

2015/22: Should Uber be made legal throughout Australia?

What they said...

'Consumers have moved with technology. It's time for industry and government to move in the same way'

New South Wales Minister for Transport and Infrastructure, Andrew Constance, commenting after his state legalised the operation of UberX

'Cashed-up companies like Uber use warm and fuzzy words but in reality they are about one thing - making money by exploiting...drivers, exposing the public to risks and lying about their operations'

The Taxi Council of Queensland chief executive, Benjamin Wash

The issue at a glance

In December, 2015, Uber's ridesharing service, UberX, was declared legal in New South Wales and Western Australia. In October, 2015, Uber's service was legalised in the Australian Capital Territory.

The advantages and disadvantages of Uber operating within Australia have been vigorously debated since Uber first arrived in this country. The company has generally met with support from commuter advocates. The Australian Taxi Association has consistently opposed the legalisation of Uber services and highlighted that Uber's operations are currently outside the law in most Australian states.

Whether Uber's operations should be legalised in other states is still being investigated and debated.

Given the phenomenal growth capacity Uber has demonstrated in overseas jurisdictions, some commentators have claimed that the legal status of Uber needs to be formalised sooner rather than later and that customer and driver safeguards should be put in place as deemed necessary.

Background

(The information printed below is an abbreviated version of that found in two Wikipedia entries. The information can be accessed at https://en.wikipedia.org/wiki/Uber_%28company%29 and https://en.wikipedia.org/wiki/Legal_status_of_Uber's_service#cite_note-lawsuits-1)

Uber Technologies Inc. (stylised as U B E R) is an American international transportation network company headquartered in San Francisco, California. The company develops markets and operates the Uber mobile app, which allows consumers with smart phones to submit a trip request which is then routed to Uber drivers who use their own cars. As of May 28, 2015, the service was available in 58 countries and 300 cities worldwide. Since Uber's launch, several other companies have copied its business model, a trend that has come to be referred to as 'Uberification'. Uber was founded as 'UberCab' by Travis Kalanick and Garrett Camp in 2009 and the app was released the following June. Beginning in 2012, Uber expanded internationally. In 2014, it experimented with carpooling features and made other updates. Klout ranked the San Francisco-based company as the 48th most powerful company in America in 2014. By late-2015, Uber was estimated to be worth \$US62.5 billion

The legality of Uber has been challenged by governments and taxi companies, who allege that its use of drivers who are not licensed to drive taxicabs is unsafe and illegal

Uber and the law

Uber is involved in at least 173 lawsuits. As of mid-2015, protests had been staged in Germany, Spain, France, and England, among other nations, and dangerous incidents involving passengers have been documented. Uber executives were arrested in France in June 2015. In December 2014, Uber was banned in Spain and in two cities in India. Uber continues to be involved in disputes with several governmental bodies, including local governments in the United States and Australia.

Governments have been largely unable to stop Uber's operations in their jurisdictions because its operations are conducted primarily over the Internet. In addition, Uber is said to use extremely aggressive tactics such as bullying and hiring investigators to 'dig up dirt' on journalists who criticize them. Portland, Oregon's transportation commissioner called Uber management 'a bunch of thugs'. A commissioner in Virginia who opposed Uber was flooded with emails and calls after Uber distributed his contact information to all of its users in the state.

Australia

In May 2015, the Australian Taxation Office issued a directive stating that drivers that generate income through ride-share are considered a business and advised those providing a ride-sharing service that they need to have an Australian Business Number and be registered for GST. Uber was quick to respond to ATO's directive and lodged documents to the Federal Court arguing that the public issue by the ATO 'unfairly targets Uber's driver-partners'.

Australian Capital Territory

Uber secured an agreement with the government of the ACT, and commenced UberX ride-sharing on 30 October 2015 as stage one of a planned legal integration of ride-sharing with the existing taxi industry. Stage two will involve legislation

introduced on 29 October and being debated and passed early in 2016. As the government holds a majority in the unicameral Legislative Assembly, this should proceed smoothly. UberX drivers must pass criminal record and driver history checks and their vehicles are checked to be registered, insured and roadworthy. In stage two, drivers will be subject to regular health checks and must pay additional licensing fees.

New South Wales

On April 30, 2014, Transport for New South Wales, the government authority regarding transportation in New South Wales, Australia, responded to the introduction of ridesharing function of Uber and clarified that "if a NSW driver is taking paying members of the public as passengers, the driver and the vehicle must operate in accordance with the Passenger Transport Act" and "Under the act, such services must be provided in a licensed taxi or hire car, by an appropriately accredited driver, authorised by Roads and Maritime Services (RMS)." In December 2014, the New South Wales government confirmed that they had conducted an unannounced search of the company's Sydney offices in April of that year for law enforcement purposes.

The New South Wales government created a taskforce to look into Uber problem stating that the existing regulatory framework is 'difficult to enforce', and therefore not as effective as it could be. The taskforce also noted that ride sharing services 'appear to meet the criteria of a public passenger service' under the 1990 Act. This is despite the fact Uber has reaffirmed that it is not a taxi service and should not have to operate under taxi regulation. On 17 December 2015, Uber was legalised in NSW with compensation for taxi plate owners

Western Australia

On December 18, 2015, the Western Australian Transport Minister Dean Nalder revealed sweeping regulatory changes to ridesharing services in the state. The reform will require ridesharing services to apply for an omnibus licence, similar to limousines and small charter vehicles. The announcement made clear that taxis would remain the only player in the rank and hail space. Mr. Nalder also insisted on security cameras for all taxis but not "omnibuses", believing these should remain optional. Uber Perth City Lead Tom White said he was delighted the government was "welcoming ridesharing" and providing certainty for its drivers. 'This forward-thinking decision will open up economic opportunity and choice to the people of WA,' he said. Taxi Industry Forum WA chairman Howard Lance said the changes were long overdue and would provide certainty but Uber compliance was paramount.

Northern Territory

As of January 2016, there is no regulation as of yet into the ride-sharing Uber company.

Queensland

Queensland premier Campbell Newman said, 'We are a deregulation-minded government' at the end of May 2014, in regard to the Queensland government's unwillingness to regulate Uber. The government sent a cease and desist letter to the company during the same month. Transport Minister Scott Emerson subsequently said that he 'welcomed innovation in transport technologies', but Uber 'must meet the relevant transport legislation'. The Taxi Council Queensland (TCQ) supported the state government's stance, while Jordan Condo, Uber's head of public policy for the Asia Pacific region, described the state's regulations as 'outdated'.

By mid-November 2014, the TCQ announced an anti-Uber media campaign, in which it warns Uber passengers that they are putting their lives at risk. In regard to the campaign's slogan, 'Don't risk your life-Rideshare apps are unlawful, unsafe and uninsured,' TCQ chief executive Benjamin Wash said in a public statement: 'Queensland taxi drivers undergo daily criminal checks, but rideshare drivers don't. You simply don't know who is behind the wheel.' Uber responded with information about its insurance policy, including a \$US5 million contingency liability insurance cover and 'each partner driver's own full insurance policies'. The TCQ also launched an online parliamentary petition to ensure that Uber remains illegal in Queensland, while Emerson said that, since August, the government had issued 'more than [A]\$170,000 in fines to 62 [Uber] drivers'.

South Australia

As of January 2016, there is no regulation as of yet into the ride-sharing Uber company.

Tasmania

As of January 2016, there is no regulation as of yet into the ride-sharing Uber company.

Victoria

On May 6, 2014, the Taxi Service Commission in Victoria, Australia, issued a number of infringement notices to Uber drivers with a fine of A\$1,723, after a public warning discouraging people to use ridesharing applications like UberX. State officers said that they will review the state's Transport Act, while Uber said it will reimburse drivers.

On the 4th of December, 2015, an Uber driver was found guilty of driving a hire car without license or registration; this case is the first of twelve brought against Uber drivers by the Victorian Taxi Services Commission.

Internet information

On December 21, 2015, the television broadcasting service SBS published an article on its Internet site titled 'Future of Uber in Australia'. The article looks at some of the differences between taxis and the Uber service and gives some details on the growth of the company's market share in Australia.

The full text of the article can be accessed at <http://www.sbs.com.au/yourlanguage/punjabi/en/article/2015/12/21/future-uber-australia>

On December 21, 2015, The Sydney Morning Herald published a report titled 'Uber is winning its war with the Australian taxi lobby'

The report gives an overview of the extent to which Uber has gained legal recognition in different Australian states.

The full text of this article can be accessed at <http://www.smh.com.au/business/the-economy/uber-is-winning-its-war-with-the-australian-taxi-lobby-20151220-gls80m.html>

On December 18, 2015, The Daily Telegraph published a report titled 'Uber legal in NSW, taxi owners to be compensated'

The report details the terms under which Uber has been legalised in New South Wales and the reactions of different stakeholders both for and against the legalisation.

The full text of the report can be accessed at <http://www.dailytelegraph.com.au/news/nsw/uber-legal-in-nsw-taxi-owners-to-be-compensated/news-story/ac75ae856b9963c847a9d528e92a70f4>

On December 17, 2015, ABC News published a report on its Internet site titled 'UberX ridesharing service legalised in NSW, taxi drivers to be compensated'

The report details the terms under which Uber has been legalised in New South Wales and the reactions of different stakeholders both for and against the legalisation.

The full text of the report can be accessed at <http://www.abc.net.au/news/2015-12-17/uber-x-legalised-in-nsw-under-government-proposals/7037600>

On December 17, 2015, The Canberra Times ran a news report titled 'Canberra taxi drivers slam compensation for owners as Uber is legalised in NSW' The report details the claims of ACT taxi drivers that the compensation to be offered taxi licence plate owners in New South Wales is inadequate.

The full text of the report can be accessed at <http://www.canberratimes.com.au/act-news/canberra-taxi-drivers-slam-compensation-for-owners-as-uber-is-legalised-in-nsw-201>

On December 7, 2015, The Courier Mail printed a news report detailing the complaints of a group of Gold Coast and Brisbane drivers contracting their services to Uber. The report is titled 'Uber drivers who claim to be earning below minimum wage preparing to fight back'

The full text of the article outlining the drivers' unremunerative conditions can be accessed at

<http://www.couriermail.com.au/news/queensland/uber-drivers-who-claim-to-be-earning-below-minimum-wage-preparing-to-fight-back/news-story/5f04f412776dcd2f2168a576ba74dc1b>

On September 24, 2015, Choice magazine, the publication of the consumer lobby group, Choice, published its report comparing Uber with conventional taxi services. Overall, the report was favourable to Uber and suggested that the competition it presents in the hire transport industry is likely to be desirable.

The full text of this report can be accessed at <https://www.choice.com.au/transport/cars/general/articles/uberx-vs-taxi-which-one-is-best#reliability>

On September 16, 2015, an opinion piece was published in The Huffington Post arguing that Uber in the United States mistreats its drivers. The comment was written by Sean Connolly, editor of the editorial section of the online newspaper, and is titled 'Uber mistreating drivers'.

The full text of this comment can be found at <http://huntnewsnu.com/2015/09/uber-mistreating-drivers/>

On August 3, 2015, Business Insider published an analysis titled 'Why Uber's GST fight is just the beginning' The article examines the respective claims of the Australian taxation Office and Uber regarding the manner in which the taxation office wants Uber drivers to collect GST. It also suggests that the company itself may ultimately be liable to collect GST on the service it provides.

The full text of this article can be found at <http://www.businessinsider.com.au/ubers-court-battle-with-australia-on-charging-gst-is-just-the-beginning-2015-8>

On July 13, 2015, The Canberra Times ran a news report titled 'Treat Uber drivers as employees: unions' The report gave the views of Transport Workers' Union leaders in New South Wales and the ACT on the exploitative conditions faced by drivers working for Uber.

The full text of this report can be accessed at <http://www.canberratimes.com.au/act-news/treat-uber-drivers-as-employees-unions-20150709-gi8kaa.html>

On January 20, 2015, Business Insider published a report titled 'Uber CEO Reveals Mind-Boggling New Statistic That Sceptics Should Put In Their Pipes And Smoke'

The report details Uber's phenomenal growth rate since its inception in June 2010, especially in its city of origin, San Francisco.

The full report can be accessed at <http://www.businessinsider.com.au/uber-revenue-san-francisco-2015-1?r=US&IR=T>

On December 18, 2014, The Conversation published an opinion piece by Chrysostomos Apostolidis, graduate tutor, Newcastle Business School, Northumbria University, Newcastle, New South Wales, titled 'How does Uber's surge pricing work - and how ethical is it?'

The piece argues that some of Uber's pricing practices seem unethical and that the company needs to alter these rather than trying to make amends after the event.

The full text can be found at <https://theconversation.com/how-does-ubers-surge-pricing-work-and-how-ethical-is-it-35574>

On December 9, 2014, Mamamia published an analysis by Grace Jennings-Edquist titled 'Explain to me: "What is Uber and is it actually safe to use?"'

The analysis looks at a number of criticisms often made about Uber and presents Uber's reply to these complaints.

The full text of this article can be accessed at <http://www.mamamia.com.au/is-uber-safe/>

On November 19, 2014, The Sydney Morning Herald ran an article detailing the Taxi Council of Queensland's opposition to Uber operating in that state.

The full text of this article can be accessed at <http://www.smh.com.au/digital-life/smartphone-apps/taxi-council-of-queensland-declares-war-on-uber-20141119-11prdl.html>

On October 8, 2014, C/Net ran an article titled 'How risky is your Uber ride? Maybe more than you think'

The article detailed the terms and conditions that commuters in the United States automatically agree to when they use an Uber app. These terms and conditions state that users recognise that they travel at their own risk and that Uber is not legally liable for any harm that befalls them.

The full text of this article can be accessed at <http://www.cnet.com/news/how-risky-is-your-uber-ride-maybe-more-than-you-think/>

In 2011 the Victorian government authorised an investigation of the operation of Victorian taxi services undertaken by Professor Allan Fels. The final report became available in December, 2012, and a further consultation on the final recommendations was undertaken to 30 January 2013.

Full copies of the final report and the draft can be accessed at <http://taxi.vic.gov.au/taxi-reform/taxi-industry-inquiry>

The Australian Taxi Drivers Association is a group dedicated to the removal of Uber from Australian. It has a section of its Internet site given over to protesting the negative effect Uber operating in Australia is having on its members.

This site can be accessed at <http://www.tda.net.au/>

Uber's customer information site offers a detailed description of the advantages that travelling using Uber offers commuters.

This information can be accessed at <http://uber.mbsf.org/benefits-of-using-uber>

Reasons why Uber should be made legal throughout Australia

1. Uber offers advantages for the commuter

Uber claims to offer a number of advantages to its customers. One of these is relatively lower cost on most rides.

In 2015, Choice, the consumer lobby group, made 56 trips around Sydney - half UberX rides and half regular taxi rides - in pairs and at seven different times to capture surge pricing. On September 24, 2015, Choice reported its findings re prices. These were as follows:

'UberX was cheaper than a taxi around nine times out of 10. Taxis were 40% more expensive than UberX on average. On the three occasions UberX was more expensive, it wasn't by much - and it was only when surge pricing was in place. Of the 28 UberX rides, we encountered surge pricing four times.'

Choice concluded, 'Uber's pricing is cheaper than taxis... we found taxis to be more expensive than UberX 89% of the time. For example, in Sydney, UberX costs \$0.40 per minute and \$1.45 per kilometre, while the maximum taxi rate is \$0.94 per minute and \$2.19 per kilometre.'

One the occasions that Choice used Uber and standard taxis, they found that Uber's 'surge pricing' mechanism did not seem to have a significant impact on the cost of using an Uber car relative to a taxi. Choice found, 'What's surprising was how few times surge pricing was actually in place during our test. We encountered surge pricing four out of 28 times, and only to a maximum of 1.5 times the base rate. When surging at this level the UberX didn't turn out to be much more expensive (an average of 6%) than a taxi (and sometimes it was still cheaper); however, surge pricing can increase well beyond these levels at times of intense demand.'

Thus it appears that even given the potential for surge pricing to make Uber much more expensive on some occasions, overall a commuter is likely to get a cheaper ride from Uber.

Uber claims that their practice of contracting private drivers who use their own vehicles also has benefits for the

customer. On their promotional Internet site, Uber stresses the advantages that come to commuters because drivers are likely to be local. The company claims, 'They know the area that they live in incredibly well, and because of that, they are able to get you where you need to go as quickly as they possibly can. On top of that, they're likely someone that lives in your community, so you may know them or you will feel safe because other people in the area know who they are.' Uber also promotes the ease of use of their app technology, stressing that it is virtually fool-proof and gives the consumer a number of features conventional taxi companies do not offer, such as the capacity to track the driver as he or she approaches the pick-up point. This means that customers are never uncertain as to how long they will have to wait before the car arrives.

On their Internet site, Uber explains some of the features of their app. 'It's an application that is easy for you to sign up for, easy for you to use, and easy for you to understand. You don't have to worry about making mistakes because you have to confirm everything that you type in, and you will be able to keep track of exactly what is going on with the driver that you have hired for your job. The app is easy to use and gives you step by step instructions that you can follow so that you don't feel overwhelmed or intimidated by what you're working with.'

A further advantage Uber claims is better access to drivers in times of high demand. Uber argues that its surge pricing policy makes it more lucrative for drivers to work in periods of high demand and that this encourages drivers to be available at these times.

The Choice study comparing taxi service to Uber found Uber to be more reliable in terms of whether the booked vehicle would actually arrive. A spokesperson for the taxi industry explained this by stating 'If the closest driver doesn't accept it within seven seconds, it will get sent to the next closest driver, and so on. And if the job has been sitting there for 20 minutes or longer, cab drivers know the chances of the passenger still being there are low.'

Choice concluded, 'Part of the problem may be that taxi drivers are told the passenger's destination, which may make short trips less attractive. Uber drivers, on the other hand, aren't given your destination until they turn up.'

2. The Uber system is safe for the commuter

Uber claims that its drivers are thoroughly checked and that there is a range of systems and procedures in place to ensure that commuters are safe.

Uber spokesperson Katie Curran has stated, 'Uber drivers are people like me and you that go through very thorough screening processes. They have to be over 21, have criminal background checks from the police, an exemplary driving record; they have to have full insurance policies... so every trip is fully covered.

So once they've passed the background checks we on-board them and train them how to use the app, (and) train them how to do customer service.'

Regarding the cars which Uber has its contractors use, Ms Curran further states, 'The vehicles have to be no older than 2005, four-door.'

Ms Curran claims that Uber's systems and procedures supply many safeguards for the consumer. For example, users can see their driver's picture and rating as soon as he or she had accepted the job.

Ms Curran explained further, 'The rider rates the driver out of five stars, and the driver rates the rider... so everybody's on their best behaviour because the anonymity has been taken out (of the process). You're not sort of putting your hand out on the street for someone to have to come pick you up.'

Ms Curran added that the app also allowed users to share their location and ETA with loved ones by clicking a button within the Uber app. She stated, 'They can literally watch you turn-by-turn get home.' Uber has noted that this is a level of accountability that no conventional taxi company offers.

In 2015, Choice, the consumer lobby group, made 56 trips around Sydney - half UberX rides and half regular taxi rides - in pairs and at seven different times to capture surge pricing.

Choice spokesperson Tom Godfrey concluded from this survey of Uber reliability, 'When we looked at a comparison between UberX and the taxi industry on things like checks, record of trip, GPS tracking, rating system and insurance, UberX performed very well, as did the taxi industry.'

3. Compensation can be offered to taxi licence owners

It has been claimed that taxi plate owners, who have opposed the legalisation of Uber because they believe it offers unfair competition to their businesses, can be compensated.

When in December 2015 New South Wales legalised the operation of Uber in that state, the government put in place a compensation scheme for taxi plate owners.

In a facebook announcement made on December 16, 2015, the New South Wales Premier, Mike Baird, stated, 'The thing that has made the taxi/ride-share situation difficult to manage is that, unlike other businesses facing disruption (say, video stores facing disruption from Netflix) the government has sold and regulated taxi licence plates and has a responsibility to offer some protection for the mums and dads and investors who own these plates.'

The perpetual owners of taxi plates, about 5800 people, will receive a \$20,000 payment for the plate. Multiple plate owners will receive a maximum of \$40,000.

A further industry compensation fund of up to \$142 million will be used to pay licensees who are facing "hardship" as a result of the changes, because they only bought plates recently. The total industry fund is budgeted at \$250 million.

Taxi and Uber drivers will pay the government a \$1 levy per trip for a maximum of five years to fund the compensation package. It will be possible for them to pass that charge on to the consumer.

The New South Wales government has also stated that its removal of many of the regulations affecting the taxi industry was also intended to reduce costs for the industry. The government has estimated that there will be a \$30 million

reduction in regulatory costs.

The New South Wales Minister for Transport and Infrastructure, Andrew Constance, has stated, 'By taking regulatory and cost pressure off the industry and unlocking more point-to-point services, we expect to create hundreds of new jobs over the next few years.'

Mr Constance has also stated with regard to compensation to taxi licence plate owners, 'It's important that we don't forget those who have poured their savings into taxi licences over the past decades and ensure they get equitable assistance as this industry adjusts to changes in our economy.'

4. Uber offers advantages for the car-owner-driver

It has been claimed that Uber drivers enjoy a number of significant job advantages, especially in comparison to conventional taxi drivers. The Uber drivers' forum lists a number of these advantages.

These include: 'An Uber driver can work as much or as little as they want. The phone/application can be turned on at any time to work and turned off just as easily. Thus the driver creates their own schedule on the fly.'

It has also been noted that in addition to flexibility, the Uber driver enjoys relative independence and freedom from oversight. The drivers' forum states, 'Although there is a manager for the drivers and sometimes they do give suggestions or pass on critique, for the most part there is no boss saying what to do and when. A driver is on their own prerogative to go where they please when they please. A driver's boss at times can be more the passengers. A driver has to maintain a 4.5 or above rating to not be cut from driving. While riders can get bossy at times, the good thing is it's not long before they are dropped off. The driver rates the passengers as well.'

The drivers' forum also notes that drivers have access to greater earning capacity through 'surge pricing'. At times of high demand, for example public holidays, Uber charges a significantly increased fare - sometimes up to seven or nine times the usual rate. Uber justifies this as a way of ensuring that there are Uber cars available at times of high demand. Uber also claims that surge pricing gives drivers an opportunity to increase their incomes.

The Uber driver forum states, 'Although getting a surge ride (an exponentially increased fare) can be elusive, it can also be lucrative. Especially for big events and holidays; Surge can make the riders fare relatively expensive and the drivers shift a lot more productive for the paycheck. Drivers get 80% of the fare, regardless of the price.'

It has also been argued that companies like Uber make it possible for a driver to enter the taxi industry without the expense of purchasing a taxi licence.

Referring to the situation that exists in the United States, Professor Austan Goolsbee from the University of Chicago has stated, 'You have to pay hundreds of thousands of dollars for a [taxi] medallion - it's a protected monopoly.' The medallion that Professor Goolsbee refers to is the equivalent of a taxi licence plate in Australia, which, in New South Wales, for example, can cost approximately \$400,000. Many owners of taxi licence plates then employ others to drive for them; however, supporters of Uber argue that Uber drivers are better off than these secondary drivers for the reasons already given - flexibility, independence and earning capacity.

5. The conventional mode of taxi ownership and operation is inefficient and exploitative

It has been claimed that the conventional mode of taxi operation in Australia is both exploitative and inefficient.

In September 2012 the results of a sixteen-month inquiry into taxi operation in Victoria were released. One of the conclusions of the enquiry was that taxi licence plate holders were more interested in maintaining their virtual monopoly, retaining the re-sale value of licences and the profitability of the industry than they were in improving service.

In terms of the faults within the current taxi industry, the report noted, 'There was widespread agreement that taxi services need to improve. Almost all submissions and responses to the inquiry from outside the industry continued to express significant concerns about service, including poor driver quality, unsatisfactory performance by taxi booking services, problems with taxi availability during peak times or in particular locations, and issues with accessibility and services provided to people with a disability.'

The head of the inquiry, Professor Allan Fels stated, 'Key elements within the industry have focused largely on maintaining high licence values and assignment fees, shielding anti-competitive forces within the industry and shoring up the position of licence holders, large fleet operators, taxi networks and other protected stakeholders.'

Professor Fels also stated, 'Victoria's taxi industry has operated for many years as a "closed shop", with a small number of licence holders protected from the effects of competition at the direct expense of consumers, taxi operators and taxi drivers (who continue to experience low levels of remuneration, poor working conditions and a highly risky work environment).'

The consumer lobby group Choice, when comparing the operation of conventional taxis and Uber vehicles noted, 'Despite taxis being significantly more expensive most of the time, taxi drivers certainly aren't raking it in. Uber says its drivers earn around \$30 per hour on average, while a survey of taxi drivers in NSW last year found taxi drivers earn \$10-\$14 per hour depending on the time of day - well below the minimum wage of \$17.29 per hour.' The conclusion critics have drawn from this is that the current mode of taxi operation has resulted in the exploitation of many drivers, who work for a very low hourly rate. This does not encourage job satisfaction or the retention of a skilled workforce.

Professor Fels was critical of a system which restricted the number of taxi licences available thus boosting the cost of the licences and encouraging licence holders to maximise their profit by employing drivers to drive at low rates over a twenty-four hour period.

The taxi inquiry made a number of recommendations; one of which was 'The removal of impediments to the introduction of group hire services, such as taxi shuttles and share rides with flat fees.' 'Share rides' is another term used to describe the type of service Uber supplies.

The inquiry believed that a better service would result from the taxi industry being exposed to greater competition and one of the means of achieving this is to legalise operations such as Uber's.

Reasons why Uber should not be made legal throughout Australia

1. Uber pays very little tax

Uber, the company which owns the Uber app that commuters use to book a driver and car through takes between 20 and 25 percent of the fares these drivers receive. However, Uber has been accused of aggressively minimising its tax payments to the Australian government.

Uber is a company which is able to operate profitably in Australia in part because of the infrastructure, especially roads, which Australian state and federal governments build and maintain. Their critics claim that the company has an obligation to pay tax on its earnings and its drivers should be ready to collect the GST. The suggestion has even been made that Uber should be paying GST on the operation of its app.

Rather than readily meeting its taxation obligations, Uber's critics claim that the company uses profit-transfer strategies to reduce its taxation commitment in Australia.

In November 2015 Uber informed a Senate corporate tax inquiry that it was 'not yet profitable'. Uber's director of public policy for Australia and New Zealand, Brad Kitschke, explained that a quarter of the company's Australian earnings went to its head company in the Netherlands. This entity then paid Uber Australia a fee for providing service support in this country. It has been suggested that the company has not been keen to make the amount of tax it pays open to public or government scrutiny. Mr Kitschke told the Senate inquiry he did not know how much overall tax the company had paid in Australia. This claim was met with disbelief by some members of the Senate inquiry.

The Australian Taxation Office declared in May 2015 that Uber drivers should be subject to collecting GST on the service they provide. This means that Uber fares will increase by 10% and should have no impact on either the earnings of the Uber drivers or of the Uber Company which supplies the app. However, Uber is in the process of challenging the Taxation Office, claiming that the manner in which the GST has been imposed on Uber drivers is harsher than the way it has been imposed on the providers of other comparable services. Critics of Uber argue that the company is simply trying to maintain the competitiveness of its service at the expense of the Australian federal budget.

It has further been argued that in addition to Uber drivers having to collect the GST due on the service they provide, Uber should also have to pay GST on the service it provides drivers through its app and for which Uber takes 20 to 25 percent of the value of fares paid by commuters.

In an article written for Business Australia on August 3, 2015, Paul Cogan stated, 'Just because a service is run from an app on a mobile phone at the consumer end doesn't automatically provide some kind of free pass on taxation. And just as the government plans to apply GST to content we download through the so-called "Netflix tax" on books, music, and streamed content services from overseas providers, the ATO will surely be lining up other digital platforms...'

2. Uber offers unfair competition to existing taxi and limousine companies

Taxi plate owners all round the world have complained that Uber offers unfair competition. They argue that Uber is able to offer cheaper fares because it does not have the same level of overheads, that is, additional operating expenses, as conventional taxis. This is because when Uber enters a market it typically operates outside the law, without paying the taxes and adhering to other regulatory procedures.

In Australia, state governments control the number of taxi licences available for sale each year and sell the licences to individuals who may then use themselves driving their own taxi or lease them to others.

For example, in New South Wales, the Passenger Transport Act 1990 requires Transport for NSW to determine before 31 March each year the number of annual taxi licences to be released in Sydney. The Act also allows Transport for NSW to determine the maximum taxi fare that customers may be charged for NSW taxi services.

Such regulated entry into the taxi industry has typically meant that the cost of taxi licence plates has been high. In New South Wales, a taxi licence can cost \$400,000. The average cost as at December 2015 was \$375,000, the lowest level since 2008. One of the reasons conventional taxis cannot offer the same low fares as Uber is that the owner of the taxi licence plate is seeking to recoup the cost of these plates.

Taxi plate owners argue that Uber represents unfair competition as the company has been able to enter the market without the same level of initial outlay.

Taxi driver representatives have condemned the New South Wales compensation package as inadequate. Canberra Taxi Industry Association chairman, John McKeough, stated, 'The New South Wales government once sold plates over the counter for the equivalent of \$400,000 and now they're saying to owners, "Here, you can have \$20,000."

Hundreds of owners have retired on that and now their asset is worth nothing and the government has legalised a foreign company to come in that pays no tax and welcomed it as giving more choice for consumers.'

Taxi drivers are also complaining about the devastating effect Uber is having on driver incomes. The Australian Taxi Drivers' Association Internet site states, 'Governments around Australia are ready to legalise UBER X, and to accept minimal annual fees plus very light rules on registration and insurance to leave you with only rank and hail work, and with instant bookings our work and income will drop even more.'

The site refers to the diminishing share of the customer base taxi drivers now have and the added hours they have to work in order to make an income. 'Uber X will be legal in the ACT in November. We have already lost 25%: we will lose another 25% by Christmas. How many extra hours can you safely drive?'

Similar complaints can be made about the impact Uber has on limousine companies. Again, limousine companies have had to make substantial outlays to purchase their vehicles. Uber uses the vehicles of its drivers, for which the drivers are

not compensated, and so can undercut limousine charges and undermine the value of the businesses limousine companies have established.

3. Uber exploits its drivers

There have been complaints made in many countries where Uber operates that the company mistreats its drivers. In an opinion piece published in The Huffington Post on September 16, 2015, it was noted of Uber drivers working in the United States, 'Through an often-exploited loophole, Uber drivers are considered independent contractors instead of full-time employees. No matter how many hours a week someone works for Uber, they will never be eligible for benefits or job security. Uber drivers are also forced to pay for all their own expenses, from gas to car insurance. These costs would be expected to be fulfilled by Uber itself if drivers were direct employees.'

Michael Aird, the New South Wales secretary of the Transport Workers Union has claimed that within Australia Uber similarly denies its drivers accepted rights and conditions. Mr Aird has stated that Uber drivers were not guaranteed any level of income for their work and were not afforded entitlements or protections required under Australian law.

In a news report published in The Canberra Times on July 13, 2015, Mr Aird was quoted claiming, 'The fact a person's work is ad hoc or contingent does not mean they are not an employee. It simply means that they are part of the trend toward increasingly insecure work.'

The ACT secretary of the Transport Workers Union, Alex White, has also condemned the employment practices adopted by Uber, claiming they exploit drivers.

Mr White has stated, 'Far from being "innovative", companies like Uber are using a new technology to revive outdated and adverse employment relationships from the 19th century. Although Uber refers to drivers as "independent contractors", Uber drivers have few or none of the characteristics of a genuine independent contractor.

A more appropriate term to refer to Uber drivers' and other "on demand" workers' form of employment is "on-hire employment services" where workers are covered by their employing company and work in a host organisation or on specific tasks.'

Uber drivers have no guaranteed hours of work, no sickness benefits and no holiday pay. Unlike contract workers, they cannot negotiate the rate they charge the company that contracts for their services.

In December, 2015, drivers across Brisbane and the Gold Coast who operate as contractors for Uber complained that they were making less than \$10 an hour after deducting GST, personal income tax and car and phone expenses from their fares in addition to the 20 per cent taken by Uber. Commission-only workers are entitled to receive the minimum wage, which is \$17.29 an hour for adults; however, Uber drivers are currently not classified as commission-only workers. One of the Brisbane drivers lodging the complaint stated, 'It's just a trick, a legal loophole, to say the drivers are contractors and therefore not subject to any of the standard minimum wages and conditions that any employee in Australia gets.'

Another Brisbane driver stated, 'The current business model, which is clearly uneconomical, is a pyramid scheme. They sign you in on a bonus incentive, they promise that you can earn a certain amount of hours and then they flood the market with drivers.'

4. Uber offers an expensive, unprotected service to commuters

It has been claimed that Uber's pricing policy leaves commuters open to exploitation and unexpected price hikes. It has further been claimed that there is inadequate redress against Uber should the commuter be injured or in any other way harmed.

Uber employs Critics claim that Uber's 'surge' pricing policy can see customers having to pay extraordinarily high rates. There were a large number of complaints from those using Uber on New Year's Eve in Sydney.

Skye Shanahan of Quakers Hill complained in an interview reported in The Sydney Morning Herald on January 1, 2016, that she ordered an Uber ride from the North Sydney foreshore to Blacktown - a fare that would typically cost less than \$100. She was required to pay \$720, which she claimed was more than a week's rent, after a surcharge multiple of eight was applied to her fare.

Another passenger complained that taking a trip from Manly to Pyrmont came at a charge of about \$370. The fare would typically cost about \$50.

Some customers have complained that the surge prices charged were higher than initially advertised.

It has also been claimed that Uber has applied its surge pricing policy during natural and man-made disasters, a practice which many users see as unethical. Uber has been criticised for quadrupling its rate to a minimum of \$100 during the Sydney siege hostage situation. It has also been noted that prices doubled during Hurricane Sandy in 2012 in the United States. This behaviour has been condemned as unethical because it is exploiting commuters not just in times of peak use, but in the face of life-endangering hazards. In an opinion piece published in The New York Times on April 22, 2014, Eric T Schneiderman stated, 'The ability to pay truly exorbitant prices shouldn't determine someone's ability to get critical goods and services when they're in short supply in an emergency.'

It has also been claimed that when Uber customers use the company's app they automatically accept a waiver which excuses the company from liability in the event of any harm or misadventure the customer may face.

The fine print of Uber's terms and conditions clearly says that passengers accept a risk by using the service. These terms and conditions include, 'You understand, therefore, that by using the application and the service, you may be exposed to transportation that is potentially dangerous, offensive, harmful to minors, unsafe or otherwise objectionable and that you use the application and the service at your own risk.'

In an article published on C/Net on October 8, 2014, it was stated, 'Several incidents have occurred during the last year

that have called into question the safety of the services. The most severe incident was the death of 6-year-old Sophia Liu, who was struck and killed by an Uber driver on New Year's Eve in San Francisco. There have also been more than a dozen allegations of sexual assault and groping; kidnapping; and physical assault.' In all these cases Uber accepted no responsibility. It argues it facilitates the transaction between driver and customer; it is not responsible for it.

5. Uber drivers are not adequately trained and monitored and their vehicles are not regularly checked

Uber critics argue that it is too easy to become an Uber driver and that those who drive for Uber may not be sufficiently trained or skilled to offer commuters a safe service. Their vehicles may not be adequate and they may not be either physically or psychologically fit for the job.

Grace Jennings Edquist, in an article published in Mamamia on December 9, 2015, noted regarding UberX, that it was 'just a series of regular people who've passed a few basic screening procedures like police and background checks, have a valid driver's license with clean driving record and updated insurance policies. But that's about it.'

A number of representatives of the taxi industry have highlighted the difference between the safeguards their industry offers and those given by Uber.

The chief executive office Australian Taxi Industry Association, Blair Davies, has stated that the main difference between taxis and UberX is that 'ride sharing is basically not licensed and the cars are private, up to nine years old. On the other hand taxis must be inspected by mechanics every four to six months.' Mr Davies added that there is 'no real roadworthy test' for UberX cars, and that UberX cars can only be tracked through the driver's phone, which can be shut off.

Mr Davies contrasted this with the greater safeguards that the taxi industry offers. Mr Davies stated, 'Taxis have two or three GPS devices hardwired into their systems as well as a security camera that cannot be disabled by the driver...

Taxi systems are known and traceable to the company and a medical test must also be performed on drivers. Doctors look at the physical and mental fitness of the driver and check to see that they are fit to drive a commercial vehicle.'

The Taxi Council of Queensland chief executive, Benjamin Wash has also warned would-be Uber passengers of alleged risks associated with the service. Mr Wash stated, 'Cashed-up companies like Uber use warm and fuzzy words but in reality they are about one thing - making money by exploiting...drivers, exposing the public to risks and lying about their operations.'

Further implications

Uber is clearly making significant inroads among commuters who would previously have used taxis. Between January 2013 and the end of 2014, Uber's market share grew more than 700 per cent. As of a year ago, there was \$12 spent on cab fares for every \$1 spent on Uber fares and given that Uber fares are typically lower than taxi fares this would suggest that Uber currently has at least 10 percent of the market base.

Currently, in states and territories other than New South Wales, Western Australia and the Australian Capital Territory, Uber operates in a grey area outside regulation. There are no laws that apply to the booking service that the company supplies through its app. Where Uber drivers have been taken to court for supplying an illegal service, the company typically pays for their legal expenses.

In those jurisdictions where Uber has been legalised, governments have spoken of the legalisation as though it were no more than bowing to an innovative inevitability. When Uber was legalised in New South Wales, the Minister for Transport and Infrastructure, Andrew Constance, stated, 'These reforms are expected to blow the doors of innovation wide open for "booked" services, where customers can track their driver, provide direct feedback, hold them more accountable and choose from accessible price points.'

Mr Constance further stated, 'Consumers have moved with technology. It's time for industry and government to move in the same way.'

It seems likely that Uber will ultimately be legalised in all Australian states and territories. Now that it has been legalised in New South Wales, an anomaly is created for drivers legally transporting passengers in that state who then want to travel into the adjoining states of Victoria, South Australia or Queensland. Given Uber's current Australian growth rate prior to legalisation, with nation-wide legalisation it can only grow further and faster.

Internationally the company has become a behemoth; valued at over \$US60 billion, it is a magnet for investors. In its most mature market, San Francisco, where the company originated, after four years it was already bigger than the whole taxi market. Uber's chief executive officer, Travis Kalanick, claimed that the whole taxi market in San Francisco was worth about \$US140 million per year. Uber's revenues in San Francisco are purportedly running at \$US500 million per year.

After the legalisation of Uber in New South Wales Australian Taxi Drivers Association spokesman, Michael Jools, stated, 'It's good in that we have now got a degree of certainty, but that certainty is that the industry as we know it has been destroyed.' Discounting the negative slant, Mr Jools's judgement seems accurate. If developments in the United States can be used as a guide, Uber will not remain the junior partner in the Australian hire car/taxi transport industry. It is likely soon to have a majority share of what is currently the taxi market in Australia.

This means that concerns about the fairness of the terms of driver employment, about the training given drivers, the maintenance of vehicles and about indemnity for passengers harmed during Uber booked trips need to be addressed now or they are unlikely to be so. Uber has the capacity to create a monopoly greater than that current taxi licence plate holders have generated and one harder to regulate as the parent company is based off-shore and all drivers are merely individual private contractors.

Newspaper items used in the compilation of this issue outline

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