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A. Introduction

1. The Transport Workers' Union of Australia, Queensland Branch (**TWU**) welcomes the opportunity to make a submission on the *Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017* ("**the Bill**").

2. In the Opportunities for Personalised Transport ("**OPT**") review white paper at page 52 it is said:

> *"The taskforce recognises that introducing competition into the personalised transport market could have implications for driver conditions and therefore, recommends that a considered review of the current situation be undertaken to ensure that drivers can be engaged on fair and equitable terms."*

3. "Ridesharing" appears to be the "competition" referred to in the above passage. The use of the term "ridesharing" in this submission should be taken to comprehend the operations of UberX, Shebah, Go-Catch and the increasing number of mobile phone based "apps" underpinning these operations.

4. Rideshare drivers are also described as "independent contractors", through a direct relationship with the Parent company rather than as a "bailee" of a vehicle and other equipment. The distinction however is unimportant as bailee taxi drivers are independent contractors also.

5. A "considered review" recommended by the OPT review white paper is not necessary. An exhaustive review of the conditions "Bailee" taxi drivers are engaged on was done in 2009/10 by the Queensland Workplace Rights Ombudsman, Mr. Don Brown. It disclosed a position described by the TWU and cited in the OPT review white paper at page 52: "*The working conditions of taxi drivers are among the worst for any workers in Australia.*". It is to be noted that this point is supported by other interstate studies that will be referred to in this submission.

6. With respect, the time has come to act on this situation, not engage in further hand-wringing or commission another study into it. The TWU considers that this Bill represents an opportunity to take that action, by making necessary amendments described in this submission.

7. Given the introduction of this Bill is Stage 2 of 3 planned Stages, the third stage being a "review" of the new framework, the opportunities for the State Government to finally confront conditions facing bailee taxi drivers and rideshare drivers is rapidly dissipating.

8. The TWU has become aware of another submission on the Bill by the Ride Share Driver's Association of Australia ("**RSSDA**"). That submission is endorsed and highlighted by the TWU as vindicating most matters put by the TWU to the Queensland Government previously through the OPT review.

9. The focus of this submission is simple. In **Part B**, the crisis in the industry in terms of industrial arrangements is discussed. For so long as the most vulnerable members of the workforce are exposed to exploitation through "independent contracting", it will forever be an industry characterised by high turnover rates, low skills and corresponding low customer satisfaction. As Professor Fels (2012:4) has put it when speaking of the Victorian Taxi industry:

> "*… … … operators and drivers… … … continue to experience low levels of remuneration, poor working conditions and a highly risky work environment*"

10. The conclusion reached is that the most effective way of addressing this situation is to <u>prohibit the use of independent contracting</u>, whether by the Taxi industry or by ridesharing operators. This way, the playing field would be evened up without a race to the bottom in working arrangements.

11. **Part C** of this submission examines the TWU's "fall-back" option. Legislative interventions have been made in other States allowing industrial tribunals to regulate the conditions of those in the transport industry described as independent contractors. Should the Queensland government not support the position in Part B, it should as a <u>minimum</u> make legislative provisions of the kind outlined in Part C, so that the position of independent contractor drivers, whether in conventional taxis or in ridesharing, can be protected. One thing is for certain: there is an error in the Bill in Clause 13 that requires revision.

12. **Part D** of this submission notes that the taxi industry is amongst the most dangerous industries to work in. Other similar industries with dangerous aspects, such as construction, have "blue card" systems to ensure the uninitiated are given rudimentary safety training. There appears no good reason why a similar system shouldn't be implemented in Queensland for the taxi and rideshare industries.

13. **Part F** of this submission outlines the conclusions and recommendations of this submission.

B. Taxi/Rideshare industry in crisis

14. For the workers in the industry, the taxi and rideshare industry is an industry in crisis.

15. In the case of bailee taxi drivers, successive inquiries, as well as the TWU's direct experience, indicate that the industry is characterised by poor quality of service, very poor conditions for workers and low safety standards. Importantly, it is now clear that those features of the industry are interrelated and that poor working conditions are at the heart of the industry's struggles.

16. The working conditions of bailee taxi drivers are among the worst for any workers in Australia.

17. An independent investigation into the Queensland Taxi industry was conducted in 2009/10 by the Queensland Workplace Rights Ombudsman, Mr. Don Brown.

18. Mr. Brown found that the average hourly rate for bailee drivers on Friday and Saturday nights was $17.68 per hour, per 12-hour shift. Between Sunday and Thursday, the average hourly rate for bailee drivers was $9.42 per hour, per 12-hour shift (Brown 2010:63).

19. It is to be noted these figures were based on the standard bailee agreement in the industry at that time. Any adjustment in favour of the bailor in terms of outgoings or fare splitting would result in even poorer outcomes for bailee drivers.

20. In annual terms, the average annual income of all taxi drivers in Queensland was $25,103.50 (Brown 2010:63).

21. The Federal Minimum Wage in 2009/10 was $15 per hour or $29,640 per annum. Added to this was superannuation (9%) or an additional $2667.60 per annum. Incorporated in the annual award minimum are benefits such as annual leave, personal leave and paid public holidays. A worker on this minimum rate of pay would also be entitled to penalty rates for working certain additional hours.

22. As a comparison point, it highlights the atrocious conditions in the industry. On top of this low remuneration, 51% of driver respondents to the survey reported having been threatened with harm, while 34% reported having been assaulted (Brown 2010:65).

23. Similarly, an expert report commissioned by the NSW Independent Pricing and Regulatory Tribunal in 2012 determined that taxi drivers on average earn in the order of $10 per hour (CIE

2012:1). That amount—some $7.29 per hour less than the then applicable Federal Minimum Wage—was earned across all hours including nights, weekends and public holidays.

24. A report into the Victorian taxi industry in 2012 determined that rates of pay were slightly higher in Melbourne at an average hourly rate of $13, from which income tax, leave, superannuation and sometime vehicle-related expenses must be deducted (Fels 2012:42).

25. It appears that drivers in rideshare operations are faring no better, despite being the new "innovation" in passenger transport.

26. Disturbing calculations are put on pages 3-6 of the RSSDA submission on this Bill that demonstrate, when travelling to pick a passenger up is factored in, how low earnings are:

> *This fact alone contributes to the high turnover of drivers in this industry as this submission is prepared.*

27. The members of this Committee must be compelled to the conclusion that rideshare/taxi driving is not a financially rewarding or satisfying career. It is little wonder that most of the current workforce are those who could not be expected to gain entry to any other part of the workforce: those with poor English speaking skills and little to no formal educational qualifications.

28. Equally, this review must be compelled to the conclusion that the time honoured "bailment" agreements have played a large part in where the industry stands today. So much was the view of Professor Fels in reviewing the Victorian Taxi industry:

> *The inquiry found that bailment arrangements are an unfair way of 'engaging' taxi drivers, actively seek to prevent drivers from being engaged as employees and have allowed the industry to avoid improving the pay, service performance and conditions of drivers in any substantial way.*
>
> (Fels 2012:42)

29. Bailment as the dominant method of industrial arrangement in the taxi industry does not appear to be under any threat in light of the Federal Court decision in *De Luxe Red & Yellow Cabs Co-Operative (Trading) Society Ltd & Ors v Commissioner of Taxation* (1997) 36 ATR 600; the subsequent appeal in *Commissioner of Taxation of the Commonwealth of Australia v De Luxe Red & Yellow Cabs Co-Operative (Trading) Society Ltd & Ors* (1998) 82 FCR 507 and the more recent decision of the Full Bench of the Fair Work Commission in *Voros v Dick* [2013] FWCFB 9339. These decisions all upheld the nature of the relationship as bailor/bailee.

30. Critically, the Fels Report identified the link between poor working conditions on the one hand and poor levels of safety and customer service on the other. The Report pointed out that:

> *…the industry struggles to retain experienced drivers, with the predominant reason almost certainly being poor remuneration and working conditions.*
>
> (Fels 2012:41)

and:

> *Driver quality is the main source of customer dissatisfaction with taxi services, particularly in Melbourne.*
>
> (Fels 2012:8)

31. In short, poor working conditions are the prime cause of poor driver quality, which is in turn is the prime cause of poor service and poor safety standards; put differently, safety and service standards in this essential industry are closely intertwined with the working conditions.

32. The matter of public and driver safety was described by the Report as one of the main issues identified by the enquiry. The Report suggested that safety is a serious concern, with drivers experiencing threats to their personal safety and customers concerned about unsafe driver practices (Fels 2012:8).

33. The experience of TWU members suggests that the unsafe and unfair working conditions contribute not only to poor safety and poor service but other systemic problems, most obviously, income tax evasion. Although declining levels of cash payments are likely to have ameliorated the position somewhat, it is likely that some drivers under-report takings. That is hardly surprising given the unconscionably low levels of driver remuneration. On one view, underreporting is tacitly encouraged by operators who insist on a "pay-in" rather than "split" bailment method.

34. The precarious nature of the engagement of rideshare drivers is likely to aggravate rather than improve the industry's existing failures. But it is not the cause of the industry's problems. It simply represents a further step down the path already travelled by the industry.

35. The position of rideshare drivers, as putative independent contractors, is almost identical to that of bailee taxi drivers. Thus, all of that identified above as being problematic for bailee taxi drivers applies with equal force to rideshare drivers.

36. There are doubts about the rideshare position emerging however. The Californian Labour Commissioner recently determined that two UberX drivers were employees. Although the Labour Commissioner obviously applied American rather than Australian law, the decision has thrown some doubt over what was previously believed to be unassailable position.

37. Of greater significance is that a class action is now being heard on the question of whether UberX drivers are employees or independent contractors: *O'Connor et al v UberX Technologies Inc.* United States District Court, Northern District of California, San Francisco No. 15-17420, C13-CV3826.

38. In the United Kingdom, the case *Aslam, Farrar & Ors v Uber & Ors* (2202551/2015) has seen the Employment Tribunal of the U.K. rule that two Uber drivers were in fact employees with rights, amongst other things, to a minimum wage and annual leave. Again, the application of Australian law may result in a different outcome; however, the point is yet to be tested.

39. Thus, we arrive at a position where the use of bailee/taxi driver agreements have become so oppressive and unrewarding the industry is now in crisis and, secondly, the use of independent contracting in the rideshare industry has caused so much dissatisfaction that challenges, including class actions, are being launched, albeit internationally.

40. It is within this context that the TWU puts its primary position: the use of independent contracting in the passenger transport industry ought to be legislatively banned and this Bill represents a good opportunity to give effect to the position. The Bill should be amended to include provisions to give effect to the position.

41. It is to be noted that the TWU is not the first organisation to advance this argument. A comprehensive review of the Victorian industry led to a similar argument being advanced in 2012 by the Footscray Community Legal Centre: *In the Driver's Seat: Achieving Justice for Taxi Drivers in Victoria*.

42. The result of this would be the *Passenger Vehicle Transportation Award 2010* modern award and the National Employment Standards would apply to bailee taxi drivers and ridesharing drivers in Queensland. Drivers would also have access to superannuation contributions and workers' compensation. This would be a huge step in ending the "low wage /low skill /high turnover / unsafe work/ poor service" culture that presently exists.

43. Drivers would also join the millions of employees in Australia working to modern awards and enterprise agreements who have any industrial disputes conciliated and occasionally arbitrated by the Fair Work Commission.

C. Alternative measures for addressing personal transport workers' conditions of engagement

44. It should be apparent from the above that the TWU sees no utility in retaining independent contracting in the taxi driving and rideshare sectors. Given the weak bargaining position rideshare and bailee taxi drivers have, it is unlikely that the "low wage /low skill /high turnover / unsafe work/ poor service" spiral will ever be broken.

45. Without derogating from this position, if the Queensland Government were not minded to legislate to prevent independent contracting in the rideshare and taxi sectors, another means of addressing the malaise is to at least make provision for independent conciliation and arbitration of disputes, as well as the ability to set reasonable minimum conditions for rideshare and bailee taxi drivers.

46. Such a position is not without precedent. The passage of the *Road Safety Remuneration Act 2012* (Cth) and the establishment of the Road Safety Remuneration Tribunal ("**RSRT**") demonstrated legislative acceptance of the nature of the road transport safety crisis and of the need to address the safety crisis. The explicit object of the Act was to promote safety and fairness in the road transport industry in various ways, including by removing remuneration-related incentives, pressures and practices that contribute to unsafe work practices.

47. That the RSRT and its underlying legislation was recently abolished does nothing to diminish the above points. That abolition was not motivated by academic or objective grounds. It was purely a political exercise.

48. Many workers in the transport industry are not employees and are engaged in a variety of non-traditional modes. Transport workers also perform a wide variety of tasks in a wide variety of environments using a range of vehicles. None of those matters prevented the RSRT from grappling with the issues. The Act and the RSRT demonstrated that it is possible to establish minimum labour standards designed to improve safety and fairness for all workers, regardless of the method of engagement or precise nature of the work.

49. There are also many State legislative equivalents. Western Australia has enacted the *Owner-Drivers (Contracts and Disputes) Act 2007* (W.A.). A recent review into the operation of the legislation stated:

> *"Insofar as the RFT Tribunal is concerned, the Review noted that "preliminary consultation with Stakeholders has indicated that the WA Tribunal has a high level of credibility and is valued by the Road Freight Transport Industry." The review further stated that "even though many disputes are resolved without reference to the Tribunal, it is widely considered that the Tribunal is operating effectively and that it plays an important role in settling disputes between owner-drivers and hirers. The decline in the number of cases referred to the Tribunal since 2010 also suggests that it has value in contributing to self-regulation of disputes between those parties."*
>
> (Chief Commissioner 2014:33)

50. Victoria has enacted broadly similar legislation: *Owner Drivers and Forestry Contractors Act 2005* (Vic.). In New South Wales, Chapter 6 of the *Industrial Relations Act 1996* (NSW) is a raft of legislative provisions analogous to the *Road Safety Remuneration Act 2012* (Cth). It essentially allows for the fixing of minimum remuneration for contractors providing services. It also allows for dispute resolution between parties by the means of conciliation. Under this legislative model, a determination for owner driver truck operators and taxi drivers has been made.

51. The rideshare and taxi industry are relatively homogenous by comparison to the general road transport industry. Establishing minimum remuneration standards for rideshare and taxi drivers, and thereby improving safety and fairness in the rideshare and taxi industry, is a more straightforward task than that facing the Road Safety Remuneration Tribunal. All that is required is an acknowledgement of the problem and a preparedness to deal with it.

52. As a salient example, in NSW the TWU administers the *Taxi Industry (Contract Drivers) Contract Determination 1984*, an industrial instrument made under Chapter 6 of the *Industrial Relations Act 1996* (NSW). As submitted above, there is no reason why similar legislation allowing such regulation in Queensland cannot be introduced.

53. There appears much precedent for (and little justification for opposing) giving the QIRC similar powers. To deny taxi drivers in Queensland such benefits is to treat them as second class citizens simply due to the State they reside in. Equally, it would naturally follow that the rideshare sector should be regulated by the same or a separate determination.

54. The TWU highlights a portion of the RSSDA submission:

… … … an independent tribunal be set up to oversee complaints against drivers so that there is a "natural" course of justice available to drivers, unlike the system currently in place where a driver can be deactivated on the unfounded allegation of a rider, who is protected by the company hiding behind "privacy concerns". Based on these unfounded allegations the driver can find himself/herself without access to the "app" with no right of reply.

55. It is a draconian system where a rideshare driver can have their earnings and livelihood stripped from them without any evidence other than an allegation they have no opportunity to respond to. This bespeaks much of the need for an independent dispute tribunal for this sector.

56. If the move to prohibit independent contracting in the taxi and ridesharing industry is not supported, then as an alternative the *Industrial Relations Act 2016* (Q.) should be amended to include provisions broadly analogous to Chapter 6 of the *Industrial Relations Act 1996* (N.S.W.), the *Owner Drivers and Forestry Contractors 2005* (Vic.) and the *Owner-Drivers (Contracts and Disputes) Act 2007* (WA). These State based Acts operate despite the *Independent Contractors Act 2006* (Cth.)[1] and there is no reason why a Queensland equivalent cannot be given the same status.

57. This would allow the QIRC to fix minimum terms of bailment contracts, rideshare contracts and conduct dispute resolution, by conciliation or by arbitration.

58. Mr Brown's recommendations referred to earlier in this submission called for empowering a tribunal with dispute resolution functions "like the QIRC" to deal with disputes in the industry. Considering the manner that the NSW IRC has exercised its conciliation and arbitration powers under Chapter 6 of its legislation, there appears no reason why the QIRC cannot be similarly empowered.

59. If the Queensland government were to introduce legislation identical to Chapter 6 of the *Industrial Relations Act 1996* (NSW) into the *Industrial Relations Act 2016* (Q.), it would allow regulation to be made ensuring that these workers received fair and reasonable benefits. It would also allow the QIRC, as an "independent umpire" to examine and potentially arbitrate a raft of issues identified by Mr. Brown's report that, in the opinion of the TWU, have not been dealt with satisfactorily by the Queensland Government.

[1]See s.7(2)(b) of the *Independent Contractors Act 2006* (Cth) and r.6(g) of the *Independent Contractors Regulations 2016* (Cth.)

60. In terms of improving the lot of bailee taxi drivers, Mr. Brown's report contained some 56 recommendations. Many of these reforms would also improve the industrial arrangements of rideshare operators.

61. The Queensland Government supported a mere 6 of these recommendations, supported another 29 "in principle" and did not support 23 recommendations.

62. Disappointingly, the Queensland Government did not support:

- Minimum bailment terms of (i) 50% of gross fares going to the bailee (ii) the bailor being responsible for 100% of fuel costs and (iii) bailment agreements for permanent drivers being for a 12-month duration (recommendation 13);
- Ending the practice of sub-leasing, which has as a consequence downward pressure on driver's remuneration (recommendations 29-35);
- Making drivers "employees" for the purposes of WorkCover legislation if satisfactory workers' compensation insurance could not be agreed upon within the industry (recommendation 43);
- Commencing talks at the federal level with a view to making superannuation contributions for bailee drivers compulsory (recommendation 46);
- In the absence of satisfactory arrangements being struck at the federal level, provision in the minimum bailment arrangements allowing drivers and operators to contribute to long service leave and retirement fund such as Q Leave (Recommendation 47); and
- An assault against a Taxi driver being treated as a serious assault under s.340(i)(g) of the *Criminal Code* as distinct from a common assault (Recommendation 54).

63. Some measures were "supported in principle" leading to varying outcomes as a result. For example:

- Recommendations 1-9 concerning training were supported "in principle" with the Queensland Government nailing its colours to the mast of national training packages soon to be introduced at that time. The TWU has detected no improvement to the industry and customer satisfaction levels have not significantly increased since their

introduction. It may be time to revisit Recommendations 1-9 of Mr Brown with a view to implementing them.

- Recommendations 10, 11, 12 and 14 all concerned the requirement of bailment agreements to be in writing and certain terms to be included in a standard agreement. Through amendments of the *Transport Operations (Passenger Transport) Act 1994* and the *Transport Operations (Passenger Transport) Regulations 2005* these were largely given effect to. However due to Bailee taxi drivers poor negotiating position, this measure has not improved the conditions bailee taxi drivers are engaged on.

- Recommendation 15 concerned introducing a prohibition on set pay in. It was supported "in principle" yet the ultimate measure chosen to give effect to this "in principle" support was to actually allow drivers with a driver authorisation of at least 12 months standing to enter into such arrangements.

- Recommendations 16 – 19 concerned dispute resolution procedures. They were supported "in principle", with QCAT trumpeted as the appropriate forum for disputes to be resolved though conciliation. The TWU is unaware of QCAT being used for any such disputes.

64. The response of the Queensland Government at the time was guided by recourse to a report it had commissioned by L.E.K. Consulting. The following is atypical of how it was used:

> *TMR has recently commissioned and independent economic analysis into the taxi industry which has been undertaken by LEK Consulting. Work done to date clearly indicates that mandating that a driver takes 50% (with the operator paying fuel) is not a sustainable model for all operators and would have significant negative impacts on their economic viability.*

65. This resulted in considerable unfairness. Relevant stakeholders were denied natural justice as this report was not circulated for comment or submission before being relied upon by the Queensland Government.

66. By "relied", more specifically the report was cited in the Queensland Government's response to Mr. Brown's recommendations as grounds for not supporting some aspects. The approach in the L.E.K. Consulting report was, with respect, simple "*laissez faire*" economics- "Let bailors and bailees strike their own arrangements". Along with ignoring the obvious power imbalance, as an economic approach this represents a long discredited approach.

67. Legislating as urged in this part of the TWU submission would give effect to some of the recommendations (recommendations 18-19) of Mr. Brown supported "in principle" by the Government which, in 7 years, no progress has been achieved on – dispute resolution. Mr Brown's recommendation called for empowering a tribunal with dispute resolution functions "like the QIRC" to deal with disputes in the industry. Recommendations 18 – 19 concerned dispute resolution procedures. They were supported "in principle", with QCAT trumpeted by the Government of the day as the appropriate forum for disputes to be resolved though conciliation. The TWU is unaware of QCAT being used for any disputes of this nature, though statistics on anything other than determined matters in that forum are elusive.

68. The taxi industry is not altogether unique in its combination of poor levels of remuneration and consequential safety concerns. In some respects, the problems facing the taxi industry are those facing the ridesharing industry generally, which is similarly affected by poor working conditions including low rates of pay, poor safety standards, operators unilaterally reducing fares with the effect of lowering driver's income and some drivers being deactivated from the system with no recourse or appeal.

69. Ridesharing undoubtedly represents a new challenge to an already dysfunctional industry. Rideshare drivers are not guaranteed any level of income. They do not receive any of the protections traditionally extended to employees and some other workers. They bear the entirety of the risk associated with their work both in terms of contingency of income and the absence of any security in work.

70. The precarious nature of the engagement of rideshare drivers is likely to aggravate rather than improve the industry's existing failures. But it is not the cause of the industry's problems. It simply represents a further step down the path already travelled by the industry.

71. A remarkable example of this is the catalyst for the class action litigation against UberX in California. Part of it concerns the litigants, as putative employees, recovering outlays. More startlingly, the other part concerns the putative employees recovering tips paid by passengers who clearly expected the tip to go to their driver. UberX rather arrogantly claimed these tips and did not pass them onto the individual drivers. It is an example of what can happen when greed goes unchecked due to the power imbalance in independent contracting.

72. Rideshare drivers and bailee taxi drivers should enjoy some minimum level of protection. The current malaise is directly attributable to the lack of any minimum levels of engagement

conditions. There is no apparent reason for the unconscionable mistreatment of workers in the personal transport industry. Whether the current position is the result of historical accident, the determination of the industry to maximise profits or something in the nature of the work done is not important. What is important is the recognition of the problem and a determination to address it.

73. As a serious concern but perhaps less pressing than the matters outlined above, Clause 13 of the Bill proposes to repeal Part 4A of the *Transport Operations (Passenger Transport) Act 1994*. This Part of that Act deals with a requirement to enter into a written bailment agreement as between the owners of a Taxi and Licence and bailee drivers. This was a reform recommended by Mr. Brown's review.

74. Astoundingly, this move was never foreshadowed in the OPT white paper. Nor did, as far as the TWU is aware, any party make a submission that this move should be made or that it was causing hardship or affecting the productivity of the industry or the services provided to the public.

75. The apparent reason for the move is contained in the Explanatory Memoranda circulated by the Minister. It states that the rationale for repealing Part 4A is as follows:

> *Clause 13 omits chapter 4A in relation to taxi service bailment agreements. A taxi service bailment agreement is a written agreement between an accredited operator and an authorised driver for the bailment of a taxi that is signed by both parties and includes information prescribed under a regulation. These agreements will no longer be regulated under TOPTA. Agreements with drivers are considered a workplace relations matter for the industry to manage subject to any applicable requirements under other legislation.*

76. With due respect to the author of this passage, if a driver is entering into a bailment agreement they become an independent contractor. So much has been the case in Australian law for over 80 years. It is not then, contrary to what is asserted, "a workplace relations matter for the industry to manage". Such matters are only the province of employers and employees.

77. This move to repeal Part 4A and the fundamental lack of understanding behind it shakes confidence in the Government having (a) read and comprehended Mr. Brown's exacting report into the taxi industry; and (b) having made recommendations to address carefully identified problems, such as a need for written bailment agreements.

78. In all it appears that in the OPT white paper the Government has left looking closely at working arrangements in the taxi and rideshare industries for "another day". In the meantime, despite

being possessed of a report and a series of recommendations since 2010, the Government is doing the reverse; trying to wind back the miniscule legislative changes it did make in the wake of Mr. Brown's report. The TWU is vociferously opposed to this move.

D. Lack of Blue Card training

79. As previously mentioned, recommendations 1-9 of Mr Brown concerned training. They were supported "in principle" by the Queensland government. The problem is the training occurs after the employee commences work, if at all.

80. It has been established by several reviews of the industry that taxi driving is a dangerous occupation. There is no reason to expect that rideshare drivers fare any better. Like the construction and transport industries, there is a strong case that rudimentary OHS "blue card" training ought to occur as a mandatory requirement before commencing work.

81. For example:

> *"Taxi drivers continue to experience threats to their personal safety, especially when driving late at night and many believe that drug and alcohol-fuelled behaviour is making their jobs more difficult than ever. Taxi customers are concerned about unsafe driver practices (such as driving while talking on the phone)".*
>
> (Fels 2012:8)

82. The TWU conducts blue card training in the heavy transport industry under the auspices of the Transport Education Audit Compliance Health Organisation ("**TEACHO**"). It has the track record and experience to conduct blue card training for the taxi and rideshare sectors.

E. Summary and responses

83. The position of the industry may be summarised as follows:

(a) The taxi industry is in crisis. Drivers suffer from very low pay and unsafe working conditions.

(b) Because of poor working conditions the industry is unable to retain skilled drivers, which in turn contributes to poor safety and service outcomes. Low levels of pay are directly linked to low safety and service outcomes.

(c) The position is complicated by the atypical work arrangements in the industry, most commonly the prevalence of bailment arrangements for engagement.

(d) The arrival of rideshare and its attendant independent contracting is not the cause of the industry's problems nor does it represent some fundamental change. Rather it involves the potential for even further decline in standards of safety and fairness, placing further downward pressure in a race to the bottom.

(e) The TWU's strongly preferred position is that independent contracting involving drivers be banned by this Bill in the taxi and rideshare sectors. Workers within these sectors can be remunerated under existing awards and legislative standards.

(f) As an alternative, this Bill should be amended to incorporate provisions at least identical to Chapter 6 of the *Industrial Relations Act 1996* (NSW) into the *Industrial Relations Act 2016* (Q.) This would allow regulation to be made ensuring that these workers received "fair and equitable" conditions of engagement, as well as allowing conciliation of disputes.

(g) Whatever arrangements are struck, new employees to the industry ought to be required to receive training blue card training on OHS issues in the industry. The TWU should be authorised to conduct this training, given its track record in successfully delivering blue card training under the auspices of TEACHO.

References

Brown, D. 2010 *Report on Investigation into the Taxi Industry in Queensland by the Queensland Workplace Rights Ombudsman*

CIE 2012 *Reweighting of the Taxi Cost Index*

Fels, A. 2012 *Customers First: Service, Safety, Choice. Taxi Industry Inquiry*

Chief Commissioner 2014 *Report of the Chief Commissioner of the Western Australian Industrial Relations Commission on the operation of the Industrial Relations Act 1979 1 July 2013 to 30 June 2014*