably well in this case. However, the level of scrutiny is not necessarily then extended to the responses provided by the Minister. SARC's analysis is merely documented rather than applied.

Has the SARC been misled to form incorrect assumptions?

¹³https://www.parliament.vic.gov.au/images/stories/committees/sarc/Alert_Digests/submissions/Victorian_Hire_Car_Association.pdf

The considered opinion of legal counsel, James D S Barber, concludes that the 2017 Act revoking licences without fair compensation was most certainly in contravention of the Charter of Human Rights.

3.12 What now?

The passenger transport industry had found itself at a crossroad facing challenges and issues forced upon it by the emergence of rideshare platforms and their disregard for the law. Deregulation of the industry was undoubtedly a bold move and there may have been some merit in taking this action.

Ultimately, in so doing all existing taxi and hire car licences under the previous regulatory structure were revoked and replaced with a single annual permit currently priced at \$53.80. This was done without fair and reasonable compensation to ex-licence owners for reasons which are not clear other than fiscal savings for the treasury. However, given there is a perpetual industry trip levy in place to recover these funds, even this suggestion doesn't quite fit.

The funding for the Transitional Assistance payments is being recovered by a \$1.10 levy (including GST) indexed with CPI, on each CPV trip. There is no sunset clause on this levy, effectively it can last for eternity.

The Victorian Government should negotiate a genuinely fair outcome for licence owners. This outcome should reflect at least the value of the licences at the time the Labor government came to power. While the government can claim it is not responsible for the damage to licences before it came along, it certainly is responsible for the damage since it was elected.

Licence holders are still suffering. Many are in disbelief and remain in shock at what has transpired at the hands of their elected representatives. The theft of their privately held assets. Countless individuals and families are unable to move on financially or emotionally which the numerous submissions to this inquiry will show. Financial ruin, insurmountable debt, homes lost, relationships strained beyond repair, retirement plans sidelined, psychological damage caused by stress and resultant physical side effects are all too common. Sadly lives have also been lost for those whom the personal consequences of these reforms were too much to bear.

The transition assistance package and Fairness Fund payments were neither fair nor adequate and must be redressed.

Recommendation

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

The funding model supporting this recommendation is detailed in the following section of this submission.

4 Fund recovery

There are only 3 sources of funds which could potentially cover the cost of the transition assistance scheme for licence owners and any additional payment which might be made.

- The government can bear the cost and pay from consolidated revenue (unlikely and unnecessary),
- The consumer bears the cost in a user pays model (currently in place, not ideal) or
- The industry self-funds the package.

The industry pays model has always been favoured over the other two options. It makes sense, it is not an impost to the consumer or to the state budget and it will generate sufficient revenue over time to adequately fund a fairer compensation package for licence owners.

4.1 Consumer pays model

A per trip levy was introduced from 1 July 2018 to recover the cost of the government industry transition scheme paid to licence owners. The \$1.10 levy (including GST) is indexed with CPI and applies to every commercial passenger vehicle trip in Victoria.

This levy is collected by the State Revenue Office Victoria (SRO) and drivers and Booking Service Providers (BSPs) are required to remit payments to the SRO quarterly in line with Business Activity Statements for GST collection.

There is no sunset clause on the levy further supporting the argument for a fair payment on each and every CPV licence revoked as a result of the reforms.

A significant drawback to the levy is that the cost is generally borne by the consumer. While the option exists for drivers to refrain from passing on the cost of the levy, the reality is that this simply does not happen.

The levy is particularly unfair for short trips where the proportion paid is significantly higher on an \$8 or \$10 fare compared to a run from the airport at upwards of \$50. This impacts many pensioners who might be transported a short distance to the local shops or to the doctors. It also hits hard people in regional and country areas where short trips of low value are more common.

4.2 A leaky levy

Interestingly, the regulator Commercial Passenger Vehicles Victoria (CPVV), formerly the Taxi Services Commission (TSC), no longer collects trip data. It was once a requirement that BSPs lodge this information with the regulator but this is no longer the case.

Anecdotally, it is well known around industry circles that the levy is very leaky and that compliance is poor across the driving pool. Many drivers have not even registered with the SRO. This is in part due to a large portion of drivers being transient industry members. Not only do they move on in terms of employment, many also depart the country once their visas expire, their studies end or their time is up.

The levy received by the SRO is either taken on trust or one can only assume that there must be a rigorous process in place to ensure full compliance and auditing.

What is the cost of levy collection?

What is the cost of levy compliance to industry participants? It adds yet another administrative burden onto the industry.

Prior to the reforms when trip data was known, taxis were performing around 40 million trips per year with hire cars perhaps contributing another 5 million trips. If we generously assume that the market has grown somewhat, due also to an increased population, an estimate for current trip data might be in the order of 60 million.

Has \$60 million been collected through the levy to date?

4.3 Industry pays model

The general public should not have to pay to compensate licence holders. The industry should pay and the industry wants to pay.

An alternative fund recovery mechanism would be to apply a higher annual CPV licence fee, nominally around \$2,500 per year. While significantly greater than the current fee of \$53.80 pa, it is a very small cost of doing business equating to \$48 a week. Hardly inhibitory particularly considering the many other costs of operating a CPV and the capital outlay for a vehicle.

A higher annual licence fee would serve a number of purposes. Aside from providing funds to adequately compensate licence holders it would act as a barrier to entry which will curb, in a measured way, the

number of registered CPVs on the road. This would relax road congestion and indirectly increase driver earnings which would in itself offset the fee paid.

Additionally, because the payment would be linked to obtaining a CPV permit it would be cheaper, easier and more straightforward to collect as opposed to the levy which requires education, monitoring, auditing and enforcement.

The licence fee also has the potential to raise far more in funds than the levy.

The current total number of registered CPVs is 64,939. If there had been a licence fee applied at \$2,500 on each, the funds collected would amount to over \$162 million in the last 12 month period.

4.4 Levy vs. licence fee

Table 1 below directly compares the benefits and shortcomings of the levy compared to an annual licence fee. The industry pays model is less leaky and more straightforward to collect than the levy. The burden of payment lies with the industry as beneficiaries of the compensation scheme and does not penalise the consumer.

Table 1: Consumer pays versus industry pays model of cost recovery.

Consumer pays	Industry pays
<ul style="list-style-type: none"> - a consumer tax - levy set at \$1 per trip + GST - indexed with CPI - no sunset clause - passengers taking short trips most affected <ul style="list-style-type: none"> o pensioners, regional/country users - administrative burden on drivers and BSPs <ul style="list-style-type: none"> o remit quarterly to SRO - CPVV no longer collects trip data - low level of compliance <ul style="list-style-type: none"> o poor understanding of obligations o high driver turnover - cost of recovery - education, monitoring, auditing and enforcement - generously estimated \$60 million should have been collected over the last 12 months less cost of collection. Has it been? 	<ul style="list-style-type: none"> - no public burden - licence fee nominally \$2,500 pa per CPV <ul style="list-style-type: none"> o \$48 per week - invoiced annually by CPVV and linked to CPV permit - cost neutral - absorbed into current invoicing processes for licence renewal - no compliance cost - may curb numbers of registered CPVs <ul style="list-style-type: none"> o reduce road and rank congestion o better market balance, supply v. demand o increased driver remuneration will offset levy - \$162 million would have been raised over the last 12 months on current CPV licences - 64,939

4.5 Revenue – levy vs. licence fee

Table 2 below compares the revenue collected from the levy with that collected from the proposed annual licence fee.

Assuming that current annual CPV trips total 60 million across all industry sectors with a nominal and conservative growth in trip rate at 2%, the levy, indexed to an average of 3% CPI, would amount to **\$675 million collected over 10 years**. In reality, CPI has been lower than 3% for quite some years. The projected trip levy may fall significantly short of this total.

Comparatively, a proposed licence fee of \$2,500 pa applied to every CPV with a nominal annual increase of 2% in CPV numbers in line with conservative growth in the number of annual trips would raise **\$1.7 billion over 10 years** if current CPV numbers hold at 64,939. This figure is reached even with a static licence fee over the entire period. If CPI indexation or other nominal increase were applied to the licence fee the revenue returned would be even greater.

Assuming the worst case scenario that the number of CPVs fall sharply by 50% upon introduction of a higher annual licence fee than is presently the case. The revenue raised is projected to be **\$888 million over 10 years**. This is still higher than the revenue raised through the collection of the levy and it is less costly to collect for reasons stated elsewhere.

Application of a higher licence fee statically applied over 10 years outperforms all other models of revenue collection and should be strongly considered as the mechanism of choice to recoup funds paid for the licence compensation scheme.

Table 2: Levy and licence fee revenue comparison generated over 10 years.

Assumptions – current annual trips – 60 million; conservative trip growth rate - 2% (based on the Victorian Taxi Industry Inquiry); \$1 levy indexed at CPI; average CPI - 3%; annual licence fee - \$2,500; flat licence fee over 10 year period; 2% growth in CPV numbers each year reflecting trip growth; CPV numbers at current value 64,939; CPV numbers at 50% current value, 32,470.

(See also Figure 3 for a graphical representation of revenue collected.)

Year	Annual trips + 2% growth	Annual levy + CPI (3%)	Cumulative levy	Licence revenue @ current CPV + 2% growth	Cumulative licence revenue @ current CPV numbers	Licence revenue @ 50% current CPVs + 2% growth	Cumulative licence revenue @ 50% current CPVs
1	60,000,000	\$60,000,000	\$60,000,000	\$162,347,500	\$162,347,500	\$81,173,750	\$81,173,750
2	61,200,000	\$63,036,000	\$123,036,000	\$165,594,450	\$327,941,950	\$82,797,225	\$163,970,975
3	62,424,000	\$64,296,720	\$187,332,720	\$168,906,339	\$496,848,289	\$84,453,170	\$248,424,145
4	63,672,480	\$65,582,654	\$252,915,374	\$172,284,466	\$669,132,755	\$86,142,233	\$334,566,377
5	64,945,930	\$66,894,307	\$319,809,682	\$175,730,155	\$844,862,910	\$87,865,078	\$422,431,455
6	66,244,848	\$68,232,194	\$388,041,876	\$179,244,758	\$1,024,107,668	\$89,622,379	\$512,053,834
7	67,569,745	\$69,596,838	\$457,638,713	\$182,829,653	\$1,206,937,321	\$91,414,827	\$603,468,661
8	68,921,140	\$70,988,774	\$528,627,487	\$186,486,246	\$1,393,432,568	\$93,243,123	\$696,711,784
9	70,299,563	\$72,408,550	\$601,036,037	\$190,215,971	\$1,583,639,539	\$95,107,986	\$791,819,770
10	71,705,554	\$73,856,721	\$674,892,758	\$194,020,291	\$1,777,659,830	\$97,010,145	\$888,829,915
Total	656,983,260	\$674,892,758	\$674,892,758	\$1,777,659,830	\$1,777,659,830	\$888,829,915	\$888,829,915

4.6 Buy back, buy fair

The industry strongly urges the government to reconsider the transition assistance scheme paid to licence owners. It was inadequate, arbitrary and the premise underlying payment of licences on a per entity basis was deeply flawed and unfair.

The only way forward for those most profoundly affected by these reforms is to implement a capital buy back of each and every licence in a fair and equitable manner in line with a compulsory acquisition of licences as property and other examples of industry deregulation.

Licence owners of the CPV industry represent the human tragedy central to the reforms of 2017. The countless submissions you will no doubt receive as part of this inquiry process are only the tip of the iceberg. Many people are unable to produce a submission, certainly not in English and certainly not in a way that could adequately express the impact of these reforms on their lives and their future. There is also an overwhelming sense of having been swindled and the sheer magnitude of shame that many feel prevents them from coming forward.

Every licence has value just as every person who owned a licence has value too. We must allow these people to move on with their lives in a way far improved from their current situation. It is our collective duty to right the wrongs of the past and repair the damage inflicted so harshly on the individuals who had historically and in good faith invested in this government regulated industry.

There were a number of licence categories in place prior to the reforms. For the sake of simplicity we refer only to Melbourne perpetual taxi licences and hire car licences.

By way of example, setting a value of \$250,000 for each taxi licence and \$35,000 for each hire car licence would represent a more acceptable outcome for very many people. There is no doubt that it will not suit everyone but this sits within reasonable parameters as considered below.

- Taxi licences were projected to fall to \$300,000 by Professor Fels following implementation of the 2013 reforms. A figure of \$250,000 represents a considerable and reasonable discount on this figure.
- Taxi licences were trading at approximately \$300,000 when the Andrews Labor government came to power in 2014 and promised in his pre-election campaign to look after licence holders at a stakeholder meeting in Huntingdale.
- Taxi licences plummeted in value when the regulator failed to uphold its statutory obligations to prosecute illegal business operators. There must be some level of responsibility accepted for the reason licence values did not hold as would have been expected in an orderly market.
- Prior to the reforms, hire car licences were available directly from the regulator at an up front cost of \$40,000. Setting a buyback value of \$35,000 for each licence reflects the fixed nature of a hire car licence over time, the cost of money and CPI.

Table 3 below represents the main licence categories pre-2017 reforms, the number of licences and the cost of the proposed capital buyback at \$250,000 for a taxi licence and \$35,000 for a hire car licence. The total cost of a capital buy back would be approximately \$917 million dollars.

Table 3: Cost of proposed licence buy back.

Licence category	Licence number	Capital buy back	Cost
Melbourne taxi	3,500	\$250,000	\$875,000
Hire car	1,200	\$35,000	\$42,000
Total			\$917,000,000

Figure 3 refers to the data presented in table 2 above and models the revenue generated over ten years for the \$1 levy and the proposed \$2,500 annual CPV licence. At every turn, the levy is outperformed by a licence fee applied to each and every CPV.

The amount paid in transition assistance to date is represented in purple (approximately \$400 million). Assuming the cost of levy collection is negligible and the system is fully compliant, the cost recovery point is around 6-7 years for the transition assistance scheme paid thus far. This would obviously extend further if collection costs and compliance levels were considered.

Cost recovery for the transition assistance scheme would be achieved within 2-5 years if a \$2,500 annual licence fee were introduced dependent on the number of registered CPVs. The lower limit being that the number of current CPVs will hold against the higher limit if up to a hypothetical 50% reduction in CPVs was observed once the licence fee is introduced.

An indicative proposed amount to be paid in a capital buy back of licences is represented in green (approximately \$917 million). With an annually collected licence fee, cost recovery is achieved within 5-6 years at current CPV numbers. This is based on the assumption that the fee will remain static over the period, which it may not.

In consideration of the worst-case scenario where implementation of a higher annual licence fee causes a reduction in the number of CPVs by 50%, the cost recovery point of a capital buy back is around 9 years.

In reality, the break even point at which the revenue collected by the annual licence equals the proposed buy back paid is likely to fall somewhere within these two values, 6-9 years and is comparable to the recovery of the transition assistance payments through the levy.

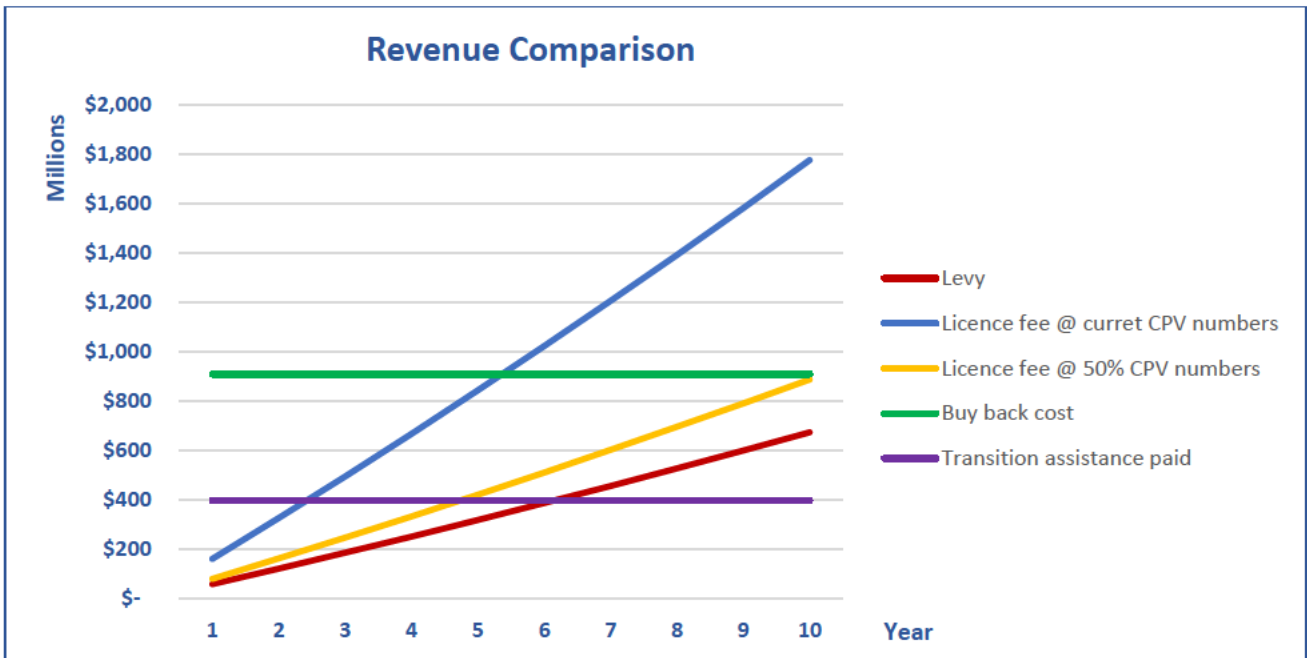


Figure 3: Comparison of revenue collected via the \$1 levy and the \$2,500 pa licence fee with the transition assistance payment and proposed total buy back cost overlayed.

Assumptions: 60,000,000 CPV trips in Victoria each year; 2% growth each year in the number of CPV trips (based on the Victorian Taxi Industry Inquiry); \$1.00 levy is indexed with CPI; CPI will average at 3% over the course of ten years; annual licence fee - \$2,500; licence fee remains static over ten years; 2% growth in number of CPVs, reflecting trip growth; scenario 1 - CPV numbers remain at current values (64,939); scenario 2 – worst case scenario, CPV numbers fall by half (32,470) on introduction of the licence fee. Cost of transition assistance scheme \$400 million; cost of capital buy back \$917 million.

This proposal works. The capital buy back scheme is sensible, it is fair and the revenue collected through application of a \$2,500 annual licence fee more than adequately recovers costs over the medium term. It is supported by the industry as beneficiaries of the compensation payment and as beneficiaries of the reforms allowing free market entry. The successful recovery of funds will be more straightforward than the levy and will be less burdensome in regard to monitoring, auditing and compliance.

Recommendation

The CPVAA recommends a capital buy back paid to each and every perpetual taxi licence at an independently valued amount, recovered through implementation of an increase in the annual licence fee to \$2,500.

5 Industry present

The on-demand economy has rattled no other industry quite like the passenger transport sector. The likes of Uber have unscrupulously entered the industry cashed up and aggressive in their campaign to attract both drivers and riders alike while heavily lobbying governments to change or introduce laws which enable their free market entry.

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

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

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

Together, these factors caused harm to the industry and began a marked reduction in overall driver remuneration in the order of 20-40%. This reduction has been exacerbated since deregulation with many drivers now reporting incomes reduced by 50% compared to before the reforms. Even rideshare drivers who initially reported good income whilst operating illegally pre-reforms have now experienced a sharp decline in their earnings due to market dilution.

While there was no prior restriction on the number of taxis and hire cars *per se* in the period pre-2017 reforms, there was a financial barrier to entry which served to confine the number of vehicles servicing the industry. These impediments have now been removed and the only requirement for CPVs is the purchase of a single annual permit to the value of \$53.80 (for all vehicles operating as a taxi, ride share or traditional hire car right throughout the state of Victoria in both metropolitan and regional areas) and a short application for driver accreditation. This has triggered an irresponsible flood of supply in the market to unsustainable levels, while patronage remains comparatively unchanged.

5.1 Commercial passenger vehicle numbers

Prior to the reforms of August 2017, the CPV transport industry comprised approximately 5,000 taxis, 1,200 private hire cars and around 58,000 accredited drivers servicing the state of Victoria. By comparison, since the legislative changes took effect, the industry has exploded to include (as of April 30, 2019) 10,786 taxis (including WAVs) (increase of 215%), 54,153 hire cars (includes rideshare, increase of 4,512%) and 95,029 accredited drivers, up by 160% (Figure 4).¹⁴ This corresponds to a total increase in vehicle supply of 1,047% with no real evidence of a proportionate increase in demand. The size of the pie has not significantly changed yet these figures continue to rise month on month.

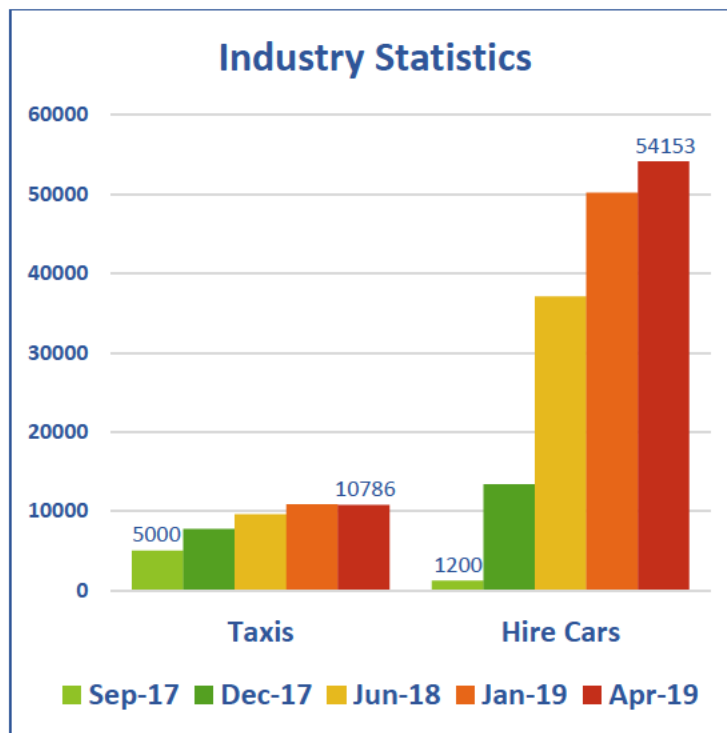


Figure 4: Registered commercial passenger vehicle numbers since 2017 reforms. 215% increase in taxis; 4,512% increase in hire cars; 1,047% increase in total registered CPVs.

The oversupply may on the surface be a benefit to the consumer, serving to reduce wait times, however this comes at a significant cost to the worker and to the demands on our road system.

There is a moral and social argument for a better balance between the desires of the consumer, those people who service them and the community at large.

Despite the rhetoric in the media and other sources, the justification for a barrier to entry to the CPV industry has traditionally been based on the view that without some barrier the market would become oversupplied. This is clearly evident in what has transpired since deregulation and comes as no great shock

¹⁴ <https://cpv.vic.gov.au/about-us/industry-statistics>

to those who live and breathe this industry. The failure of the market to proceed to an appropriate outcome will ultimately see consumers lose via higher costs and/or lower service standards.

The barrier to entry was never designed to protect incumbent licence holders. Furthermore, the licence fee has not been linked to the farebox since the 2013-2014 Taxi Fair Review by the Essential Services Commission.¹⁵

... when setting fares, no provision is made for assignment fees or operator margins, these will no longer be treated as a cost item associated with the provision of taxi services. Instead, from this review onwards, we include an allowance for an overall industry rate of return based on farebox revenue. This is a return that, as the fare regulator, we assume is required by the industry-as-a-whole in order to generate the necessary investment to maintain its financial viability.

By dispensing with the previous approach of treating assignment fees (and operator margins) as a cost item, we have broken once-and-for-all the nexus between fares and licence values (or assignment fees).

By this account, if a taxi fare is considered reasonable to maintain financial viability in an orderly market as opposed to a diluted one, what then do we make of the heavily discounted fares being offered by some rideshare platforms? How sustainable are these?

5.2 Industry viability and driver remuneration

Where once the transport industry offered a viable income, this is no longer the case across any sector be it taxi, hire car or rideshare workers, with some suffering more pronounced effects than others. Driver remuneration is at an all time low due to market dilution.

There is a race to the bottom where workers, particularly those new to the industry, are increasingly known to accept jobs with little consideration or understanding of the actual commercial cost of performing the work. This is more so the case in the rideshare sector with fluctuating fares while the taxi meter is a constant. It is commonly known that rideshare fares calculated at base rates without surge pricing barely cover operating costs let alone anything for the driver.

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

As a result of this demographic, a sub-industry in vehicle leasing has emerged to provide access to vehicles for arguably vulnerable people who do not own a car but have been induced to drive on the promise of a

¹⁵ <https://www.esc.vic.gov.au/sites/default/files/documents/f3f22493-62aa-4234-bb64-a95b79733669.pdf>, page XIX

decent return. This becomes problematic if the terms and conditions associated with vehicle leasing commit these workers to an unsustainable arrangement and sees their earnings and costs chase one another in circles.

More concerning is that organisations like Uber are partnering with vehicle leasing companies to enable and incentivise drivers to sign on to the platform with ease in a one-stop-shop offering. There are promises of a return but the pay rates are far from advertised. A typical weekly vehicle hire comes at a cost of \$269 per week with a one-off membership fee of \$275.

The taxi industry has also shifted into the space of vehicle 'leasing' although the arrangements are far less formal. Many operators are moving toward a 'set pay in' model for shift payments rather than taking a cut of the meter. This ensures a minimum return for the owner of the vehicle regardless of driver earnings.

As there is no requirement for commercial enterprises to disclose the number of trip bookings received on their platform (rideshare or taxis) or the number of registered vehicles on their books, it is difficult for drivers to evaluate economic propositions in order to make informed business choices about potential returns.

Recommendation

The potential for driver exploitation is very real and very high. The CPVAA recommends mandatory trip disclosure by the booking service provider and live data about the number of vehicles logged on to their system.

It is widely reported and understood that CPV drivers earn below minimum wage. This is a direct result of the cheaper fares being offered by rideshare platforms as well as the number of commercial vehicles in supply diluting the market for all involved. Fixed costs associated with the vehicle remain unchanged. There is no doubt that cheaper fares come at a direct cost to driver income.

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

Uber does not openly advertise their base rates on their website but it is reported by the RSDU (Ride Share Drivers United) that in Melbourne, current Uber base rates per kilometre (inclusive of all fare components) is about \$1.38. Following deduction of Uber's 27% commission and 10% GST, there remains 87 cents net earnings per kilometre from which the running costs of the vehicle must be sourced. Compounding this is that not all kilometres travelled are paid kilometres. A proportion of the distance travelled will be unpaid

kilometres travelling empty to pick up locations or areas of higher activity. Plainly, the margin of profit between operating costs and net earnings is slim creating an underclass of the working poor.

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

While there is no data available in Australia, unsurprisingly, the annual turnover of Uber drivers in the USA is reported to be as high as 90% in some areas. It is not inconceivable to assume that local statistics may be somewhat reflective of this number. Taxi driver turnover may be less than this figure and yet still high.

Meanwhile, the delay in drivers realising the poor profitability within the sector supports the burn and churn business model of rideshare. For the most part it is a fallacy that this industry with all its flexibility now provides anywhere near the financial elements necessary to provide enduring and profitable conditions for its workers. It was once described that Uber drivers represent charity workers who drive the middle class around at their own cost. With the current state of affairs, the same can now be said about taxi drivers.

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

Recommendation

The CPVAA recommends curtailing the influx of commercial passenger vehicles into the market through a considered rise in the cost of the CPV annual permit rather than by applying a market cap on vehicles which would be difficult to fairly manage across the different sectors of the industry. This will inflate driver earnings and improve viability for all market participants.

5.3 Wage theft

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

It is reported for example, that a \$10 fare would incur \$1 GST added to the total. The passenger pays \$11, Uber deducts 27% of the total fare (including GST) as commission leaving the driver with \$8.03 from which \$1 GST must be paid to the ATO, the driver now left with \$7.03. The driver is responsible for paying GST on Ubers cut of the fare yet Uber includes in their commission a cut of the GST by deducting from the total service charge rather than the base fare.

It should be that Uber deducts their 27% commission from the \$10 fare giving the driver \$7.30 in earnings and leaving intact the \$1 in GST for payment to the ATO. Uber is effectively short-changing drivers 2.7% of their earnings.

Recommendation

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

5.4 Conditions of employment

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

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

Only recently, the Fair Work Ombudsman (FWO) concluded a 2 year investigation announcing that Uber drivers are independent contractors, not employees, despite not being able to set their own rates.¹⁶ The FWO found that drivers are not 'employees' because they have control over their own hours. This is in contrast to other courts around the world which found Uber to be an employer. This is a devastating outcome and if this is what the laws are guiding regulators to do then the laws must be seriously broken. Governments must act urgently to put in place rights that protect all workers.

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

¹⁶ <https://mobile.abc.net.au/news/2019-06-07/uber-fair-work-ombudsman-investigation-contractor-employee/11189828?pfmredir=sm&fbclid=IwAR0sL5K4mTX0YupTVcZ60mivZrZHWJnZYiStTsmJ-vswXCL08l6inn4yRME>

relied on the existence of a sustainable and viable industry to ensure the slice of the pie was big enough for all stakeholders to thrive.

5.5 Network affiliation vs. independent operation vs. commission

The drawcard for many drivers joining the industry has been the cheap cost of entry permits, flexible employment options and a means to earn a primary or supplementary income with potentially no outlay in capital (providing that they have access to a vehicle) and no skills requirement other than a valid driver's licence.

Flexibility is perhaps more pronounced within the rideshare sector of the industry as the driver pays a commission to the booking service provider on every fare in a 'pay as you earn' model. Uber's commission is up to 27% of each fare for those newer to the system although long-term partners are on marginally better rates determined by the date of joining not their loyalty to the platform.

More often than not, taxis choose to affiliate with a taxi network for a monthly fee although this fee is not contingent on the number of bookings received. The fee can be up to \$700 per month fixed to a vehicle regardless of how many hours that vehicle is logged in to the network or how many jobs received through the network. The taxi network fee includes camera rental, access to EFTPOS facilities, appropriate vehicle branding and a duress alarm. While mandatory affiliation to a taxi network was abolished some years ago it would be difficult for any CPV to have no affiliation with any BSP.

One of the obstacles of operating independently of a taxi network is the requirement for taxis to carry approved terminals for processing of Multi Purpose Taxi Program (MPTP) payments. The MPTP program provides government subsidised fares to assist the travel needs of people with severe and permanent disabilities.

Until very recently Cabcharge terminals were the only terminals able to process such cards. Terminals supplied by NetCabs (Oii) have now also been approved for MPTP processing.

Cabcharge is synonymous with 13Cabs, the largest taxi network in Australia. They have been reported to be less than timely in processing applications for terminals to allow drivers to break their affiliation with the networks and operate independently. Things may shift with NetCabs now providing an alternative. If a driver relies on rank and hail and perhaps has a reasonable number of private clients it may be a suitable proposition to become independent although this business model will not suit everyone.

Ultimately, the networks are the only industry sector to have benefited from the reforms. With taxi numbers at double what they were prior and a monthly fee being applied to each for the privilege of network affiliation it is fairly obvious why networks are less than helpful in facilitating driver independence through provision of payment terminals. Yet we have taxi drivers complaining that there are few bookings received from the BSP per shift.

It is concerning that the industry landscape now provides less revenue for drivers, less revenue for operators, licence holders have been obliterated and all their wealth has been transferred to the networks. The networks have become more powerful and their businesses more lucrative than ever before.

Recommendation

The view of the CPVAA is that taxi network fees must be reflective of bookings being dispatched. Perhaps moving to a commission based model of payment or setting a limit on monthly charges would go a long way to reduce the operating costs of the driver. For rideshare there must also be a cap on the percentage of the fare that can be charged as commission.

Further, there should be government intervention to break the monopoly position of BSPs in the provision of government approved terminals. Perhaps terminals and BSPs should be mutually exclusive to allow drivers true choice and independence as the reforms allow.

6 Safety

6.1 Self-regulation

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

There is no doubt that the commercial passenger industry was somewhat over-prescribed, however safety should never be compromised regardless of cost or convenience. What may be flawless in theory may not be practical and may not transfer well to the lived reality of this industry and those who partake in it.

6.2 Touting

When a person is deprived of earning a sustainable income it is understandable (although not acceptable) that in desperation they might resort to unsavoury business practices. Touting was illegal under the previous legislation and regulations but since the reforms of 2017 it no longer attracts a penalty.

There has been a huge increase in complaints about drivers approaching people at Melbourne Airport, major events and hotels and on Melbourne's city streets. Drivers harassing, coaxing, urging people to accept their ride even fighting in the streets over fares. This is not restricted to one sector of the industry – it is evident across taxis, rideshare and hire cars.

Given the commercial reality in the industry at present it is particularly disheartening if you have been following the rules and waiting in the taxi holding ranks at Melbourne airport for your turn only to see rides walking away.

These direct approaches by drivers are in many cases made by individuals in unmarked cars and many offer cash rides, often with no record of the trip recorded by the passenger or a booking service provider. This practice also circumvents mandatory levy payments.

Touting is a serious safety issue in Melbourne and it needs an urgent solution. It is intimidating and dangerous. Touters are ruining Melbourne's reputation as a safe city.

Along similar lines, a problem exists in regional areas with unlicensed vehicles. There is a growing presence of 'cash for rides' operations advertising on Facebook and gumtree and other social platforms. Given the unprecedentedly low fee for a valid CPV annual permit it is disappointing that some are still operating outside the law and getting away with it. There must be heavy penalties applied to discourage such behaviour. It is a danger to the travelling public, a nuisance, unfair for the legitimate industry and it makes a mockery of the rules and the regulator enforcing them.

Recommendation

The CPVAA strongly urges for the swift reintroduction of touting laws before there is a serious incident.

The CPVAA recommends a targeted campaign by the regulator to stamp out this activity and stronger penalties for unlicensed vehicles operating as CPVs to act as a sufficient deterrent.

6.3 Driver fatigue

Driver fatigue is becoming an increasing problem and one which puts both drivers, passengers as well as other road users at significant risk. In an oversupplied market, there is the tendency that workers will extend their shift to generate further revenue to cover the cost of living. Driver takings are so poor now that it is not uncommon for workers to be on the roads in excess of 12 hours at a time.

Some taxi networks have implemented time restrictions logged on to the platform, however, there is nothing that prevents a person doing a 12 hour shift in a taxi followed by a few extra hours as a rideshare driver on one or more platforms. There needs to be greater oversight by government in this area and there

should be some level of co-ordination across all platforms to prevent drivers making the choices that they currently do.

Recommendation

Driver fatigue must be centrally managed to ensure workers do no more than 12 total hours of driving per 24 hour period and that there is at least a minimum of 6 hours between reaching that limit and starting another shift.

6.4 Livery, vehicle identification and cameras

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

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

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

Previously, under the historical regulations, it was mandated that taxi vehicles were required to have installed tamper-proof cameras, the contents of which could only be accessed by the regulator and Victoria police. This requirement now only applies to CPVs wishing to engage in anonymous rank and hail work.

The argument has been that cameras are no longer necessary because bookings are no longer 'anonymous' through the need for passengers and drivers to register accounts with network service providers. This is claimed to diminish opportunities by perpetrators to engage in criminal activity without getting caught.

This is all well and good yet despite everything, history shows there will always be some people who choose to behave in ways that contravene the law and, that there is always more than one version of events. An authentic video recording is the only way to ensure that both drivers and passengers are protected by providing the necessary and irrefutable evidence to pursue and support convictions.

Recommendation

The CPVAA recommends vehicle identification permanently fixed to the vehicle whether it be a specialised number plate or other signage.

The CPVAA recommends mandatory tamper proof cameras in all CPVs taking anonymous bookings in which the client is not known to the driver.

6.5 Vehicle insurance

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

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

Recommendation

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

6.6 Vehicle age limits and roadworthiness

As a condition of the CPV licencing system, there was once an age limit on commercial passenger vehicles set by government.

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

Where once, taxis were required to have their vehicles inspected by the regulator and to obtain an annual road-worthy certificate (RWC) through inspections conducted by a licenced vehicle tester. These conditions have been removed.

There is now a two-tiered standard in terms of what suffices as a vehicle inspection. At one level there is a road worthy certificate (RWC) conducted by a licenced vehicle tester. This is a rigorous process of checks to the mechanics and safety of the vehicle, on the hoist, inside and out.

At another level, there is a redbook check which is a cursory glance at a vehicle to point out potential areas of concern but far from thorough. There should be only one acceptable standard of vehicle check. It should be the gold standard and anything less is a serious compromise in passenger and driver safety.

While CPVs are required to obtain a RWC or redbook check annually, the certificates are only required to be kept in vehicle and not submitted to the regulator as a requirement. Now with over 60,000 vehicles on the road and a reduced number of compliance officers engaged by the regulator, it is highly unlikely that this will ever be monitored sufficiently. There are now allegedly 8 CPVV compliance officers. They would need to conduct spot inspections on 5,000 vehicles a month to get coverage across the entire industry and ensure vehicle safety standards are met.

Recommendation

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

7 Unintended consequences

7.1 Impact on communities and consumers

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

The reduction in wait times as a result of deregulation is a positive outcome for the consumer. However, this must be considered on balance with the uncontrolled influx of commercial vehicles contributing heavily to

congestion in our cities. This has led to implications surrounding parking availability, particularly in the CBD area where CPV drivers are using any curb-side space as a rank to wait for their next job.

For all the increased numbers of taxis operating in the industry there has been not a single additional rank created for waiting vehicles. Many of the ranks are full to overflowing and infringement officers aggressively issue fines forcing drivers to keep moving and circling, contributing to the congestion on our roads. Each fine can cost a CPV driver two days in wages.

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

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

7.2 Dynamic pricing

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

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

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

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

Recommendation

The CPVAA recommends greater consumer and driver protections in this sector through some level of independent oversight of pricing. Maximum limits should be applied to all fares calculated on a per kilometre basis. Price surging should be limited to within a maximum multiplier.

7.3 Predatory pricing

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

There are obvious dangers in opening the industry up to commercial enterprises without reasonable regulations to ensure that the industry not only serves the community efficiently and fairly but that it is a sustainable industry for those who work within it.

8 Summary

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

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

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