

6 July 2015

ACT Taxi Innovation Review
ACT Government
GPO Box 158
Via email: taxiinnovationreview@act.gov.au

Dear Sir/Madam,

UnionsACT Submission to the 2015 ACT Taxi Innovation Review

UnionsACT is the peak council for trade unions in the Canberra region, representing over 33,000 working people. Affiliates of UnionsACT represent workers in the taxi and transport industries, and the UnionsACT Executive has expressed close interest in the outcome of the Review.

UnionsACT believes that the Review represents an opportunity for the ACT Government to improve the conditions of work for all workers in the transport and “on demand” sector, which historically has involved serious and systematic exploitation of workers.

UnionsACT understands that the Australian Council of Trade Unions, and the Transport Workers Union, have made submissions to the review. If this submission conflicts with theirs, the view of the ACTU and TWU should prevail.

Note: where reference is made to Uber, this should be read to include other app-based services unless the context specifically refers to Uber as a company.

The Taxi Industry and On-demand Transport Services (e.g. Uber)

The taxi industry for decades has grossly exploited drivers. In 2011 the average hourly rate for a taxi driver was approximately \$10 per hour, far below the minimum wage. Reports into the industry found it was rife with poor working conditions, unacceptable risks to safety and low levels of remuneration.

Driver safety is of particular concern, both risks from passengers, and also pressure from taxi companies/operators that drivers work excessive and unsafe hours. This unsafe working environment is worsened by the poor workplace rights of taxi drivers, largely due to the bailment arrangements.

The Taxi Innovation Review presents an opportunity for the ACT Government to assess the safety and remuneration risks for workers caused by bailment arrangements, which would be utterly unacceptable in any other industry. Why are these arrangements tolerated in the ACT?

During the Review consultation, it was expressed to UnionsACT that service such as Uber were able to provide greater levels of customer service. We argue that the poor working conditions and safety are the primary cause of customer service issues in the taxi industry; the industry struggles to retain skilled, professional drivers. There is little reason to expect that the arrival of Uber, with similarly

precarious and low-paid working arrangements, would see a sustained upswing in customer service.

UnionsACT holds that the emergence of app-based booking services does not excuse companies from their responsibility to workers and to the community. The ACT Government is well placed to ensure that any regulatory reforms to the taxi and hire car industry are fair, and improve the conditions of those workers that are currently operating in informal or sub-standard employment relationships.

Uber, like many of the app-based labour hire companies moving into the Australian market, are structuring their business model to ensure the workers using their apps are classed as contractors. This arrangement is a legal fiction and in substance results in insufficient protection for these workers. UnionsACT is concerned that app-based labour arrangements has the potential to undermine the living conditions of all Australian workers.

UnionsACT contends that 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.

Similar adverse employment arrangements likely exist in the taxi and hire-car industry, and this review is an opportunity to address the serious and systematic exploitation of drivers in the established industry, not just Uber drivers.

In the course of the Taxi Innovation Review consultation, views were expressed to UnionsACT that reform to the taxi industry should result in minimal regulation to allow students or part-time wage earners to become drivers to supplement their incomes. The justification is that workplace and safety rights and protections were less necessary for “supplemental income drivers”. UnionsACT is concerned that these views could lead to change to regulation that would in effect create two classes of worker: one for incumbent drivers competing with new entrants, and one for those new entrants who work with few or no rights.

It is a legal fiction to argue that Uber (and other app companies) are technological intermediaries, rather than transport providers, and we would be extremely concerned if the ACT Government accepted their claims on this issue. In substance, Uber drivers are employees and are not, in any real sense, persons operating their own business as claimed by Uber.

Our view is: Uber (and “on demand” app-based) drivers should be properly deemed to be employees of Uber, and be entitled to the relevant workplace rights and entitlements.

Before any regulatory reform takes place in the taxi industry, UnionsACT asks the ACT Government ensure that:

- Drivers (whether Uber, or traditional taxi/hire car) have appropriate and secure employment relationships;
- That the ACT Government review existing regulations with a view to substantially improving the safety of drivers;

- Employment arrangements are such that drivers are entitled to at least the minimum National Employment Standards (NES), or better;
- The arrival of new service providers (e.g. Uber) does not substantially diminish the conditions of existing workers;
- That competition takes place on the basis of genuine innovation, not on the basis of reduction in workers' rights or conditions; and
- Stakeholders, including unions and business, are systematically engaged and consulted.

Safety and WHS Liability

UnionsACT has significant concerns that any regulatory reform in the taxi/hire car sector could result in reduction in driver safety, and reduction in rights for injured drivers to access workers compensation.

As noted, the taxi industry is already characterised by lack of safety for drivers. This lack of safety arises from both risks from passengers, and risks caused by lengthy unsafe driving hours. The Taxi Innovation Review should address this as a matter of priority.

Uber drivers in other jurisdictions are operating in an insurance and WHS “black hole”. The lack of defined responsibility for these issues represents in reality a shouldering of risk purely by the individual driver, rather than the company they work for. Undefined responsibility for WHS and Workers Compensation Insurance exposes drivers to untenable risk.

UnionsACT again emphasises that this does not reflect any genuine innovation on the part of Uber or other app-based companies, but returns to outdated modes of employment.

The *Work Health and Safety Act* (WHS Act) recognises the wide range of interactions and work that take place within a workplace and requires that there be an identifiable “person in control of a business or undertaking” (PCBU) for whom who is ultimately responsible for all WHS. The WHS Act also maintains that a “worker” under the Act includes labour hire workers assigned by an auspicing company to work for a different organisation/person. As discussed above, UnionsACT contends that work sourced by an app is of a similar nature to work provided by a labour hire firm.

The ACT Government should ensure that any changes to regulation should appropriately define WHS responsibilities to ensure that no Uber driver (or existing taxi/hire car driver) is worse off. Ideally, regulation should leave drivers better off.

All workers deserve a safe workplace and protection from economic ruin caused by work incidences. The ACT Government should ensure that this is respected. Taxi driving is a risky business – the exposure to car accidents, harassment and assault is widely recognised. The ACT Government should consider it a principle responsibility to ensure that workers can work in safety, and create regulation to ensure that companies can be penalised for breaches of worker safety.

Wages and Leave Provisions

As noted, the taxi industry is already a sector that systematically underpays drivers, often far below minimum wage. This serious breach is a result of the bailment system. The Taxi Innovation Review represents an important opportunity to redress the widespread failure to extend legal workers' rights to taxi drivers.

Two of the areas that Uber and other app-based “on demand” transport services particularly impact the rights of workers are wages and leave rights.

A lack of defined rates (Uber sets prices for drivers, further demonstrating that drivers are not “individual entrepreneurs”) means that there is no ability of the worker to negotiate good outcomes and trade-offs for permanency. Uber’s “surge pricing” model is by no means a replacement for leave loading or penalty rates. Surge pricing is set by the company in response to a demand for drivers. There is no guarantee that prices will actually be higher at undesirable work hours, and the driver therefore has no ability to make rational decisions for him or herself about when to work and for what compensation, which ultimately is what penalty rates are intended for. If the worker is in an informal economic relationship with no negotiating power, the lack of regulation doesn’t represent “flexibility” or “innovation” – it represents a business-model that shifts risk onto the worker.

There are no leave provisions in an informal employment relationship. This has often been cited as the trade –off for the “flexibility” of casualised work, and our concerns about this are included in our efforts to create more secure jobs. For those who are relying on the informal economy as their primary source of income, this places them at extreme risk of loss of income. This is a situation that 1 in 5 Australians face, but we repeat again that just because some workers are already in need of strengthening of their conditions does not mean that we should allow a further weakening of the system.

UnionsACT refers to the landmark inquiry commissioned by the ACTU into insecure work to highlight the impact that insecure work has on workers.

Dismissal Rights and Redundancy Pay

Under Uber’s current operating system the company “deactivates” (terminates) a worker without notice and entirely on the reviews of customers. This is at odds with the National Employment Standards.

Without any unfair dismissal provisions workers earn at the whim of their employers and customers without any evidence necessary for poor reviews. This would likely compound other problems, as workers feel unable to be honest about the conditions in which they serve for fear of retaliation. The worker is evidently not an independent contractor as they are reliant on the app company for employment and if the app company “deactivates” the worker they are effectively fired and cut off from that source of income. Appropriate definition of the drivers as employees would initiate the NES unfair dismissal provisions.

During the course of the Taxi Innovation Review consultation, the view was expressed to UnionsACT that the solution to this was the drivers’ ability to use another app. We reject this view, noting that it is fundamentally at odds with employment rights, which places obligations on employers (Uber). The risk is that app-based employment relationships create two classes of worker, one with employment and dismissal rights, and the other without any rights or protections.

Conclusion

UnionsACT welcomes the opportunity to provide this submission to the Taxi Innovation Review. Our position is to not oppose the entrance of app-based technology, or to stop companies like Uber from operating.

Rather, our position is that any change to regulations in the taxi/hire car sector should protect and expand workers' rights so that competition occurs on the basis of genuine innovation rather than the erosion of workers' rights.

Regulatory reform in the taxi industry is long-overdue, as this industry is rife with exploitation of workers.

The ACT Government should use this review as an opportunity to address the historic inequities and exploitation of taxi and hire-car drivers, and ensure that new entrants to the market do not further worsen the pay, rights and conditions of incumbent drivers.

Simply put, workplace and safety rights should be guaranteed for all workers, regardless of their classification as employees, bailees or independent contractors.

In particular, UnionsACT recommends that the ACT Government work with unions and business to introduce a regime of training for drivers and new entrants to the taxi/"on-demand" industry. The training would be conducted by representatives of bailors/drivers, funded by industry, with the objective of informing bailors/drivers of their legal rights, and enforcing compliance of existing minimum rights and conditions. Without training and enforcement, and engagement with unions and industry, ongoing serious exploitation and safety risks continues for drivers.

UnionsACT agrees with the TWU recommendation that the ACT Government consider the Road Safety Remuneration Act 2012 (Cwth), which specifically looked at ways to improve safety by removing remuneration-related incentives tied to unsafe work practices. The ACT Government could consider the creation of a similar local Act and Tribunal focused on the taxi/"on-demand" industry. This would be especially beneficial during the period that Uber commences operations in the ACT.

The ACT Government should use this review as an opportunity to engage with unions and businesses on an ongoing and systematic basis.

Again, I would like to emphasise that UnionsACT supports the submissions from the ACTU and TWU.

UnionsACT will make our submission available to the public on our website.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Alex White', written over a horizontal line.

Alex White
Secretary
UnionsACT