

5 August 2016

Mr Joshua Morris MLC
Chairman
Economy and Infrastructure Committee
Parliament of Victoria
By email: <eic@parliament.vic.gov.au>

Dear Mr Morris

Inquiry into Ride Sourcing Services

I refer to the above inquiry, and provide a submission to your committee on behalf of the Institute of Public Affairs. The overarching theme of this submission is that Victoria must cut red tape to unleash prosperity.

About the Institute of Public Affairs, and our existing research

The Institute of Public Affairs ('IPA') is an independent, non-profit public policy think tank, dedicated to preserving and strengthening the foundations of economic and political freedom. The IPA supports the free market of ideas, the free flow of capital, a limited and efficient government, evidence-based public policy, the rule of law, and representative democracy. Throughout human history, these ideas have proven themselves to be the most dynamic, liberating and exciting. Our researchers apply these ideas to the public policy questions which matter today.

Although the current inquiry focusses on ride sharing services, it is important to note that the outcomes of this inquiry will set a precedent for Victoria's regulatory approach to the sharing economy more broadly. The 'sharing economy' describes a rise of new business models that uproot traditional markets, break down industry categories, and maximise the use of scarce resources. The best known services are the ridesharing system Uber and the accommodation service Airbnb. However, the sharing economy extends much further into finance, home tools, investment, and everyday tasks.

This inquiry provides the Parliament of Victoria with an exciting opportunity to lead the way in its regulatory approach to the sharing economy.

In December 2014, the IPA published a research paper '*The Sharing Economy: how over-regulation could destroy an economic revolution*', authored by IPA Research Fellow Darcy Allen and Senior Fellow Chris Berg. This submission is based on this research. We enclosed a copy of this research paper, and trust that it will be of assistance to the committee in this inquiry.

Adopting a permissionless innovation approach to regulatory design

The IPA submits that the only objective of legislative action should be reducing regulatory barriers to entrepreneurs developing new approaches to public transport, such as ride-sharing.

Currently, such an objective benefits riders and drivers involved in ride-sharing, as well as the platform developers that provide a valuable matching service to these two groups of people. Into the future, this objective means that regulation does not hold back the dynamism of entrepreneurs and prevent the creation of new and innovative organisational and technological forms of mass-transportation – currently, in large part, unknowable.

In order for any regulation to meet this aim, the IPA recommends that the committee adopt the following approach:

- regulators should encourage bottom-up, organic, self-regulating institutions prior to introducing top-down government control;
- occupational licensing needs to be reduced to allow private certification schemes and reputation mechanisms to evolve;
- industry specific regulatory frameworks need to be avoided;
- regulations that make it harder for start-ups to compete for labour need to be reduced; and
- the status of individual contractors needs to remain separate from highly restrictive employment law.

The principle underpinning these recommendations is the notion of permissionless innovation: that experimentation with new technologies and business models should generally be permitted by default.

Deregulatory approach to ride-sharing

The primary submission of the IPA is that the committee does not need to propose a new scheme of red-tape on the sharing economy. Instead, the committee should adopt the approach of deregulating ride-sharing. It can do this by clarifying the law and amending existing legislation.

For instance, section 158(1) of the *Transport (Compliance and Miscellaneous) Act 1983 (Vic)* makes it an offence to carry passengers for hire or reward in a vehicle which has not been specially licensed. Similarly, section 165(1) of the *Transport (Compliance and Miscellaneous) Act 1983 (Vic)* makes it an offence to drive a Commercial Vehicle without being the holder of approved driver accreditation. The relevant vehicle and driver accreditation is only able to be obtained from the Taxi Services Commission, maintaining a highly-regulated monopoly.

In order to encourage growth of the sharing economy – in this case ride-sharing services – the committee could simply recommend amending this Act (and incidental amendments to the other Acts such as the *Transport Integration Act 2010 (Vic)*) to clarify that the above provisions do not prohibit ride-sharing services. This would involve passing a simple amendment to the Act, and perhaps providing a definition of ride-sharing services (although such a definition would need to be broad enough so that it did not exclude new organisational and technological forms which may emerge in the future).

Under this approach, ride-sharing services could continue to be provided through a booking platform – such as Uber’s – while taxis and approved vehicles and drivers would be free to compete in this market, while also maintaining their monopoly over hail and rank services.¹

We have had the opportunity of reviewing the *Ridesharing Bill 2016 (Vic)* introduced into the Legislative Council earlier this year by Fiona Patten MLC. Parts 1 and 3 of this Bill broadly conform to the preferred approach outlined above. Part 2 of this Bill, however, imposes a significant regulatory burden on ride-sharing, which raises barriers to entry and will constrain future competition. An additional concern is that Ms Patten foreshadowed a future power to proclaim regulations that would “account for insurance, accreditation, health checks, and access to disability subsidies”².

¹ Although the Institute of Public Affairs contends that there is no reason that taxis should enjoy any monopoly rights, we appreciate that this is beyond the scope of the terms of reference for the current inquiry.

² Victoria, *Parliamentary Debates*, Council, 8 June 2016, 2745 (Fiona Patten).

Response to the terms of reference

We will now specifically address the terms of reference of the inquiry, in relation to the IPA's preferred option.

(1) Barriers To Entry and (4) Competition

If specific legislation was introduced regulating ride-sharing, it will create a barrier to entry for new entrants. Although public interest arguments will be advanced in terms of public safety and quality of service, the truth is that regulation is highly susceptible to being introduced and implemented in a manner that furthers *private* interests rather than the public interest. For instance, incumbent firms in a market often welcome new regulations – even costly new regulations – because they present barriers to entry for new competitors.

While regulation might be welcomed by current ride-sharing platforms in Victoria, the committee should be mindful that they are not the only ride-sharing platform operating around the world – and that other innovative technology platforms might be developed in the future to displace the current ride-sharing model.

(2) Consumer Protection, (3) Consumer Safety and (5) Access to People with Disabilities

The default position for regulators should be to enable bottom-up, organic, self-regulating institutions before top-down, rigid, government control. Only once these systems fail (if they do) should we look to impose costly, slow and rigid top-down government solutions.

The IPA submits that the committee must be satisfied on the evidence of failure – not the potential of failure – of current ride-sharing platforms to deal with consumer protection, consumer safety, and access issues. The burden of proof must be discharged by those seeking to impose regulatory barriers.

This is because the sharing economy has already begun to implement a number of bottom-up governance mechanisms – and this is indeed true of ride-sharing. Particularly, the use of rating and reputation systems is ubiquitous.

In the case of ride-sharing, Uber, to use one platform as an example, have incorporated³ many consumer safety mechanisms:

- Uber drivers are pre-screened under four separate checks on drivers: driving history; criminal background checks; vehicle inspections; and medical checks;
- the vehicles of Uber partners face standards tests: no Uber vehicle is pre-2004, and the average model year for vehicles is typically 2008;
- every passenger is covered by Uber's contingent liability policy that provides US \$5 million in coverage for each trip. Further, on UberBLACK riders are also covered by commercial insurance covered by Uber's licensed and registered hire car partners;
- a record of every transaction is held by Uber (transactions are not anonymous);
- there is no handling of cash as payment occurs through the registered payment type within the Uber application; and
- the system is self-governing as riders and drivers who fall below a certain peer-determined rating are reviewed and potentially suspended.⁴

³ As at December 2014.

⁴ References provided in enclosed research paper, p. 7.

Further, when a rating below a certain level is selected by either a driver or a rider, they are required to provide a reason for their low rating. Ratings may trigger a review process by local teams.

These mechanisms are the result of market competition aiding the development and supply of reliable products and services. It is in the best interests of the platforms to produce a reliable and safe service; this is their brand. A deregulatory approach would allow this to continue to thrive. The taxi industry has not been responsive to consumer experience because they have been shielded from competition.

(6) Remuneration and Workplace Rights for Drivers

The modern economy is full of vast excess capacity – capital and labour which are not being engaged to their full potential. In large part this excess capacity is due to the substantial transaction costs involved in utilising those resources. Ride-sharing services take advantage of two underutilised resources – idle cars and people in need of work – in order to match them to the demand of people who need a ride.

Ride-sharing services reduce matching costs and remove the overheads involved on both sides of the exchange, creating a full car sharing service. To get the most out of the sharing economy we need to ensure that labour markets and the laws of contract are flexible and adaptable; providing entrepreneurs with the maximum ability to develop new services and extract maximum value out of existing resources.

It is important to note that ridesharing platforms do not employ drivers. Nor should the drivers be considered contractors of the platform. Drivers are simply paying fees through the platform in return for the valuable matching and payment service that the platform provides.

In short, the ride-sharing model operates outside the jurisdiction of the heavily regulated *Fair Work Act 2009* (Cth), and the committee should not seek to change this through regulation. Indeed, this fact is central to the platform's success to date. A deregulatory approach would leave decisions about the distribution of fees and charges between riders, drivers and platforms, a matter for them – and let the market set these conditions.

(7) How impacts of such regulation on the Taxi Industry can be minimised, and (8) Industry transition

It is important for the committee to note that ride-sharing is already occurring in Victoria. It is our understanding that the committee is not proposing to abolish licensing for taxis more generally. As such, a deregulatory approach to ride-sharing would not remove the taxi industry's continued monopoly over hail and rank services. This alone will minimise the impact on the taxi industry.

The IPA submits that compensation for the taxi industry is not an appropriate response to the new competitive threats of ride-sharing.

Broadly speaking there are three types of arguments for industry compensation. None conform to a deregulatory approach.

First, legal arguments focus on whether a taxi license is a property right, and whether deregulation is an unjust interference with that right. On this point, the committee should note that the licenses are licenses to drive and operate a taxi – not government guarantees of returns, or guarantees of a certain level of income.

Second, equitable arguments claim that deregulating ride-sharing reduces the value of a taxi license. A deregulatory approach would stimulate growth in ride-sharing – indeed, this is the aim – and this

would further erode some value of the taxi licenses on that basis. There is evidence to suggest that ride-sharing has created a new market. Such a change is simply a consequence of living in a technologically-innovative market-based economy.

There is a compelling analogy here with international competition displacing domestic manufacturing. At the federal level, the car manufacturing industry received over \$30 billion of 'transitional' industry assistance between 1997 and 2012, yet the Productivity Commission found that this has "forestalled, but not prevented, the significant structural adjustment facing the industry"⁵. Indeed, such support "tends to hinder rather than promote adjustment"⁶.

Third, political arguments contend that the reform process would be easier if vested interests can be paid off. The sharing economy is disrupting existing industries. Compensation for ride-sharing would set a terrible precedent for every other industry in Victoria that faces disruptive innovation. Taxpayers and consumers should not be asked to pay for barriers to economic progress.

(9) Any other issues the Committee regards as relevant.

The IPA draws the committee's attention to the fact that the sharing economy is growing, and the potential for economic growth in a deregulated system should not be underestimated. The growth of the sharing economy was estimated at 25% in 2013, with over \$3.5 billion in revenue.⁷ Direct government intervention will hinder, rather than help, the growth of these services – at the most critical time in the industry's emergence.

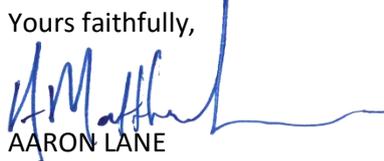
With this exciting potential, Victoria has an opportunity to become a 'permissionless innovation' jurisdiction by adopting a deregulatory approach.

Conclusion

We trust that this contribution on the benefits of a deregulatory approach to ride-sharing will be of assistance to the committee. Of course, the IPA would be pleased to present our submission, and answer any questions, at a public hearing of the committee.

If you have any questions, please do not hesitate to contact myself: in writing to Level 2, 410 Collins Street, Melbourne 3000; by telephone on (03) 9600 4744; or by email to alane@ipa.org.au.

Yours faithfully,



AARON LANE

Legal Fellow, Institute of Public Affairs

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⁵ Productivity Commission, *Australia's Automotive Manufacturing Industry*, Inquiry Report No. 70, 31 March 2014, p. 5.

⁶ *Ibid*, p. 13.

⁷ References provided in enclosed research paper, p. 4.