

26 May 2015

Mr Patrick Boneham
General Manager
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600
By email: competition@treasury.gov.au

Dear Mr Boneham,

RE: 2015 COMPETITION POLICY REVIEW FINAL REPORT

The Australian Taxi Industry Association (ATIA) is the national peak representative body for the taxi industry in Australia.

The Australian taxi industry has a significant interest in the establishment and maintenance of markets for taxi services that –

- provide a level playing field for service providers;
- promote efficiency, innovation and best practice;
- minimise discrimination to the maximum extent possible, especially in respect of disability, social economic status, age, ethnicity and gender;
- support affordable, reliable and timely service to whole communities on a 24/7 basis; and
- maximise consumer and driver safety.

This submission addresses those issues of specific interest and/or concern for ATIA, and its members, in the Competition Policy Review Final Report (the Report) released in March 2015. In that regard, this submission serves to complement, rather than repeat¹, our previous inputs to the Competition Policy Review –

- ATIA's June 2014 submission responding to the Competition Policy Review Issues Paper (April 2014); and
- ATIA's November 2014 submission responding to the Competition Policy Review Draft Report (September 2014).

In releasing the Report, the Minister for Small Business, Hon Bruce Billson MP, was reported in The Australian on 30 March 2015 as saying,

*"Upon our election to government, this is exactly what we have done, activating an independent, **objective and evidence-based review** led by Ian Harper and supported by an eminent panel."*²

Disappointingly, it is the strong and unequivocal contention of this submission that at least in respect of the Report's discussion of the taxi industry, the Review Panel failed abjectly to deliver on its brief to be **objective and evidence-based**.

¹ For a fulsome understanding of the ATIA's position, readers should refer to all three (3) of ATIA's submissions in relation to the Competition Policy Review.

² Emphasis added by ATIA.

As a case in point, on page 53 the Report states the following under the heading, “Taxis and ride-sharing”.

“Regulation limiting the number of taxi licences and preventing other services from competing with taxis has raised costs for consumers, including elderly and disadvantaged consumers, and hindered the emergence of innovative passenger transport services. Regulation of taxi and hire car services should be focused on ensuring minimum standards for the benefit of consumers rather than on restricting competition or supporting a particular business model. An independent body should oversee the regulations.”

Deconstructing this statement by the Review Panel exposes the Report’s gross inadequacy in regard to being evidence-based and its serious deficiency in regard to objectivity.

Firstly, there is simply no objective empirical evidence to support the proposition that quantity supply restrictions on taxi licences increase the price of taxi services paid by consumers. It is a hypothesised proposition that is misleading for the Review Panel to represent as a matter of certainty or fact. If true, the hypothesis would predict the removal of quantity supply restrictions on taxi licences to result in decreases in the prices of taxi services paid by consumers. However, the UK Law Commission in its comprehensive and rigorous three (3) year review of Taxi and Private Hire Service regulation concluded the contrary to be the case:

“[Taxi] Fares are another area in which practice does not appear to match economic theory. Economists predict that fares should become lower if there are more vehicles available. The prediction is not borne out either by comparisons of fares across licensing authorities or by comparisons of fare levels before and after derestriction.”³

Secondly, there is simply no objective empirical evidence to support the proposition that quantity supply restrictions on taxi licences are inherently disadvantageous to consumers. Again, it is a hypothesised proposition that is misleading for the Review Panel to represent as a matter of certainty or fact. If true, the hypothesis would expect the removal of quantity supply restrictions on taxi licences to improve service levels for consumers. However, here again the UK Law Commission’s more objective and evidence-based review concluded to the contrary:

“Economists predict that waiting times would be reduced if there were more vehicles available. Behavioural studies of taxi drivers, and an abundance of anecdotal evidence during consultation, suggest they do not behave as predicted by economic theories. In addition, the workforce is largely uncoordinated and independent, and drivers are very resistant to change in working patterns. This suggests that increased taxi numbers could result in more taxis at times and in places where demand is already relatively well served but little improvement elsewhere, such as at night or in more suburban areas. The effect of deregulation may therefore not be uniform.”⁴

³ UK Law Commission Report, 2014, Law Com No 347, “Taxis and Private Hire Services”, p 156, cl 11.55.

⁴ UK Law Commission Report, 2014, Law Com No 347, “Taxis and Private Hire Services”, pp 154-155, cl 11.50.

Thirdly, it is neither objective nor evidence-based for the Review Panel to recommend the limitation of taxi regulation to “*minimum standards*”. Taxi regulation is no different to any other regulatory intervention of Government. It should be introduced and retained to the extent that it promotes a net public benefit, satisfying the three-prong test of “*appropriateness, effectiveness and efficiency*”. Taxi regulation that does not address a market failure, or does not do so effectively or efficiently, lacks justification. Conversely, taxi regulation that overcomes a market failure effectively and efficiently to deliver a net public benefit, in terms of safety, social equity or economy deserves support. The Review Panel’s blind dismissal of any potential for market failure in the taxi industry whereby “*derestriction*” could or would produce a net public benefit is simply not objective, rational or evidence based. Indeed, in no lesser view than that of the UK Law Commission and its analysis, such a blinded view is contradictory to the empirical evidence.

Fourthly, the Review Panel’s proposal for an independent body to oversee taxi regulation is just perverse. State and Territory Governments develop and enact legislation for the enjoyment, advancement and protection of their respective communities. In Australia’s democratic system, those same State and Territory Governments are ultimately held responsible for their actions and inactions by their respective communities. State and Territory regulations covering on-demand, for-profit, passenger transport services do not exist outside of, or exempt from, the normal legislative process or democratic system. There is no objective evidence whatsoever that would support the proposition that a net public benefit would be delivered by removing responsibility for regulation of the taxi industry from an elected Government and placing it with an unelected “*independent body*”. In the ATIA’s view, the proposition is unnecessary, a waste of resources, and potentially self-serving of parties that may aspire to be rewarded in the establishment of such a body. Competition Policy should more properly be promoting smaller government, more efficient government administration, and not be open to hijack for the promotion of new and unnecessary bureaucratic empires.

In considering the UK Law Commission’s 2014 findings noted above, it is particularly relevant to note that these assessments represent reversals in the Commission’s position presented in its draft consultation report, “*Reforming the law of taxi and private hire services*” in May 2012.⁵ The UK Law Commission originally recommended “*derestriction*” (removal of quantity restrictions on taxi licence supply).

Importantly, the UK Law Commission openly and transparently acknowledged that its original support for “*derestriction*” was based on accepting the untested advice it received from interested economists. However, after testing the hypothesised outcomes predicted in that advice, the Commission found that they were not supported by any empirical evidence, indeed that they were contradicted by the empirical evidence. Unsupported by evidence, the UK Law Commission rightly abandoned its previous recommendation for “*derestriction*” and in its final report recommended the following approach to taxi regulation reform.

“We take the view that we should not propose a change to the existing legal position unless we are satisfied that it will yield an improvement. We are not satisfied of this in the light of apparent empirical evidence to the contrary. In

⁵ UK Law Commission Report, 2012, Law Com No 203, “*Reforming the law of taxi and private hire services*”.

summary, evidence from consultation suggests that we cannot be confident that removing quantity restrictions would bring significant consumer benefit.”⁶

Had the Review Panel conducted its review of taxi regulation objectively, as an evidenced-based review, with similar due diligence to the UK Law Commission (or even simply availing themselves of the Commission’s report and analysis), the Panel should have arrived at the same conclusion as the Commission.

Put more precisely, the Review Panel’s comments in relation to the taxi industry are premised on hypothesised speculations that are contradictory to the empirical evidence. Furthermore, as presented throughout this submission, the Report’s discussion of taxi market issues is riddled with errors of fact and judgement.

Irrespective of the Commonwealth Government’s decisions in relation to other matters canvassed in the Report, there is no escaping the conclusion that the Review Panel’s recommendation in relation to the taxi industry cannot be regarded as valid or reliable, if the Government holds to Minister Billson’s view that Competition Policy development be founded on objective and evidence-based review.

Recommendation 10 on page 54 of the Report states:

“... the following should be priority areas for review:

- Taxis and ride-sharing: in particular, regulations that restrict numbers of taxi licences and competition in the taxi industry, including from ride-sharing and other passenger transport services that compete with taxis.”*

The Commonwealth Government should comprehensively reject Recommendation 10.

There is simply no evidence to support any expectation that reviewing taxi regulation will produce any net public benefit, yet alone a benefit of a quantum or importance that would warrant promotion of such reviews as a special “*priority*”. Indeed the Review Panel notes that any such reviews, and presumably the implementation of subsequent reforms, are unlikely to contribute significantly to national productivity⁷.

The review of taxi regulation should be treated no differently to the review of other regulation. In the case of taxi regulation, it should be reviewed by the respective State and Territory Government that owns and has responsibility for the legislation without interference from other Governments (or levels of Government). The scheduling and conduct of such reviews should occur in the normal course and resourcing constraints of the respective State or Territory Government’s program for reviewing the entirety of its legislation.

COMMENTS ON SECTION 10.2 OF THE REPORT

The Report discusses the “*taxi industry and ride-sharing*” in some detail in Section 10.2 on pages 131-135. The ATIA makes the following comments in relation to errors of fact or judgement in Section 10.2.

⁶ UK Law Commission Report, 2014, Law Com No 347, “Taxis and Private Hire Services”, p 157, cl 11.59 – 11.60.

⁷ The Report, page 134, paragraph 6.

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1. On page 131 in paragraph 2, the Report lists 4 categories of purpose for regulation of the taxi industry, namely to –
 - a. set minimum quality standards;
 - b. establish Community Service Obligations (CSOs);
 - c. place restrictions on competition from other services; and
 - d. place restrictions on the number of taxis.

The Report's categorisation scheme is derelict and misleading by not identifying the prime purpose of much taxi regulation is based on establishing standards for the protection of consumers' and drivers' **safety**. Removal or degradation of safety-oriented regulations would be unlikely to produce any net public benefit. Accordingly, by not acknowledging the "safety" purpose of taxi regulation, the Report materially misrepresents the quantum of opportunity to introduce change/reform of taxi regulation that can potentially be in the net public interest.

2. On page 131 in paragraph 3, the Report states:

"On the whole, they (quality standards taxi regulation] appear to impose little cost on the taxi industry and their customers because they do not significantly restrict competition between taxi services."

There is no evidence for this statement. Presumably under the heading of the quality standards, the Report includes regulations for the maintenance and replacement of vehicles, equipment specifications (e.g. mandated taximeters, hail lights, special livery, duress systems, security camera systems, despatch systems and equipment and EFTPOS equipment), and commercial insurances (e.g. motor property, compulsory third party (CTP) personal injury, public liability and workers compensation). These regulatory requirements add tens of thousands of dollars recurrently to the operation of a taxi in Australia. Taxi regulations associated with safety and quality cannot then objectively, or on the evidence, be described as "*imposing little cost*" as stated in the Report. To the contrary, they are more correctly described as substantial costs that are unavoidable for the preservation of net public benefit.

3. On page 132 in paragraph 2, the Report states:

"This [taxi licence supply restrictions] has the effect of limiting responsiveness to consumer demand."

As noted above, the UK Law Commission found no evidence that markets without restrictions on taxi licence numbers are more responsive to consumer demand than markets with restrictions. Consistent with this point, the evidence of the Northern Territory's removal of its restriction on taxi licence numbers in 1999 was that it produced less responsive taxi services. As a consequence, the Territory Government subsequently reintroduced caps on taxi licence numbers to promote improved service responsiveness. Similarly, a comparison of the New Zealand taxi market (which has no restriction on taxi licence numbers) and the Queensland taxi market (which has restrictions on taxi licence numbers) shows the latter significantly outperforming the service responsiveness of the former. The Report's proposition is a baseless imagination of the Review Panel that is both false and misleading.

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4. On page 132 in paragraph 3 the Report states:

“New taxi licences are typically issued on an infrequent and ad hoc basis with different sale methods in the States and Territories resulting in large variations in sale price.”

It is somewhat unclear as to what the Review Panel intended readers to make of this statement. However, had the Review Panel investigated the matter with due diligence, they would have discovered that some jurisdictions issue taxi licences regularly (e.g. annually), all jurisdictions issue taxi licences using methods that are consistent with their historical practice, and that there are not large variations in the sale prices received by the respective Government to the prices of licences being traded privately in the respective jurisdiction as determined by the forces of supply and demand. The Report's proposition is at best inaccurate and at worst seriously misleading.

5. On page 132 in paragraph 4 the Report states:

“Although laws that regulate safety and minimum service levels are commonplace in the Australian economy, the taxi industry is virtually unique among customer service industries in having absolute limits on the number of service providers.”

This is a particularly curious error for the Report. In paragraph 2 on the same page, the Report actually acknowledges that, *“There is no restriction on the number of taxi drivers.”* Had the Review Panel investigated the matter with due diligence, they would have discovered that for over 85% of any given week in any given market for taxi services in Australia, the number of taxis that are on-road plying-for-hire is not limited by the number of available taxi vehicles (due to taxi licence quantity restrictions) but by a lesser number of drivers (who are unrestricted in supply) wanting to bail, lease or otherwise acquire access to a taxi due to their expectation of customer demand at the time. The Report's distorted overestimation of the impact of quantity restrictions imposed by regulation on the number of taxi licences flaws its analysis.

The Report is factually wrong in asserting that there are *“absolute limits on the number of service providers”* in the taxi industry. The actual service provider of a taxi service is of course the taxi driver, and as the Report acknowledges, there are no regulatory restrictions limiting their number.

Relevantly, had the Review Panel investigated the matter with due diligence, they also would have discovered that there are also no quantity restrictions imposed by regulation on the number of taxi dispatch / booking companies (networks) that facilitate the booking of taxis services in a taxi area.

6. On page 132 in paragraph 6 the Report states:

“... the Panel notes that most service industries face variable demand, and that businesses are able to operate without regulation limiting the number of operators.”

This statement is either naïve or deliberately misleading. In the case of most business activities in Australia, there are barriers to entry that work to restrict the number of actors in a market. These barriers include physical limits on the quantity of land available for establishing a “bricks and mortar” based operation, of spectrum for electronic communication services, of prerequisite qualifications in the case of many professions. In markets where natural barriers to entry do not restrict the oversupply of operators, it is not uncommon for Governments to protect their communities from harm or disadvantage associated with market failure. The overfishing of marine resources is a classic case where Governments have intervened to impose restrictive fishing licences (i.e. to control for oversupply of fishers). It is also the case in utility markets that Governments have imposed absolute or virtual quantity restrictions on the number of electricity generators, the operation of electricity distribution networks, the provision of heavy and light rail infrastructure and services, and the provision of bus and ferry services.

As noted above, there are no quantity restrictions on the number of taxi drivers or taxi booking/dispatch companies. The quantity restrictions imposed by regulation on the number of taxi licences represent a minimalist approach to intervention that serves to promote the objects of maximising public necessity and convenience (by imposing service, safety, accessibility and affordability obligations) and minimising public nuisance (associated with oversupply due to market failure). When competently constructed, administered and maintained, the empirical evidence confirms that quantity restrictions on taxi licences promote a net public benefit.

Accordingly, the Report is neither objective nor evidenced-based in pretending that an oversupply of vehicles providing taxi services in a given market –

- will not likely occur in the absence of regulatory intervention;
- will not result in degraded levels in taxi services;
- will not produce a range of social or environmental harms with material costs;
- will not promote a range of *allocative inefficiencies* associated with underutilised assets and resources; and
- will not provide opportunities for detrimental rogue behaviour by some operators, including price gouging (or surge pricing).

7. On page 132 in paragraph 7 the Report states:

“The scarcity of taxi licences has seen prices paid for licences at \$390,000 in New South Wales and \$290,000 in Victoria, which indicates that significant economic rents accrue to owners of taxi licences and is at odds with the claim that licence numbers are balanced given market conditions.”

It is somewhat unclear as to what the Review Panel intended readers to make of this statement, but it appears to infer that the existence of taxi licences having non-zero values results from an undersupply of licence and this undersupply then creates economic rents that cause taxi fares to be higher than they would otherwise need to be, and so work to the disadvantage of taxi consumers. However, had the Review Panel

investigated the matter with due diligence, they would have discovered that licence values in Victoria⁸ dropped from a peak of \$500,000 per licence in 2010 to \$280,000 in 2013, a 44% reduction in value. During the corresponding period, there was no change or movement in taxi fares in Victoria. In 2014, Victorian taxi licence values increased by 2% to \$285,000 and taxi fares increased by over 12%. The Review Panel's proposition that high (non-zero) taxi licence values cause higher taxi fares, and by implication lower taxi licence values cause lower taxi fares, is clearly not supported by the facts for Victoria, one of the two jurisdictions highlighted in the Report.

Given that Sydney taxi licences peaked in 2011, dropped in 2012, remained the same in 2013, dropped again in 2014 and there was been no corresponding adjustment (reduction) in taxi fares, the Review Panel's proposition does not hold for the other jurisdiction noted in the Report. As noted already in this submission, there is simply no empirical evidence of jurisdictions removing quantity restrictions on taxi licences and seeing anything other than taxi fares increasing, not decreasing by some (or any) commensurate proportion associated with the hypothesised rent arguments.

8. On page 133 in paragraph 1 the Report states:

"In each jurisdiction and nationally, the industry has been subject to a series of reviews dating back more than two decades. However, apart from recent reforms in Victoria (see Box 10.7), there has been little reform. The Victorian case demonstrates that change for the benefit of consumers is possible."

The Report spends half a page (as Box 10.7) listing a mere 9 of the 139 reforms recommended by the Victorian Taxi Industry Inquiry (VTII), presumably as some sort of selective further endorsement of the VTII and its work. However, had the Review Panel investigated the matter with due diligence, they would have discovered that these reforms have not resulted in Victorian taxi services becoming a best practice benchmark for taxi services in Australia in terms of price, quality or reliability⁹. Moreover, they also would have discovered that the VTII reforms increased the quantum of regulation applying to the taxi industry (i.e. added regulatory burden), increased administrative costs to the State Government associated with that regulation (i.e. Victoria has the highest Regulator staffing costs of any Australian jurisdiction), and resulted in price increases to taxi customers of more than 12 percent when consumers in other Australian States experienced no increase in taxi fares or increases generally consistent with the Consumer Price Index (i.e. less than 2 percent). The Review Panel's endorsement of the VTII reforms is completely inconsistent with the Competition Policy's presumption of promoting net public benefit.

⁸ For consistency with the Report, this submission refers to Victorian licence values. However, the figures noted in this submission and the Report are more correctly Melbourne conventional taxi licence values. Taxi licence values vary from area to area across Victoria. They also vary by type of licence and any special conditions that may be attached to the licence.

⁹ Victorian taxi services do however compare very favourably against international performance benchmarks for overseas jurisdictions. In that context, Australian taxi services are widely regarded as operating at world's best practice and so Australian performance benchmarks for taxi services are especially high.

9. On page 133 in paragraph 2 the Report states:

“Technological change is also disrupting the taxi industry, with ride-sharing apps, such as Uber, connecting passengers with private drivers. Traditional booking methods are also being challenged by the emergence of apps such as GoCatch and ingogo.”

Given that every Australian capital city taxi network had a smartphone app for booking taxi services before Uber commenced operations in Australia in September 2012 it is not reasonable or defensible for the Review Panel to contend that the taxi industry was disrupted by the arrival of Uber’s smartphone app.

It is also not logical or sustainable for the Review Panel to propose that the smartphone apps by GoCatch and ingogo were “technologically disruptive” when they respectively launched their apps in late June 2011 and August 2011, and industry developed apps had been in the Australian market since 2010. Indeed, GoCatch and ingogo launched their apps after, not before, fully working and functional industry developed apps were showcased in public presentations at the Australian Taxi Conference in the first week of May 2011.

The disruptive component of the Uber’s ride-hailing service, uberX, launched in April 2014 was not the app or any technology per se. In fact, the Uber app had been operating in Australia for 18 months prior to Uber switching on the uberX, ride-hailing service feature. The uberX disruption to the taxi industry was the use of drivers without appropriate authorisation to illegally ply their private vehicles for exclusive hire to the public (or strangers) for commercial reward. It is simply an imagination by the Review Panel to categorise this as a “*technological disruption*”. The substantive disruption to the taxi industry has been the unfairness of having to comply with safety and service standards that impose significant costs (and inconveniences), and using inflexible pricing regulated by Government, when a significant competitor is allowed by ineffective regulatory enforcement to avoid such costs (and inconveniences) and to undercut taxi prices through avoidance of such costs (and inconveniences).

10. On page 133 in paragraph 3 the Report states:

“The advent of ride-sharing services both in Australia and overseas has been particularly controversial, with regulatory agencies questioning their legality and fining drivers, notwithstanding public acceptance of and demand for ride-sharing services.”

The Report is factually wrong to describe “*regulatory agencies [as] questioning ... [ride-hailing services] legality...*”. Where they operate, ride-hailing services have been declared to be unlawful by every respective State and Territory Government in Australia. It is a baseless invention for the Review Panel to contend otherwise, namely that there is any doubt in the mind of any State Government or their Regulatory Agency as the current illegality of ride-hailing services.

It is also plainly wrong for the Review Panel to propose that this current illegality of ride-hailing services, or State Governments’ efforts to enforce their respective law, should somehow be affected by some measure of

“*public acceptance*” or “*demand*” for ride-hailing services. If such “*acceptance*” or “*demand*” existed, and the ATIA is unaware of any verifiable or reliable data which shows majority community support in any Australian jurisdiction for ride-hailing services, they could only give cause or encouragement for the respective State Government to change their existing laws, not to resile from the declaration of the existing laws or the upholding of them through appropriate enforcement.

11. On page 134 in paragraph 3 the Report quotes the submission from Uber that,

“While ridesharing competes with the taxi industry, ridesharing is not a taxi service ... Notably, ridesharing trips (as with all services facilitated by platforms such as the Uber app) are not anonymous, cannot be hailed on the street, do not use taxi ranks and do not have taximeters.”

It is somewhat unclear as to what the Review Panel intended readers to make of this statement, but presumably it is presented as an opposing argument to the contention attributed to the Taxi Council of Queensland in the immediately previous paragraph, namely that ride-hailing services were “*de-facto taxi services*”. It is disappointing that the Review Panel publishes the Uber quote without any critical assessment. Had the Review Panel investigated the matter with due diligence, they would discovered that taxi services in Australia are not exclusively anonymous, not exclusively hailed or hired from a rank, and do not always calculate fares by taximeters. Indeed, none of the points of differentiation noted in the Uber quote demonstrate anything other than ride-hailing services operating as a point-to-point, on-demand, exclusive hire, passenger transport services to the public for commercial reward - that is, in form and function, a type of taxi service.

12. On page 134 in paragraph 4 the Report states:

“A number of state and territory governments have determined that Uber is acting outside current industry regulations and issued fines to Uber drivers.”

The Report is either careless and/or misleading in this statement. Had the Review Panel investigated the matter with due diligence, they would discovered that every Australian State or Territory has laws on their statute books that specifically make ride-hailing, including uberX services, illegal in their jurisdiction. Where ride-hailing services operate, all of the respective State and Territory Governments and/or their respective agencies have proceeded to enforce their laws through issuing “cease and desist” notices, monetary fines, court appearance notices, and the use of other enforcement instruments. It is not “*a number*” of them, it is in fact all of them.

13. On page 134 in paragraph 6 the Report states:

“Although taxi reform is not expected to make a major contribution to national productivity ...”.

In the ATIA’s view it simply beggars belief that the Review Panel can openly acknowledge that pursuing taxi reforms will make little difference to national productivity and yet advocate the very pursuit of such reforms as a priority for Governments (i.e. in Recommendation 10 of the Report). It appears that the

Review Panel lost sight of Competition Policy not being an end in itself but a means to promoting maximal net public benefit. To recommend Governments incur certain costs (because regulatory reform competently conducted will always incur real and material costs) for uncertain and possibly illusory benefit can only constitute an irresponsible and irrational folly.

14. On page 134 in paragraph 7 the Report states:

“The Panel considers that the longstanding failure to reform taxi regulation has undermined the credibility of governments’ commitment to competition policy more broadly, making it harder to argue the case for reform in other areas. The Victorian example demonstrates that change is possible and technological disruption suggests that consumer-driven change is inevitable.”¹⁰

Firstly, there is no evidence of “*failure to reform taxi regulation*” in Australia. Indeed, the Report acknowledges that wide-ranging taxi reforms occurred in Victoria in 2014. Had the Review Panel investigated the matter with due diligence, they would have discovered that virtually every State Government has undertaken wide-ranging reviews of their respective taxi regulations within the last 5 years, plus reviewed them in the context of the Victorian Taxi Industry Inquiry (VTII) reforms, and the Northern Territory and Australian Capital Territory¹¹ are currently conducting wide-ranging reviews. The Review Panel’s proposition, that there is some “*longstanding failure*” to review and reform taxi regulation is a baseless invention of the Review Panel that is both false and misleading.

There is no evidence that any State Government has suffered any diminution in “*credibility*” in respect of “*commitment to competition policy*” as a result of its ongoing regulation of the taxi industry. The proposition is another baseless invention of the Review Panel that is both false and misleading.

There is no evidence of any State Government having experienced hardship in progressing “*reforms in other areas*” due to its ongoing regulation of the taxi industry. Yet again, the proposition is a baseless invention of the Review Panel that is both false and misleading.

There is also no evidence of any State Government having experienced any diminution of electoral support or credibility due to its ongoing regulation of the taxi industry. Indeed, the defeat of the Victorian State Government at the September 2014 poll, after implementing exemplary taxi regulation review and reform from the Review Panel’s perspective, is clearly counterintuitive to any such a proposition.

Lastly, had the Review Panel investigated the matter with due diligence, they would have discovered that after the implementation of the VTII reforms, Victorian taxi standards remain below benchmark performances in other

¹⁰ This statement was also made in the Draft Report as paragraph 4 on page 139 paragraph. The ATIA’s November 2014 submission recommended the statement be deleted arguing it was not factually true.

¹¹ Somewhat curiously, the Report acknowledges, albeit disconnectedly, the ACT Review as a simple note on page 135 as paragraph 3

Australian States¹². Accordingly, the Report's statement that, "*The Victorian example demonstrates that change is possible and technological disruption suggests that consumer-driven change is inevitable*" is peculiar. The proposition that "*change is possible*" but (and only) "*consumer-driven change is inevitable*" is plainly absurd in this or indeed probably any context. "*Change*" in the taxi industry is no less inevitable than in any other sector of the Australian economy and "*consumer-driven*" catalysts for change are simply one of many catalysts for change. The Review Panel's endorsement of the VTII review as some form of regulatory best practice, or promotion of net public benefit, is just not objectively evidence based.

15. On page 135 in paragraph 1 the Report states:

"The focus of reform in the taxi industry needs to be twofold: to reduce or eliminate restrictions on the supply of taxis that limit choice and increase prices for consumers; and to encourage technological change that can benefit consumers. There is also an opportunity for the taxi industry to consider a reduction in the current level of red tape that applies to their industry."

Best practice in regulatory reform can never be promoted by prejudging the outcomes of regulatory changes based on hypothesised expectations. The proper focus of reform in the taxi industry should be promotion of net public benefit. Given that the empirical evidence of jurisdictions removing quantity restrictions on the supply of taxi licences is that taxi fares (prices) to consumers increase rather than decrease, it would be the reasonable expectation of the ATIA that a competent and objective Regulatory Impact Statement would not conclude their removal to be likely to contribute to a net public benefit. As noted above, the UK Law Commission's more diligent and comprehensive review of such matters found that the empirical evidence contradicts the Report's speculations that, "*restrictions on the supply of taxis ... increase prices*" and their reduction or elimination will necessarily result in "*benefit consumers*".

It is somewhat unclear as to what the Review Panel intended readers to make of its comments in relation to "*red tape*". Removal of "*red tape*", namely any regulatory intervention that fails the three-prong test of being "*appropriate, effective and efficient*" is not a matter requiring any further consideration by the taxi industry as its removal should proceed as a matter of natural course at the earliest efficient convenience of the respective State Government.

16. On page 135 in paragraph 2 the Report states:

"An important element of reforming regulation should be to separate out CSOs currently embedded in taxi regulation and fund those CSOs explicitly."

As noted above, best practice in regulatory reform can never be promoted by prejudging the outcomes of regulatory changes based on hypothesised

¹² Victorian taxi services do however compare very favourably against international performance benchmarks for overseas jurisdictions. In that context, Australian taxi services are widely regarded as operating at world's best practice and so Australian performance benchmarks for taxi services are especially high.

expectations. As to whether CSOs are better delivered under the existing regulatory scheme, under explicit separation, or some hybrid arrangement should be a matter determined quantitatively in the preparation of a competent and objective Regulatory Impact Statement. The Review Panel's advocacy of separating out CSOs is simply an unsubstantiated speculation that is inconsistent with its brief to provide objective and evidence based policy recommendations.

CONCLUSION

The Report in its discussion of taxi regulation regularly fails the tests of objectivity and reliability. As noted throughout this submission, this failure results directly from the Review Panel ignoring or disregarding empirical evidence without cause or justification. In preferring to promote views that are inconsistent with, or contradicted by, the empirical evidence the Review Panel's advice in relation to taxi regulation is fundamentally flawed and unreliable.

The Commonwealth Government should accordingly reject the Report's Recommendation 10 in its entirety.

Moreover, there is simply no evidence to support any expectation that reviewing taxi regulation will produce any net public benefit, yet alone a benefit of a quantum or importance that would warrant promotion of such reviews as a special "priority". Indeed, the Review Panel notes that any such reviews, and presumably the implementation of subsequent reforms, are unlikely to contribute significantly to national productivity¹³.

As a substitute for Recommendation 10, the ATIA advocates the review of taxi regulation should be treated no differently to the review of other regulation. Taxi regulation should be reviewed by the respective State and Territory Government that owns and has responsibility for the legislation without interference from other Governments (or levels of Government). The scheduling and conduct of such reviews should occur in the normal course and resourcing constraints of the respective State or Territory Government's program for reviewing the entirety of its legislation.

The Commonwealth Government has rightly recognised that lessening the quantum of regulatory burden on the Australian economy must be one of its highest priorities. Rather than assisting that commitment, the Review Panel's promotion of the market for ride-hailing services, such as uberX, as a separate market to the market for taxi services is decidedly unhelpful and represents bad public policy. The last thing the Australian economy needs, or can sustain, would be the creation of new and separate regulations for every new service variation emerging out of the so-called sharing or digital economy. In essence uberX (and other ride-sharing) services are just a type of taxi service and so the same rules that apply to taxi drivers should apply to uberX (and other ride-sharing) drivers. Similarly, the same rules that apply to taxi vehicles and the dispatch of taxi bookings should apply uberX (and other ride-sharing) vehicles and uberX (and other ride-sharing) ride "facilitations".

Competition Policy should promote by all respective competitors playing on a level field, playing within and under the same rules, and winning market share and profitability through competitive advantages leveraged from superior efforts, innovations and efficiencies.

¹³ *The Report, page 134, paragraph 6.*

The Review Panel's enthusiasm for promoting ride-hailing services, as services to be regulated differently to taxi services and so necessitating the creation of a new (or separate) regulatory framework, fails the test of being objective and evidence based. Ride-hailing services operate as point-to-point, on-demand, exclusive hire passenger transport services to the public (i.e. strangers) for commercial reward. They are in form and function nothing more, and nothing less, than a type of taxi service. In such circumstances, the creation of new or additional regulations for ride-hailing services cannot reasonably or responsibly be expected to produce a net public benefit – but only to add to the complexity and burden of an already overburdened regulatory framework.

Finally, should you require any further information or clarification in regard to any matter raised in this letter, I can be contacted directly on (07) 3467 3560.

Yours sincerely



Blair Davies
Chief Executive Officer