



IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMON LAW DIVISION  
GROUP PROCEEDINGS LIST

S ECI 2020 01834 Case: S ECI 2020 01834  
Filed on: 19/06/2023 10:53 AM

BETWEEN

**JAMAL SALEM** in her capacity as executor for the estate of **ANWAR SALEM**

Plaintiff

- and -

**UBER TECHNOLOGIES INCORPORATED** and others

(in accordance with the Schedule of Parties to this Second Further Amended Statement of Claim)

Defendants

**THIRD FOURTH FURTHER AMENDED STATEMENT OF CLAIM**

(Filed pursuant to the the Orders of the Honourable Justice Nichols dated [14 June 2023](#))

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## **PART A – PARTIES AND GROUP MEMBERS**

1. The Plaintiff:

- (a) is the executor for the estate of Mr Anwar Salem, who died on 1 March 2018;
- (b) at all material times within the Victorian Claim Period as defined in paragraph 2(a) below, Mr Salem held a taxi-cab licence within the meaning of the *Transport (Compliance and Miscellaneous) Act 1983* (Vic) (the **Victorian Transport Act**), bearing the number MT 1966; and
- (c) at all material times within the Victorian Claim Period, Mr Salem assigned, under s 150 of the Victorian Transport Act, to a third party the rights to use the taxi-cab licence referred to in the preceding sub-paragraph.

### **Particulars**

Mr Salem assigned the licence to an operator. Mrs Salem is unable to provide further details about the assignee at this time.

2. At any point in the period:

- (a) 1 April 2014 to 23 August 2017 (the **Victorian Claim Period**), there were:
  - (i) taxi-cab licence holders (**Victorian Taxi Licence Holders**);
  - (ii) accredited taxi-cab operators (**Victorian Taxi Operators**);
  - (iii) accredited taxi-cab drivers (**Victorian Taxi Drivers**); and
  - (iv) accredited ~~provider of taxi-cab network services~~ taxi-cab network service operators (**Victorian Network Service Providers**); and
  - (i) – (iv) above, the **Victorian Taxi Industry Members**;
  - (v) hire car licence holders (**Victorian Hire Car Licence Holders**);
  - (vi) hire car operators (**Victorian Hire Car Operators**); and

(vii) accredited hire car drivers (Victorian Hire Car Drivers);

(v) – (vii) above, the **Victorian Hire Car Industry Members**;

as defined in Item 1 of Schedule A to this Further Amended Statement of Claim (together, the **Victorian Industry Members**);

(b) 7 April 2014 and 18 December 2015 (the **New South Wales Claim Period**) there were:

(i) taxi-cab licence holders (NSW Taxi Licence Holders);

(ii) accredited taxi-cab operators (NSW Taxi Operators);

(iii) authorised taxi-cab drivers (NSW Taxi Drivers); and

(iv) authorised taxi-cab network providers (NSW Taxi Network Providers); and

(i) – (iv) above, the **New South Wales Taxi Industry Members**;

(v) private hire vehicle licence holders (NSW Hire Car Licence Holders);

(vi) accredited private hire vehicle operators (NSW Hire Car Operators); and

(vii) authorised private hire vehicle drivers (NSW Hire Car Drivers);

(v) – (vii) above, the **New South Wales Hire Car Industry Members**;

as defined in Item 2 of Schedule A to this Further Amended Statement of Claim (together, the **New South Wales Industry Members**);

(c) 17 April 2014 to ~~9 June 2017~~ September 2016 (the **Queensland Claim Period**) there were:

(i) taxi service licence ~~owners~~holders (Queensland Taxi Licence Holders);

(ii) accredited taxi service operators (Queensland Taxi Operators);

(iii) authorised taxi drivers (Queensland Taxi Drivers); and

(iv) taxi service administrators (Queensland Taxi Administrators); and

(i) – (iv) above, the **Queensland Taxi Industry Members**;

(v) limousine service licence ~~holders~~~~owners~~ (Queensland Hire Car Licence Holders);

- (vi) accredited limousine service operators (Queensland Hire Car Operators); or
- (vii) authorised limousine drivers (Queensland Hire Car Drivers);

(v) – (vii) above, the **Queensland Hire Car Industry Members**;

as defined in Item 3 of Schedule A to this Further Amended Statement of Claim (together, the **Queensland Industry Members**); and

- (d) 10 October 2014 to 4 July 2016 (the **Western Australian Claim Period**) (with the Victorian Claim Period, New South Wales Claim Period and Queensland Claim Period, the **Claim Period**) there were:

- (i) taxi plate holders (WA Taxi Plate Holders);
- (ii) district taxi-car licence holders (WA District Taxi Licence Holders);
- (iii) taxi operators (WA Taxi Operators);
- (iv) taxi drivers (WA Taxi Drivers); and
- (v) taxi dispatch service providers (WA Taxi Dispatch Service Providers); and

(i) – (iv) above, the **Western Australian Taxi Industry Members**;

- (vi) omnibus licence holders (WA Hire Car Licence Holders);
- (vii) omnibus operators (WA Hire Car Operators); and
- (viii) omnibus drivers (WA Hire Car Drivers);

(v) – (vii) above, the **Western Australian Hire Car Industry Members**;

as defined in Item 4 of Schedule A to this Further Amended statement of claim (together, the **Western Australian Industry Members**) (together with the Victorian Industry Members, New South Wales Industry Members and Queensland Industry Members are the **Industry Members**).

- 2A. Prior to the commencement of this proceeding, or alternatively, prior to the filing of this Further Amended Statement of Claim:

- (a) some Industry Members, being natural persons, died, and their estate, including the claim for the tort alleged in this Further Amended Statement of Claim, devolved by the laws of succession to their respective legal personal representatives;
- (aa) some Industry Members, being natural persons, were made bankrupt and the claim for the tort alleged in this Further Amended Statement of Claim vested in their respective trustees in bankruptcy;
- (b) some Industry Members assigned or transferred their claim for the tort alleged in this Further Amended Statement of Claim to a person with a pre-existing genuine commercial interest in the claim;
- (c) some Industry Members, being trustees of a trust, were replaced by another trustee in whom was vested the claim for the tort alleged in this Further Amended Statement of Claim; and
- (d) some Industry Members, formerly operating as the trustee of a trust, were deregistered pursuant to Part 5A.1 of the *Corporations Act 2001* (Cth), thereby having ceased to exist and for that reason are incapable of pursuing the claim for the tort alleged in this Further Amended Statement of Claim in circumstances in which the beneficiaries of the said trust ought to be permitted to enforce the claim.

2B. This proceeding is commenced as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) by the Plaintiff on her own behalf and on behalf of all persons who or which as at the date this Further Amended Statement of Claim was filed:

- (a) have had vested in, assigned, devolved or transferred to them the claim for a tort alleged below of a Victorian Industry Member, New South Wales Industry Member, Queensland Industry Member or Western Australian Industry Member, as alleged in subparagraphs 2A(a) to (c) above; and/or
- (b) is the beneficiary of a trust who is entitled to bring a claim for a tort alleged below in the circumstances alleged in subparagraph 2A(d) above,

((a) and (b) together, the **Derivative Group Members**).

3. As at the date of commencement of this proceeding, there are seven or more persons who have claims against the defendants and each of them.

4. The First Defendant (**Uber Inc**):

- (a) is, and since 16 July 2010 has been, a body corporate registered in the State of Delaware, United States of America; and
  - (b) is capable of being sued.
- 5. The Second Defendant (**Uber Holding**):
  - (a) is, and since 4 September 2012 has been, a private company chartered in the Netherlands; and
  - (b) is capable of being sued.
- 6. The Third Defendant (**Uber B.V.**):
  - (a) is, and since 24 October 2012 has been, a private limited liability company chartered in the Netherlands; and
  - (b) is capable of being sued.
- 7. The Fourth Defendant (**Uber Australia**):
  - (a) is, and since 11 September 2012 has been, a body corporate registered under the *Corporations Act 2001* (Cth); and
  - (b) is capable of being sued.
- 8. The Fifth Defendant (**Rasier Operations**):
  - (a) is, and since 3 February 2014 has been, a private company chartered in the Netherlands; and
  - (b) is capable of being sued.
- 9. The Sixth and Seventh Defendants (collectively, **Rasier Pacific**):
  - (a) are, and since 21 December 2015 have been, the partners in a partnership within the meaning of Art 7A: 1655 BW, registered in the Netherlands and known as Rasier Pacific; and
  - (b) are capable of being sued.

## PART B – THE UBER GROUP’S ESTABLISHMENT AND OPERATION OF UBERX

### The Uber Group

10. At all material times, Uber Inc was the parent, or ultimate holding, company of a group of more than 110 entities including the Second to Seventh Defendants (the **Uber Group**).
11. At all material times, Uber Inc published and made available in the United States of America:
  - (a) a software application known as the “Uber app”; and
  - (b) a software application known as the “Uber Partner app”.
12. At all material times, the Uber app, when downloaded onto a device, enabled a person to (among other things) become registered to use the Uber app and, once registered (a **Rider**), to use the Uber app to request a form of passenger transport service in which the passenger determines the pickup time and location and the destination (**Point to Point Passenger Transport Service**).
13. At all material times, the Uber Partner app, when downloaded onto a smartphone, enabled (among other things) persons who had entered into an agreement permitting them to use the Uber Partner app (an **Uber Partner**) to:
  - (a) receive requests for the provision of Point to Point Passenger Transport Services from Riders; and
  - (b) to accept such requests and provide such services.
14. At all material times, Uber Inc licenced the software in the Uber app and the Uber Partner app (the **Software**) to Uber B.V. to operate and make available the Uber app and the Uber Partner app to Riders and Uber Partners outside of the United States of America.
15. At all material times:
  - (a) Uber Inc and/or Uber B.V. operated, or caused to be operated, the technical architecture which supported the Uber app and Uber Partner app (the **Architecture**); and
  - (b) Uber B.V. operated the Uber app and the Uber Partner app outside the United States of America.

### Particulars

1. As to subparagraph 15(a), the Architecture was comprised of the computer hardware and software required for the support and operation of the Uber app



and Uber Partner app including servers, computer programs (applications) and databases.

2. As to subparagraph 15(b), the Plaintiff relies on the the affidavit of Craig Walther Jackson sworn 31 July 2015 (**Jackson Affidavit**) filed in the matter of *Uber B.V. v The Commissioner of Taxation of the Commonwealth of Australia* (2017) 247 FCR 462 (**Uber B.V. v CoT**).
3. Further particulars may be provided after discovery.

16. The Uber Group was established and operated to, among other things, conduct business in a number of countries by, relevantly:

- (a) utilising the Software and the Architecture to:
    - (i) enable Riders to use the Uber app to request Point to Point Passenger Transport Services;
    - (ii) enable Uber Partners using the Uber Partner app to receive, accept and fulfil such requests; and
    - (iii) facilitate payment by the Rider to the Uber Partner of a fare for the provision of those services; and
  - (b) doing so in consideration for a fee paid by the Uber Partner out of the fare charged for the provision of the Point to Point Passenger Transport Services,
- (the **Uber Business**).

### **The Uber Business in Australia**

17. In about August 2012, Uber Inc decided to commence operating the Uber Business in Australia.

#### **Particulars**

1. The decision was made by Travis Kalanick, then Chief Executive Officer of Uber Inc, in about August 2012.
2. Further particulars may be provided after discovery.

18. At all material times from about October 2012, Uber Inc:
- (a) had control, directly or indirectly, of the Uber Group, and had and exercised oversight of the operations and business strategy of the Uber Group; and
  - (b) received reports about the Uber Business in Australia.

**Particulars**

- 1. As to paragraph 18(a), the Plaintiff refers to:
    - (a) the First Witness Statement of Thomas Elvidge dated 26 February 2018 and filed in *Uber London Limited v Transport for London*, Westminster Magistrates Court (*ULL v TfL*), at paragraph [27]; and
    - (b) the First Witness Statement of Fred Jones dated 26 February 2018 and filed in *ULL v TfL*, at paragraph [26].
  - 2. As to paragraph 18(b), the Plaintiff refers to an article published in the Australian Financial Review on 4 December 2015 headed "Wheeler Dealer".
  - 3. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
  - 4. Further particulars may be provided after discovery.
19. In about 2012 to 2013, Uber Inc provided financial support to Uber Australia.

**Particulars**

- 1. The Uber Australia Financial Report for the year ended 30 June 2013, lodged with the Australian Securities and Investment Commission, discloses that Uber Australia had a non-current liability totalling \$979,509, comprised of 2 borrowings from "Uber Inc" (\$879,088) and "Uber International" (\$100,421).
  - 2. Copies of the document referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
  - 3. Further particulars may be provided after discovery.
20. At all material times from about October 2012, Uber Holding:

- (a) was responsible for the management of the Uber Group's international operations, including business strategy and development and financial investments, including engineering;

- (b) set the local business objectives for the Australian market, which were then supported by Uber Australia;
- (c) made payments to Uber Australia for the performance of the services pleaded in paragraphs 23(a) and 23(b), 28 and 29 below; and
- (d) guaranteed ongoing financial support to Uber Australia to ensure that Uber Australia could pay its debts as and when they fell due.

### Particulars

1. The Plaintiff refers to:
  - (a) a submission bearing the name "Uber" made to the Commonwealth of Australia Senate Economics Reference Committee, under cover of Brad Kitschke, Director of Public Policy, Oceania, dated 4 October 2015;
  - (b) the Uber Australia Financial Report for the year ended 30 June 2013, lodged with the Australian Securities and Investment Commission;
  - (c) the Uber Australia General Purpose (RDR) Financial Report for the year ended 30 June 2016, lodged with the Australian Securities and Investment Commission; and
  - (d) the Uber Australia General Purpose (RDR) Financial Report for the period 1 July 2016 to 31 December 2016, lodged with the Australian Securities and Investment Commission.
2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
3. Further particulars may be provided after discovery.

20A. Uber B.V.:

- (a) from at least November 2013, made payments to Uber Australia; ~~and~~
- (b) on 1 November 2013, entered into an agreement with Uber Australia, which agreement provided that Uber Australia would provide Support Services (as defined in the agreement and which included promotion of 'Uber', the Uber Partner app and the Uber app) to, for the benefit of, and upon request of, Uber B.V. and Uber B.V. would pay Uber Australia for those services;

Particulars

The plaintiff refers to the “Intercompany Service Agreement” between Uber B.V. and Uber Australia dated 1 November 2013 (UBR.001.008.0930).

- (c) from at least 2015, had decision-making functions with respect to the Uber Business in Australia; and

Particulars

The plaintiff refers to page 9 of the document titled “Uber Technologies, Inc. Australian tax opinion” prepared by PWC and dated 23 March 2016 (UBR.003.002.0073).

- ~~(b)~~(d) from at least 2016, guaranteed ongoing financial support to Uber Australia to ensure that Uber Australia could pay its debts as and when they fell due.

21. At all material times from about October 2012, Uber B.V.:

- (a) registered as Riders certain individuals in Australia who:
- (i) had completed an application to be a Rider;
  - (ii) had provided payment information to Uber B.V. (such as a credit card or PayPal account);
  - (iii) had entered into a standard form contract with Uber B.V. (the **Rider Contract**); and
  - (iv) had accepted Uber B.V.’s terms and conditions as a condition of registering with Uber B.V. and being authorised to use the Uber app; and
- (b) created, via the Architecture, a personal account for each Rider, accessible in the Uber app.

22. At all material times, there were terms of the Rider Contract that, or to the effect that:

- (a) the contracting partner was Uber B.V.;
- (b) by using the Uber app or the services defined in the Rider Contract the Rider entered into a contract with Uber B.V.;

- (c) in order to be able to use the Uber app or the services defined in the Rider Contract it was necessary to first sign up or register and maintain an account with Uber B.V.;
- (d) when signing up, it was necessary to provide Uber B.V. with specified personal information, a mobile telephone number and credit card or PayPal details;
- (e) the Uber app allowed the Rider to send a request for transportation services to an Uber Partner;
- (f) Uber B.V. would charge the Rider for the transportation services provided to the Rider by the Uber Partner on behalf of the Uber Partner;
- (g) the Rider agreed that they would pay for any transportation services they purchased from the Uber Partner and that Uber B.V. could charge the Rider's credit card or PayPal account for the transportation services that might be accrued by or in connection with the Rider's account; and
- (h) subject to the Rider's compliance with the terms and conditions, Uber B.V. granted the Rider a limited non-exclusive, non-transferable licence to download and install a copy of the Uber app on a single mobile device that the Rider owned or controlled and to run such copy of the Uber app on the Rider's own personal device.

23. At all material times from about October 2012, Uber Australia:

- (a) employed certain persons to perform work, and performed work, connected to the operation of the Uber Business in Australia, including to:
  - (i) develop and implement campaigns marketing the Uber app and the Uber Partner app;
  - (ii) undertake tasks connected to the recruitment of Uber Partners;  
and
  - (iii) otherwise support the operation of the Uber Business in Australia;
- (b) from time to time, rented premises in Victoria, New South Wales, Queensland and Western Australia (the **Australian States**) for the purposes of:

- (i) providing office accommodation for employees of Uber Australia;
  - (ii) providing office accommodation from time to time for employees of other entities in the Uber Group; and
  - (iii) providing services associated with the recruitment of Uber Partners, including inductions and conducting or arranging vehicle roadworthiness inspections; and
- (c) received payment from Uber Holding for providing the services pleaded in paragraph 20(c) above; [and](#)
- (d) [received payment from Uber B.V. for providing the services pleaded in paragraph 20A\(b\).](#)

#### **UberX established**

24. In about April 2013, Uber Inc launched, in the United States of America, the ride-sharing service known as uberX (**UberX**).
25. At all material times from about April 2013, UberX:
- (a) was marketed as a “low cost” Point to Point Passenger Transport Service;
  - (b) was available to Riders through the Uber app and to Uber Partners through the Uber Partner app; and
  - (c) was a service:
    - (i) through which Riders could request Point to Point Passenger Transport Services;
    - (ii) to be provided by an Uber Partner as soon as possible after the request was made (subject to availability);
    - (iii) whereby requests for such services could not be made in advance of the time that they were required; and
    - (iv) through which Uber Partners providing the Point to Point Passenger Transport Services (**UberX Partners**) did so using motor vehicles which were typically owned by the UberX Partner.

## Expansion of UberX

26. On about 12 April 2013, Uber Inc adopted a policy that, or to the effect that:
- (a) it would roll out UberX in any market where the regulator had tacitly approved doing so by failing to take direct enforcement action; and
  - (a) if clear and consistent enforcement action had taken place within 30 days of a competitor rolling out a ridesharing service, then it would not roll out UberX in that jurisdiction.

### Particulars

- 1. The Plaintiff refers to a document headed “Uber Policy White Paper 1.0 – Principled Innovation: Addressing the Regulatory Ambiguity”, published on the website [www.uber.com](http://www.uber.com) at [newsroom.uber.com/2013/04/uber-policy-white-paper-1-0](http://newsroom.uber.com/2013/04/uber-policy-white-paper-1-0).
  - 2. A copy of the document referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
  - 3. Further particulars may be provided after discovery.
- 26A. From about November 2013, internal guidance for Uber employees responsible for rolling out UberX in a new jurisdiction:
- (b) required the review of applicable laws and regulations and the likelihood of enforcement of those laws and regulations in the jurisdiction;
  - (c) provided that UberX would be rolled out in the jurisdiction if it was legal to do so;
  - (d) provided that UberX could be rolled out in the jurisdiction if it was not legal to do so, having regard to the likely level of enforcement.

### Particulars

- 1. The Plaintiff refers to:
  - (a) a document titled “P2P City Launch Playbook \*\*Revisions\*\*” dated 27 November 2013;
  - (b) a document titled “P2P City Launch Playbook”, dated 28 January 2014;
  - (c) a document titled “P2P City Launch Playbook’, dated 6 October 2015;

- (d) a document titled "Launch Playbook – Sample", dated 9 June 2015;
  - (e) a document titled "International P2P Launch Guide".
2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.

**Review of applicable laws and regulations, including penalties and enforcement, in the Australian states**

26B. Prior to making UberX available in the Australian States, one or more of the Uber Entities undertook, or caused to be undertaken, an analysis of laws and regulations relating to passenger transport services which were or may be applicable to UberX, including potential penalties and potential enforcement action that an Uber Entity or UberX Partners could face arising from the provision or operation of UberX.

**Receipt of legal advice regarding the establishment and operation of UberX in the Australian states**

26C. Prior to and/or throughout the Claim Period, one or more of the Uber Entities received legal advice that or to the effect that:

(a) in Victoria:

(i) UberX Partners would commit or were committing offences under the Victorian Transport Act by reason that the Victorian Transport Act required all commercial passenger vehicles to be licensed and drivers of such vehicles to be accredited; and

**Particulars**

1. Legal advice dated 23 January 2014 from Terence O'Brien of Brand Partners to Zac de Kievit and Simon Rossi titled "Re: Compliance Considerations and Consequences - UberX – Melbourne" (UBR.003.001.0232) stated that:

(a) "Any prospective driver of an UberX service must... be accredited and their vehicle licensed by the [Victorian Taxi Services Commission]" (paragraph 23);

(b) "the definition of 'commercial passenger vehicle' [in the Victorian Transport Act] and the requirement that all commercial passenger vehicles be licensed provides sufficient basis for prosecutorial action to be taken by the [Victorian Taxi Services Commission] without requiring amendments to the Act" (paragraph 4); and



- (c) the “principal offences” that would be committed by providing “P2P” services included the offence under s 165(1) of the Victorian Transport Act of driving a commercial passenger vehicle without being accredited (paragraph 46).
2. Legal advice dated 21 May 2014 from Terence O’Brien of Brand Partners to Zac de Kievit and Simon Rossi titled “Defending Charges Pursuant to sections 158(1) and 165(1)(a) of the Transport (Compliance and Miscellaneous) Act 1983 (“the Act”) (UBR.003.001.0573) stated:
- (a) “It is our opinion that despite the defence at section 158(2), a Magistrate would likely find a charge of Unauthorized Operation [s 158(1) of the Victorian Transport Act] proven if the charge was properly worded, all elements were proved, and the circumstances at paragraph 28 above were satisfied. The position with respect to Operate CPV without Accreditation [s 165(1)(a) of the Victorian Transport Act] is even more difficult to defend by the absence of any applicable statutory defence” (paragraph 30); and
- (b) “On your instructions, in relation to the investigations and enforcement action taken to date, it appears that the [Victorian Taxi Services Commission] have done enough to secure a successful prosecution of the relevant drivers if they [the Victorian Taxi Services Commission] had ridden in the vehicles” (paragraph 39).
- (ii) one or more of the Uber Entities may commit criminal offences, including complicity, by participating in or facilitating offences committed by the UberX Partners;

### Particulars

1. Legal advice dated 23 January 2014 from Terence O’Brien of Brand Partners to Zac de Kievit and Simon Rossi titled “Re: Compliance Considerations and Consequences – UberX – Melbourne” (UBR.003.001.0232) stated:
- (a) “The role of the Uber System in connecting a passenger with a driver for the purpose of travel for reward raises specific criminal liability issues with respect to participating in or facilitating an offence” (paragraph 53);
- (b) “Principals [sic] of criminal law and stand-alone charges exist to extend the ability for the [Victorian Taxi Services Commission] to charge the Uber Entity, its directors, officers and managers under Victorian Law for driver offences” (paragraph 2);
- (c) “A prosecution for Unlicensed Driver Offences against UberX could be brought on the basis of a conspiracy to commit an offence insofar as the system is intended to be used by drivers who do not hold a [commercial passenger vehicle] licence or accreditation and the system operates to provide customers to the driver who contravenes the Act” (paragraph 56); and

(d) “Criminal liability for offences against the [Victorian Transport Act] may also be extended to the Uber Entity” on other grounds, including “aiding, abetting, counselling or procuring a person to contravene the Act” (paragraph 63(a)).

2. An email dated 24 October 2014 from Terence O’Brien of Brand Partners to Simon Rossi and Stephen Man (UBR.003.001.1338) stated: “We foreshadowed criminal proceedings against employees and the company in our compliance overview memorandum of 23 January 2014”.

(b) in New South Wales:

(i) UberX Partners would commit or were committing offences under the Passenger Transport Act 1900 (NSW) by reason that UberX was a “public passenger service” under that Act and therefore that vehicles providing UberX were required to be licensed and UberX Partners were required to be accredited and authorised; and

### Particulars

1. An email dated 14 April 2014 from Madeleine Meehan of Herbert Smith Freehills to Zac de Kievit with the subject heading “RE: Regulatory advice” (UBR.003.001.0330) stated:

(a) “it appears that Uber and the drivers will be in breach of the relevant legislation in Queensland and NSW because they will be providing services without an accreditation”;

(b) “it appears that Uber and the drivers must be accredited to provide the services contemplated because the proposed services fall within the definition of a ‘public passenger service’; and

(c) “1,000 penalty units may be imposed on Uber and the drivers for providing the services contemplated without the appropriate accreditation. In New South Wales one penalty unit is \$110. Refer to Division 4A and section 37 for further details.”

2. Legal advice dated 9 January 2015 from Tim O’Callaghan of Piper Alderman to Glenn O’Sullivan (UBR.003.001.1825) stated:

(a) “The service provided by UberX drivers falls within the definition of a ‘public passenger service’ under the [Passenger Transport Act 1990 (NSW)]. UberX drivers carry passengers in motor vehicles for a fare or other consideration” (paragraph 18);

(b) “if a ride is provided for a fare or other consideration, it comes within the definition of a ‘public passenger service’ and, unless specifically authorised, is not permitted under the current law” (paragraph 76);

(c) “UberX drivers who are not driving taxi-cabs carry on a ‘private hire vehicle service” (paragraph 23);

- (d) “Section 37(1) of the [Passenger Transport Act 1990 (NSW)] makes it an offence for a person to carry on a ‘private hire vehicle service’ if the person is not accredited” or “the private hire vehicle is not licensed” (paragraph 24);
  - (e) “Section 40(2) of the [Passenger Transport Act 1990 (NSW)] makes it an offence for a person to drive a private hire vehicle unless the person is an ‘authorised private hire vehicle driver” (paragraph 37);
  - (f) “UberX drivers who hold no driver authority, and those who hold the wrong driver authority are in breach of section 40(2) of the [Passenger Transport Act 1990 (NSW)]” (paragraph 65);
  - (g) “At law, the labels Uber uses to describe itself do not carry any weight. The terms of the legislation and the regulations apply to the service which is in substance being provided. A public passenger service is being provided when there is carriage of passengers for payment of a fare or other consideration, regardless of whether those involved in the provision of the service consider the service to be ‘public’ or not” (paragraph 79); and
  - (h) “there is a strong likelihood that the RMS charges against Mr Rekhi and other UberX drivers will be successful. This is because the NSW legislation has a broad prohibition against unauthorised drivers conveying passengers if there is a fare or other consideration involved” (paragraph 85).
- (ii) one or more of the Uber Entities would commit or were committing offences under the *Passenger Transport Act 1990* (NSW), including by reason of carrying on a private hire vehicle service in breach of s 37(1) of that Act;

### Particulars

1. Particular 1 to sub-paragraph (i) above is referred to and relied upon.
  2. Legal advice dated 9 January 2015 from Tim O’Callaghan of Piper Alderman to Glenn O’Sullivan (**UBR.003.001.1825**) stated: “this advice deals with relevant legislative scheme risks faced by driver partners using the UberX model... obviously, the legislative scheme also potentially applies to Uber” (paragraph 12); and
  3. Legal advice dated 20 January 2015 from Tim O’Callaghan of Piper Alderman to Glenn O’Sullivan (**UBR.003.001.1900**) stated: “There is... potential for RMS to take action against Uber Australia alleging that Uber Australia carries on a private hire vehicle service in breach of section 37(1) of the [Passenger Transport Act 1990 (NSW)]”;
- (c) in Queensland, UberX Partners and/or one or more of the Uber Entities would commit or were committing offences under the *Transport Operations*

(Passenger Transport Act) 1994 (Qld) by reason that that Act required UberX Partners and the Uber Entities to be accredited to provide UberX;

### Particulars

1. An email dated 14 April 2014 from Madeleine Meehan of Herbert Smith Freehills to Zac de Kievit with the subject heading "RE: Regulatory advice" (UBR.003.001.0330) stated:
    - (a) "it appears that Uber and the drivers will be in breach of the relevant legislation in Queensland and NSW because they will be providing services without an accreditation";
    - (b) "Based on the information you provided, it appears that Uber and the drivers need to be accredited to provide the proposed services because those services fall within the definition of 'public passenger services'"; and
    - (c) "If Uber and the drivers do not have the appropriate accreditations a maximum of 160 penalty units may be imposed on Uber and the drivers for breaching the [Transport Operations (Passenger Transport Act) 1994 (Qld)]".
  2. A note from Herbert Smith Freehills titled "Queensland passenger transport legislation: Penalty provisions", attached to an email dated 2 May 2014 from Andrew Eastwood of Herbert Smith Freehills to Salle Yoo and other Uber employees (UBR.003.001.0415, UBR.003.001.0416) states: "This note sets out a number of penalty provisions contained in Queensland's passenger transport legislation that we consider may be particularly relevant to Uber's Queensland operations", including sections 15, 27 and 70 of the Transport Operations (Passenger Transport) Act 1994 (Qld).
- (d) in Western Australia, UberX Partners and/or one or more of the Uber Entities may commit offences under the Transport Co-ordination Act 1966 (WA) by reason of licensing requirements under that Act.

### Particulars

An undated email from Guy Narburgh of Herbert Smith Freehills to Matt Burton, forwarded by Matt Burton to other Uber employees on 17 October 2014 (UBR.001.006.3472) stated:

- (a) "to the extent that an Uber driver's vehicle constitutes an 'omnibus' under the Act, the vehicle is required to be licenced in accordance with the [Transport Co-ordination Act 1966 (WA)]";
- (b) "based on our understanding of Uber's business model, it is likely that Uber drivers would require some form of omnibus licence in order to provide ride-sharing services in accordance with the Act";

(c) “A number of penalties are applicable for driving on the Uber platform without the correct vehicle licence under the [Transport Co-ordination Act 1966 (WA)] (whether this is an SCV licence or otherwise). These penalties could apply to the driver, Uber itself, the Uber directors and potentially a passenger”; and

(d) “Uber itself may be liable as a result of a driver’s operation of a vehicle on the Uber platform without the correct licence under the [Transport Co-ordination Act 1966 (WA)]”.

### **Engagement with Australian regulatory authorities and regulatory change**

27. From at least October 2013, Uber Inc and/or Uber Australia engaged with regulatory authorities and government representatives in the Australian States for the purpose, or with the object or intention, of:

- (a) securing a favourable regulatory environment for the operation of UberX in those states; and/or
- (b) securing a regulatory environment with low barriers to entry for the operation of UberX in those states; and/or
- (c) securing regulatory change that would have the effect of legalising or rendering lawful the operation of UberX in those states.

### **Particulars**

1. The Plaintiff refers to:

- (a) a record of a meeting between certain officers of the Queensland Department of Transport and Main Roads – Translink Division and representatives of Uber Inc, dated 20 May 2014;
- (b) a letter addressed to Mike Abbott, General Manager, under cover of Keith Boyer, Director (Passenger Transport Standards and Taxis), Translink Division, Queensland Department of Transport and Main Roads, dated 21 May 2014;
- (c) an email from Keith Boyer, Director (Passenger Transport Standards and Taxis), Translink Division, Queensland Department of Transport and Main Roads to certain officers of the Queensland Department of Transport and Main Roads, dated 4 June 2014;
- (d) a letter from Keith Boyer, Director (Passenger Transport Standards and Taxis), Translink Division, Queensland Department of Transport and Main Roads to Mike Abbott, General Manager, dated 11 June 2014;
- (e) an email chain between Jordon Condo of Uber Inc and Keith Boyer, Director (Passenger

Transport Standards and Taxis), Translink Division, Queensland Department of Transport and Main Roads, dated 30 September 2014;

- (f) notes of a meeting between officers of the Translink Division, Queensland Department of Transport and Main Roads and Jordon Condo of Uber Inc and a Matthew McCahon, dated 1 October 2014;
  - (g) a letter from Jordon Condo of Uber Inc to Keith Boyer, Director (Passenger Transport Standards and Taxis), Translink Division, Queensland Department of Transport and Main Roads, dated 13 October 2014;
  - (h) an opinion piece by David Rohrsheim, Uber Australia General Manager, published in The Australian newspaper on 31 December 2014 headed "Hailing a new way: government should come along for ride on Uber";
  - (i) an interview given by David Plouffe, Head of Strategy, Uber Inc, to the Grattan Institute on 9 February 2015;
  - (j) a Queensland Department of Transport and Main Roads Meeting Brief to the Deputy Premier, Minister for Transport, Minister for Infrastructure, Local Government and Planning and Minister for Trade, dated 1 April 2015;
  - (k) an article published in the WA Today online news reporting service on 20 August 2015 headed "Did Transport Minister Dean Nalder mislead Parliament over Perth UberX launch?";
  - (l) an opinion piece by David Rohrsheim, Uber Australia General Manager, published in the Daily Telegraph on 24 November 2015 headed "Uber is a future we can hail a success";
  - (m) an opinion piece by David Rohrsheim, Uber Australia General Manager, published in the Herald Sun on 8 December 2015 headed "Time for Victoria to jump on board for ride reform"; and
  - (n) the matters recorded in the judgment in *Martin v Nalder* [2016] WASC 138 (***Martin v Nalder***), including at paragraphs [30]-[31].
2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
  3. Further particulars may be provided after discovery.

27A. Prior to and throughout the Claim Period, one or more of the Uber Entities sought to secure regulatory change that would have the effect of legalising or rendering lawful the operation of UberX in the Australian States, a favourable regulatory environment or a regulatory environment with low barriers to entry by, among other things:

- (a) rapidly building scale, including using the methods and conduct alleged at paragraphs 59, 61, 63, 65, [65A](#) and 65B-67 below in relation to evading enforcement action and supporting UberX Partners subject to enforcement action;
- (b) lobbying regulatory authorities and government representatives in the Australian States through external consultants; and
- (c) building public support for UberX and for securing regulatory change or a favourable regulatory environment.

### Particulars

As to (c):

- (i) one or more of the Uber Entities coordinated and/or assisted members of the public to make contact with political figures in support of regulatory change;
- (ii) one or more of the Uber Entities collected feedback and testimonials from Riders and UberX Partners for the purpose of lobbying regulatory authorities and/or government representatives;
- (iii) one or more of the Uber Entities held public events and engaged in public campaigning to build public support for regulatory change.

### Promoting, procuring and encouraging the uptake of UberX in Australia

28. At all material times from about February 2014, one or more of Uber Inc, Uber Holding, Uber B.V., Uber Australia, Rasier Operations and, from about 21 December 2015, Rasier Pacific (together, the **Uber Entities**):

- (a) undertook marketing activities directed at:
  - (i) promoting the Uber app and UberX in Australia;
  - (ii) encouraging and/or procuring individuals in Australia to register as Riders for the purpose of using UberX; and
  - (iii) encouraging and/or procuring Riders in Australia to use the Uber app to request UberX; and
- (b) provided incentives to Riders directed at:
  - (i) encouraging and/or procuring individuals in Australia to register as Riders for the purpose of using UberX; and

- (ii) encouraging and/or procuring Riders in Australia to use the Uber app to request UberX.

### **Particulars**

1. The marketing activities and incentives included:
  - (a) placing advertisements for UberX and the Uber app in various online forums;
  - (b) a promotion in Melbourne whereby UberX was offered to Riders for free for three days, which ran in May 2014;
  - (c) a promotion in Melbourne titled "UberX Now up to 30% Cheaper than a Taxi", in which Riders were informed that they could save up to 30% by using UberX rather than taxis, which ran in July 2014;
  - (d) a promotion whereby existing and new Riders received free credit of \$10 each if a new Rider were to sign up using an existing Rider's invite code, which ran from at least July 2014;
  - (e) a promotion in Melbourne whereby Riders were offered \$10 off their next two UberX rides, which ran in August 2014;
  - (f) a promotion in Melbourne known as "UberChopper", in which Riders were offered the opportunity to win one of 20 rides in a Mini Cooper to a helipad, followed by a helicopter ride to the Caulfield Cup, which ran in October 2014;
  - (g) a promotion in Sydney, Melbourne, Brisbane, Perth, Geelong and the Gold Coast known as "UberKittens", in which a Rider could request that a kitten be brought to their workplace for a fee of \$40, which ran in February 2015;
  - (h) a promotion in Sydney, Melbourne, Brisbane, Adelaide and Perth known as "Uber + Fast and Furious", in which Riders who entered a promotion code into the Uber app and requested an UberFF7 could win a ride in a sports car to the Australian premiere of Fast & Furious 7, which ran from March 2015;
  - (i) a promotion in Melbourne whereby UberX prices were dropped by 15%, which ran from around May 2015;
  - (j) a promotion throughout Australia whereby prospective Riders were informed that their first trip with UberX would be free, in the period 10-17 September 2015;



- (k) a promotion throughout Australia whereby prospective Riders were informed that new Riders who registered their Mastercard would receive their first two trips with UberX for free up to \$25 each, in the period 17 November – 31 December 2015;
  - (l) a promotion in Adelaide, Brisbane, Canberra, Melbourne, Perth and Sydney known as “UberUmpire”, in which Riders could book an umpire to officiate their backyard cricket game, which ran in January 2016;
  - (m) a promotion in Adelaide, Brisbane, Canberra, Gold Coast, Melbourne, Perth, Sunshine Coast and Sydney known as “UberPuppies”, in which Riders could request that a puppy be brought to their offices for a fee of \$40, which ran in February 2016;
  - (n) a promotion in Melbourne whereby a 15% price reduction was introduced to “get more riders on the road taking more trips, and in turn increase driver-partner earning potential”, which ran in March 2016; and
  - (o) a promotion in Melbourne in which Uber Australia entered into a partnership with the Victorian Racing Club to provide Uber ranks at a series of events at Flemington Racecourse in October and November 2016.
2. The Plaintiff also refers to:
- (a) an article appearing on the website [www.uber.com](http://www.uber.com) dated 16 April 2014, headed “Shhhhh... Secret Ubers have made their way to the Queensland Capital”;
  - (b) a submission bearing the name “Uber” made to the Commonwealth of Australia Senate Economics Reference Committee, under cover of Brad Kitschke, Director of Public Policy, Oceania, dated 4 October 2015; and
  - (c) Uber Inc’s Form S-1 Registration Statement filed with the United States Securities and Exchange Commission on 11 April 2019 (**the Uber Inc Prospectus**), including at pp 26, 29, 106-7, 139 and 152-4.
3. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
4. Further particulars may be provided after discovery.

29. At all material times from about February 2014, one or more of the Uber Entities:
- (a) undertook marketing activities directed at:
    - (i) promoting the Uber Partner app and UberX to prospective Uber Partners and UberX Partners;
    - (ii) encouraging and/or procuring individuals to apply to become an UberX Partner; and
    - (iii) encouraging and/or procuring UberX Partners to provide UberX using the Uber Partner app; and
  - (b) provided incentives to UberX Partners or prospective UberX Partners directed at:
    - (i) encouraging and/or procuring individuals to apply to become an UberX Partner; and
    - (ii) encouraging and/or procuring UberX Partners to provide UberX using the Uber Partner app.

#### **Particulars**

1. The marketing activities included placing advertisements for UberX Partners on Seek, Facebook, Gumtree and specialist taxi and commercial vehicle driver internet forums.
2. The Plaintiff also refers to:
  - (a) a bundle of documents sent from the email address [partners.brisbane@uber.com](mailto:partners.brisbane@uber.com) and bearing the name "Uber Technologies Inc" to an UberX Partner applicant in the course of June and July 2014 which, among other things, state that if the applicant signed up that week he would receive a \$250 sign-on reward as soon as he completed 10 trips on the Uber system and a \$30 per hour minimum guarantee when driving in Uber's core service area during peak times;
  - (b) a "refer now" function in the Uber Partner app which allowed Uber Partners to refer third parties in exchange for a credit to their account if that third party signed up to use the Uber Partner app;
  - (c) payment of UberX Partners' criminal record checks, driver history checks and vehicle checks;

- (d) bonuses for certain numbers of trips completed, such as a \$500 bonus once an UberX Partner had completed 20 trips;
  - (e) the use of surge pricing by location; and
  - (f) the Uber Inc Prospectus, including at pp 26, 29, 139 and 152-4.
3. Copies of the documents referred to at particulars 2(a) and (f) above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
  4. Further particulars may be provided after discovery.

### **Minimum vehicle requirements for UberX in Australia**

30. At all material times, one or more of the Uber Entities set and maintained minimum vehicle standards for vehicles used to provide UberX that, or to the effect that, such vehicles:

- (a) were to be registered;
- (b) were to be in good condition;
- (c) were not to be more than 9 years old;
- (d) in New South Wales, Queensland and Western Australia were to have four doors and in Victoria were to have at least four doors;
- (e) could not be taxis (howsoever called in each State or Territory) or have commercial branding; and

in Victoria and New South Wales, could not be vehicles previously used as taxis (howsoever called in each State or Territory) (the **Minimum Vehicle Requirements**).

### **Particulars**

1. The Plaintiff refers to:
  - (a) a bundle of documents sent from the email address [partners.brisbane@uber.com](mailto:partners.brisbane@uber.com) and bearing the name "Uber Technologies Inc" to an UberX Partner applicant in the course of June and July 2014; and
  - (b) the *Economic Effects of Ridesharing in Australia (2016)* (Deloitte) at p 12.
2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.

3. Further particulars may be provided after discovery.

### **UberX Partners in Australia**

31. At all material times from about early 2014, one or more of the Uber Entities published on the website [www.uber.com](http://www.uber.com):
  - (a) information about the requirements for becoming an UberX Partner in each of the Australian States;
  - (b) information about how to apply to become an UberX Partner in each of the Australian States; and
  - (c) the Minimum Vehicle Requirements alleged in paragraph 30.

#### **Particulars**

1. The information described in subparagraphs (a) and (b) was, in the case of Victoria, New South Wales and Queensland, published from about early 2014.
  2. The information described subparagraphs (a) and (b) was, in the case of Western Australia, published from about mid-2014.
32. At all material times, one or more of the Uber Entities received applications from individuals seeking to provide UberX in Australia and thereafter:
  - (a) collected from those individuals, among other things:
    - (i) personal information including their name, contact number, bank account details and email address;
    - (ii) a copy of their driver's licence;
    - (iii) details of the vehicle to be used in the provision of UberX, including the make, model and licence plate number;
    - (iv) evidence of a valid registration for the vehicle to be used in the provision of UberX; and
    - (v) a copy of the insurance policy or certificate of currency, including third party insurance, for vehicles to be used in the provision of UberX, showing the vehicle licence plate number;

- (b) undertook, or arranged and reviewed the results of, third party roadworthiness inspections of the vehicle nominated by those individuals for use in the provision of UberX;
  - (c) confirmed whether the vehicle nominated met the Minimum Vehicle Requirements, as alleged in paragraph 30, for the relevant Australian State and whether its registration was valid;
  - (d) determined which applicants would be approved as UberX Partners;
  - (e) notified Uber B.V. (if necessary) of the applicants who were to be approved as UberX Partners; and
  - (f) provided Uber B.V. (if necessary) with certain details of the applicants who were to be approved as UberX Partners, including their name, contact number and bank account details and their vehicle make, model and licence plate.
33. At all material times from about February 2014, Uber B.V. and/or Uber Australia:
- (a) activated, via the Architecture, an UberX Partner account, accessible in the Uber Partner app for each successful UberX Partner applicant in Australia; and
  - (b) issued the UberX Partner, via the Architecture, a "Driver ID" to enable them to access and use the Uber Partner app.
- 33A. The data collected from UberX Partners in accordance with the preceding paragraphs was:
- (a) held or controlled by Uber B.V. and/or Rasier Operations and from about 23 December 2015 Rasier Pacific;
  - (b) available to the Uber Entities; and
  - (c) used by Uber Australia.

### **Rasier Operations**

34. On about 3 February 2014, Uber B.V. sub-licenced the Uber Partner app to Rasier Operations.
35. At all material times from about February 2014 to about 20 December 2015, Rasier Operations entered into a standard form agreement, as in force from time to time, with each UberX Partner in Australia (the **Rasier Operations Contract**).

### Particulars

1. The Rasier Operations Contract was in writing, comprising a document headed "Transportation Provider Service Agreement" and dated May 2014, and was made available to UberX Partners electronically.
  2. The Rasier Operations Contract was entered into electronically by the UberX Partner clicking a button reading "Yes, I agree" appearing at the end of the Rasier Operations Contract.
  3. Copies of the document referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
36. There were terms of the Rasier Operations Contract that, or to the effect that:
- (a) subject to the terms and conditions in the Rasier Operations Contract, the Rasier Operations Contract would give the UberX Partner the right to accept requests to perform Point to Point Passenger Transport Services received by the UberX Partner using the Uber Partner app, for which the UberX Partner would be paid a service fee to perform the Point to Point Passenger Transport Services;
  - (b) Rasier Operations would offer the services under the Rasier Operations Contract to the UberX Partner during those times that the UberX Partner chose to be available to receive the requests to perform Point to Point Passenger Transport Services;
  - (c) prior to execution of the Rasier Operations Contract, the UberX Partner was to provide to Rasier Operations a description of each vehicle and a copy of the vehicle registration for each vehicle the UberX Partner intended to use to provide services under the Rasier Operations Contract;
  - (d) the UberX Partner agreed to notify Rasier Operations of any change in their vehicle(s) by submitting to Rasier Operations an updated description and vehicle registration for any previously unidentified vehicle to perform services under the Agreement;
  - (e) the UberX Partner represented that they possessed a valid driver's license and all licenses, permits and other legal prerequisites necessary to perform ride share or Point to Point Passenger Transport Services, as required by the states and/or localities in which they operated;
  - (f) to ensure compliance with all legal requirements, the UberX Partner was required to provide written copies of all such licences, permits and other legal

prerequisites prior to the date of execution of the Rasier Operations Contract and thereafter submit all current copies of such licences, permits, etc as they were renewed;

- (g) in exchange for accepting and fully performing a request for Point to Point Passenger Transport Services, the UberX Partner would be paid an agreed service fee, as specified in a service fee schedule for their completion of the request;
- (h) Rasier Operations would electronically remit payment of the service fees to the UberX Partner consistent with Rasier Operations payment practices, as set forth in the service fee schedule;
- (i) in exchange for the UberX Partner's access to and use of the Uber Partner app and the services provided through the Uber Partner app, including the right to receive requests for Point to Point Passenger Transport Services, the UberX Partner agreed to pay to Rasier Operations a fee for each request accepted as specified in the service fee schedule;
- (j) subject to certain conditions, Rasier Operations would offer the UberX Partner the right to use a mobile telephone provided by Rasier Operations, which was and would remain the property of the Rasier Operations; and
- (k) Rasier Operations would issue the UberX Partner a "Driver ID" to enable them to access the services provided by the Uber Partner app.

37. At all material times, Rasier Operations:

- (a) did not intend that UberX Partners would be required to or would comply with all legal requirements contrary to the contractual terms pleaded in subparagraphs (e) and (f) of the preceding paragraph; and
- (b) did not intend to, and did not, enforce the contractual terms pleaded in subparagraphs (e) and (f) of the preceding paragraph.

### **Particulars**

1. That Rasier Operations did not have the pleaded intention is to be inferred from:
  - (a) the conduct pleaded in paragraph 32, pursuant to which information was obtained from prospective UberX Partners in Australia by which, among other things, the Uber Entities ensured compliance with some, but not all, of the contractual requirements contained in the terms pleaded in paragraph 36(e) and 36(f);

- (b) the matters pleaded in paragraph 55 below, by which the Uber Entities failed to make the enquiries that would have allowed the Uber Entities to ensure compliance by UberX Partners with all of the contractual requirements contained in the terms pleaded in paragraph 36(e) and 36(f);
  - (c) the publication of an intention to pay, and the payment of, Regulatory Fines, [as well as the provision of other assistance to UberX Partners](#) as alleged in paragraphs 59, 61, 63 and 65 below [and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A below](#);
  - (d) the attempts to avoid or delay enforcement action, as alleged in paragraph 65B; and
  - (e) the Evasion Tools, as alleged in paragraphs 66 and 67 below.
2. As to the allegation that Rasier Operations did not enforce the contractual terms, the Plaintiff refers to:
- (a) the matters pleaded in paragraph 55 below;
  - (b) the publication of an intention to pay, and the payment of, Regulatory Fines, [as well as the provision of other assistance to UberX Partners](#) as alleged in paragraphs 59, 61, 63 and 65 below [and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A below](#);
  - (c) the attempts to avoid or delay enforcement action, as alleged in paragraph 65B; and
  - (d) the Evasion Tools, as alleged in paragraphs 66 and 67 below.
3. Further particulars may be provided after discovery.

38. At all material times:

- (a) from about April 2014 to about 18 November 2014 Rasier Operations provided each UberX Partner with a smartphone for the purpose of the UberX Partner accessing the Uber Partner app;



- (b) from about 19 November 2014, UberX Partners who had entered into the Rasier Operations Contract could elect between:
  - (i) using a smartphone provided by Rasier Operations on which the Uber Partner app was installed; or
  - (ii) installing the Uber Partner app on their own smartphone; and
- (c) from about 19 November 2014:
  - (i) UberX Partners who had entered into the Rasier Operations Contract and who elected to use their own smartphone to access the Uber Partner app were required to enter into an agreement with Rasier Operations regulating access to the Uber Partner app from that smartphone; and
  - (ii) Rasier Operations provided UberX Partners who elected to use a smartphone provided by Rasier Operations with such a smartphone.

#### **Particulars**

1. As to paragraph 38(a), the Plaintiff refers to the Rasier Operations Contract at p 7 "Company Equipment/Driver ID".
2. As to paragraphs 38(b) and 38(c), the Plaintiff refers to:
  - (a) a document headed "Addendum for "Bring your own device" program" being a standard form agreement entered into by UberX Partners; and
  - (b) the affidavit of Brian Colin Fine affirmed 15 October 2015 (the **Fine Affidavit**), filed in *Uber B.V. v CoT*.
3. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
4. Further particulars may be provided after discovery.

- 38A. From about November 2015, Rasier Operations :
- (a) entered into arrangements with vehicle rental companies to facilitate access to rental vehicles for UberX Partners; and
  - (b) thereby facilitated access for UberX Partners to vehicles for the purpose of them providing UberX in the Australian States

#### **Rasier Pacific**

39. On and from about 21 December 2015:
- (a) Rasier Operations sub-licenced the Software to Rasier Pacific; and
  - (b) Rasier Operations ceased entering into standard form agreements with persons approved to become an UberX Partner.
40. At all material times from about 21 December 2015, Rasier Pacific entered into a standard form agreement, as in force from time to time, with each UberX Partner in Australia (the **Rasier Pacific Contract**).

#### **Particulars**

- 1. The Rasier Pacific Contract was in writing, comprising a document headed "Service Agreement" and was made available to UberX Partners electronically.
  - 2. The Rasier Pacific Contract was entered into electronically by the UberX Partner clicking a button reading "I accept" appearing at the end of the Rasier Pacific Contract or signing the document.
  - 3. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
  - 4. Further particulars may be provided after discovery.
41. There were terms of the Rasier Pacific Contract that, or to the effect that:
- (a) the Rasier Pacific Contract enabled the UberX Partner to seek, receive and fulfil requests for transportation services from Riders (Chapeau);
  - (b) Uber B.V. would perform certain functions associated with the provision of the services as authorised agent for Rasier Pacific (Chapeau);
  - (c) the services regulated by the contract were the electronic services provided by Rasier Pacific (or at the direction of Rasier Pacific) rendered through a

digital technology platform, being point to point intermediary and related services that enabled transportation providers to seek, receive and fulfill requests for transportation services by individuals seeking transportation services; such services included access to the Uber Partner app and Uber's related software, websites, payment services as described in the Rasier Pacific Contract and related support services system, as may have been updated or modified from time to time (cl 1.14);

- (d) Rasier Pacific would issue the UberX Partner with a Driver ID to enable the UberX Partner to access the Uber Partner app (cl 2.1);
- (e) when the Uber Partner app was active, Rider requests might appear to the UberX Partner through the app if the UberX Partner was available and in the vicinity of the Rider (cl 2.2);
- (f) Rasier Pacific encouraged the UberX Partner to use their own device in providing services, but otherwise Rasier Pacific would supply the UberX partner with a device (cl 2.6.1);
- (g) the UberX Partner acknowledged and agreed that at all times they would hold and maintain a valid driver's licence with the appropriate level of certification to operate their vehicle and all licences, permits, approvals and authority applicable to the UberX Partner as were necessary to provide passenger transportation services to third parties in the territory in which they operated (cl 3.1);
- (h) the vehicle which could be used in the provision of UberX was a vehicle that met the then current Rasier Pacific requirements for UberX and which Rasier Pacific had authorised for use for the purpose of providing UberX (cl 1.17);
- (i) the UberX Partner acknowledged and agreed that their vehicle would be at all times properly registered and licenced to operate as a passenger transportation vehicle in the relevant territory, owned or leased by the UberX Partner or otherwise in their lawful possession, suitable for performing the passenger transportation services contemplated by the Rasier Pacific Contract and maintained in good operating conditions, consistent with industry safety and maintenance standards for a vehicle of its kind and any additional standards or requirements in the applicable territory and in a clean and sanitary condition (cl 3.2);
- (j) to ensure compliance with the requirements relating to licences, permits, approvals and vehicles, the UberX Partner was required to provide Rasier

Pacific with written copies of all such licences, permits, approvals, authority, registrations and certifications prior to the provision of any transportation services (cl 3.3);

- (k) the UberX Partner was entitled to charge a fare for each instance of completed transportation services, where such fare was calculated based upon a base fare amount plus distance (as determined by Rasier Pacific) (cl 4.1);
- (l) the UberX Partner appointed Rasier Pacific as limited payment collection agent solely for the purpose of accepting the fare, and any applicable tolls and charges, from the person requesting the service through the payment processing functionality (cl 4.1);
- (m) in consideration of Rasier Pacific's provision of the services under the Agreement, the UberX Partner agreed to pay Rasier Pacific a services fee on a per transportation services transaction basis calculated as a percentage of the fare (cl 4.4);
- (n) Rasier Pacific reserved the right to change the service fee at any time in its discretion based upon local market factors (cl 4.4); and
- (o) subject to the terms and conditions in the Agreement, Rasier Pacific granted the UberX Partner a non-exclusive, royalty-free, non-transferrable, non-sublicensable, non-assignable licence, during the term of the Rasier Pacific Contract, to use the UberX Partner app in connection with the provision of the services under the Rasier Pacific Contract solely for the purpose of providing transportation services and tracking resulting fares and fees (cl 5.1).

42. At all material times, Rasier Pacific:

- (a) did not intend that UberX Partners would be required to or would comply with all legal requirements, contrary to the contractual terms pleaded in subparagraphs (g), (i) and (j) of the preceding paragraph; and
- (b) did not intend to, and did not, enforce the contractual terms pleaded in subparagraphs (g), (i) and (j) of the preceding paragraph.

#### **Particulars**

1. That Rasier Pacific did not have the pleaded intention is to be inferred from:

- (a) the conduct pleaded in paragraph 32, pursuant to which information was obtained from prospective UberX Partners in Australia by which, among other things, the Uber Entities ensured compliance with some, but not all, of the contractual requirements contained in the terms pleaded in paragraph 41(g), (i) and (j);
  - (b) the matters pleaded in paragraph 55 below, by which the Uber Entities failed to make the enquiries that would have allowed the Uber Entities to ensure compliance by UberX Partners with all of the contractual requirements contained in the terms pleaded in paragraph 41(g), (i) and (j);
  - (c) the publication of an intention to pay, and the payment of, Regulatory Fines, as well as the provision of other assistance to UberX Partners as alleged in paragraphs 59, 61, 63 and 65 below and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A below;
  - (d) the attempts to avoid or delay enforcement action, as alleged in paragraph 65B; and
  - (e) the Evasion Tools, as alleged in paragraphs 66 and 67 below.
2. As to the allegation that Rasier Pacific did not enforce the contractual terms, the Plaintiff refers to:
- (a) the matters pleaded in paragraph 55 below;
  - (b) the publication of an intention to pay, and the payment of, Regulatory Fines as well as the provision of other assistance to UberX Partners, as alleged in paragraphs 59, 61, 63 and 65 below and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A below;
  - (c) the attempts to avoid or delay enforcement action, as alleged in paragraph 65B; and
  - (e) the Evasion Tools, as alleged in paragraphs 66 and 67 below.
3. Further particulars may be provided after discovery.

43. From about 21 December 2015:
- (a) UberX Partners who had entered into the Rasier Pacific Contract could elect between:
    - (i) using a smartphone provided by Rasier Pacific and paying the costs prescribed by the Rasier Pacific Contract; or
    - (ii) installing the Uber Partner app on their own smartphone; and
  - (b) Rasier Pacific provided UberX Partners who elected to use a smartphone provided by Rasier Pacific with such a smartphone and charged those UberX Partners the costs prescribed by the Rasier Pacific Contract for doing so.

43A. From at least April 2016, Rasier Pacific:

- (a) entered into arrangements with vehicle rental companies to facilitate access to rental vehicles for UberX Partners; and
- (b) thereby facilitated access for UberX Partners to vehicles for the purpose of them providing UberX in the Australian States.

### **UberX in Australia**

44. At all material times:

- (a) from about April 2014, UberX was available to and used by Riders, and provided by UberX Partners, in Victoria, New South Wales and Queensland through the Uber app and the Uber Partner app; and
- (b) from about October 2014, UberX was available to and used by Riders, and provided by UberX Partners, in Western Australia through the Uber app and the Uber Partner app.

45. UberX was made available in the Australian States:

- (a) to Riders by Uber B.V. through the Uber app, in accordance with the licences alleged in paragraphs 14 and 22(h); and
- (b) to UberX Partners through the Uber Partner app:
  - (i) at all material times, by Uber B.V., in accordance with the licences alleged in paragraphs 14 and 34; and/or

- (ii) at all material times, by Rasier Operations, in accordance with the licence alleged in paragraphs 34 and 39(a) and the Raiser Operations Contract; and/or
- (iii) at all material times from about 21 December 2015, by Rasier Pacific, in accordance with the licences alleged in paragraphs 39(a) and 41(o) and the Rasier Pacific Contract.

46. At all material times, in Australia, UberX operated as follows:

- (a) the Rider opened the Uber app and either:
  - (i) entered the relevant sign-in details, namely an email address and a password; or
  - (ii) such details were saved and automatically recognised by the Uber app, depending on the Rider's electronic device and/or Uber app settings;
- (b) the Rider was then given access to a map that displayed the location of available UberX Partners near the Rider's location, as detected by a global positioning system (**GPS**);
- (c) the Rider was then asked to confirm their pick-up address by accepting the location detected by the Uber app through GPS or by manually entering a location and was provided an option to nominate the destination address;
- (d) the Rider was then given the option to request an estimate of the cost of the potential ride;
- (e) the Rider then pressed a square marked "REQUEST uberX";
- (f) the Uber app sent the request from the Rider to the Architecture, which then used an algorithm to dispatch the request to the nearest (or otherwise appropriate) UberX Partner who was logged onto the Uber Partner app;
- (g) the UberX Partner could choose, via the Uber Partner app, to accept or decline the request within 15 seconds of receiving the request;
- (h) if the request was not accepted or declined by the initial UberX Partner (referred to in sub-paragraphs (f) and (g) above), the Architecture continued to send the ride request to other nearby UberX Partners through the Uber Partner app, until an UberX Partner accepted the request;

- (i) once the request was accepted by an UberX Partner, the Architecture would send information about the UberX Partner to the Uber app which caused the Uber app to display:
  - (i) the name of the UberX Partner;
  - (ii) the licence plate number of the UberX Partner's vehicle;
  - (iii) a description of the make and model of the UberX Partner's vehicle;
  - (iv) the feedback "star rating" of the UberX Partner; and
  - (v) an option to cancel the service, to call the UberX Partner, or to send a text message to the UberX Partner;
- (j) the Architecture would also send information about the Rider to the Uber Partner app which caused the Uber Partner app to display:
  - (i) the pickup address nominated by the Rider and a route to that address determined by the Architecture;
  - (ii) the feedback "star rating" of the Rider; and
  - (iii) an option to cancel the service, to call the Rider, or to send a text message to the Rider;
- (k) as the UberX Partner drove to the pickup address nominated by the Rider, the Uber Partner app would send the GPS location of the UberX Partner to the Architecture at regular and frequent intervals, enabling a map showing the location of the UberX Partner to be displayed to the Rider on the Uber app;
- (l) once the UberX Partner picked up the Rider, the UberX Partner would press the "START TRIP" button/slider, and the Uber Partner app would then:
  - (i) display the route to the destination address (as determined by the Architecture) and a button marked "NAVIGATE" which the UberX Partner could press to be provided with turn by turn navigation;
  - (ii) record the location (as determined by GPS) of the start of the trip and send that data to the Architecture;
- (m) the Rider was then driven to the Rider's nominated destination address, or other destination as directed by the Rider, by the UberX Partner, during



which time both the Uber app and the Uber Partner app would, at regular and frequent intervals record and send the Rider's and UberX Partner's GPS location to the Architecture;

- (n) on arrival at the destination, the UberX Partner would press/slide the "COMPLETE TRIP" button/slider, which caused the Uber Partner app to send data to the Architecture to record that the trip had ended;
- (o) the Rider then was charged a fare for the provision of the service, in accordance with paragraph 47 below;
- (p) the Rider was invited by the Uber app to rate the UberX Partner by assigning one to five stars and, if desired, leaving feedback comments; and
- (q) the UberX Partner had an option to rate the Rider via the Uber Partner app.

47. At all material times, in Australia, the process for calculating the amount charged for each UberX service described in the preceding paragraph (the **Fare**) and the mechanism for that Fare being paid was as follows:

- (a) the pick-up location and destination locations, as well as the duration of the journey, the route taken and details of any applicable 'surge pricing', tolls or surcharges, were used to calculate the Fare via the Architecture;
- (b) the Fare was:
  - (i) calculated in accordance with the terms of the Rider Contract, as in force from time to time; and
  - (ii) comprised of components determined by one or more of the Uber Entities from time to time and used by algorithms running on the Architecture;
- (c) at the conclusion of a ride:
  - (i) Uber B.V. charged the Fare to the Rider's credit card or PayPal account;
  - (ii) the charge to the Rider's credit card or PayPal account resulted in a credit to an account held in the name of, or on behalf of, Uber B.V.; and
  - (iii) Uber B.V. issued an electronic receipt to the Rider by email;

- (d) an amount reflecting a fee for use of the Uber Partner app by the Uber Partner was calculated and deducted from the Fare (the **Service Fee**);
- (e) the Service Fee was charged:
  - (i) by Uber B.V.; oralternatively,
  - (ii) until about 20 December 2015, by Rasier Operations; and
  - (iii) from about 21 December 2015, by Rasier Pacific; and
- (f) Uber B.V., Rasier Operations and/or Rasier Pacific (as the case may be) paid, or caused to be paid, the remaining Fare balance to the UberX Partner by way of a weekly electronic transfer to a bank account nominated by that UberX Partner, subject to adjustments from time to time for promotional, incentive or other purposes.

47A. The trip data which resulted from or which recorded the provision of UberX in the Australian States was:

- (a) Held or controlled by Uber B.V. and/or Rasier Operations, and from about 23 December 2015 Rasier Pacific;
- (b) available to the Uber Entities; and
- (c) used by Uber Australia, including for the purposes of building demand for and scale of UberX and avoiding enforcement activity.

48. At all material times, UberX Partners in Australia were, and one or more of the Uber Entities promoted to UberX Partners in Australia, that they would be:

- (a) free to set their own hours of operation;
- (b) free to log on and log off the Uber Partner app at their discretion;
- (c) not subject to any minimum period for which they were required to be logged on;
- (d) not required to perform any minimum number of trips;
- (e) free to provide Point to Point Passenger Transport Services using other software applications and/or through employment or independent contracting arrangements; and

- (f) free to engage in employment outside the provision of Point to Point Passenger Transport Services.

48A. Further or in the alternative to paragraphs 38(a), 38(c)(ii), and 43(b), from March 2014, Uber Australia provided UberX Partners with a smartphone, further, a smartphone and data plan, for the purpose of the UberX Partner accessing the Uber Partner app.

## **PART C – THE UBER ENTITIES’ STRATEGY**

### **Competition with other Point to Point Passenger Transport Services**

49. At all material times, the Uber Entities intended that UberX:
- (a) would compete in each of the Australian States with other Point to Point Passenger Transport Services in those states; and
  - (b) thereby would compete with:
    - ~~(e)~~(i) one or more sub-category of the Victorian Industry Members as set out at sub-paragraphs 75A(a)(i) to (iv)the Victorian Industry Members; and/or
    - ~~(i)~~(ii) one or more sub-category of the New South Wales Industry Members as set out the at sub-paragraphs 88A(a)(i) to (iv).South Wales Industry Members; and/or
    - ~~(ii)~~(iii) one or more sub-category of the Queensland Industry Members as set out at sub-paragraphs 106A(a)(i) to (iv); and/or
    - ~~(iii)~~(iv) one or more sub-category of the Western Australian Industry Members as set out at sub-paragraphs 139A(a)(i) to (iv).

### **Particulars**

1. The Plaintiff refers to:
  - (a) a promotion in Melbourne titled “UberX Now up to 30% Cheaper than a Taxi” in which Riders were informed that they could save up to 30% by using UberX rather than taxis, which ran in July 2014;
  - (b) a submission to the Queensland Parliament Infrastructure, Planning and Natural Resources Committee inquiry into the Transport Legislation (Taxi Services) Amendment Bill 2015, marked as Submission No. 264, dated 20 October 2015 and under cover of Brad Kitschke, Director Public Policy, Oceania;

- (c) a statement on Uber Blog Australia that “uberX rides [were] up to 40% more affordable than comparable forms of transport”, published in October 2015;
  - (d) the New South Wales Government Point to Point Transport Taskforce Report to the Minister for Transport and Infrastructure dated November 2015;
  - (e) a submission to the Queensland Government headed “Ridesharing – A 21<sup>st</sup> Century Transport Solution for Queensland”, prepared in 2015 but otherwise undated;
  - (f) Report No 21, 55<sup>th</sup> Queensland Parliament, Infrastructure, Planning and Natural Resources Committee ‘Transport Legislation (Taxi Services) Amendment Bill 2015’, dated March 2016; and
  - (g) the Uber Inc Prospectus, including at pp 25, 26 and 184.
2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
  3. Further particulars may be provided after discovery.

**Unlawful conduct by UberX Partners and Uber Entities gave UberX a competitive advantage**

50. At all material times, the provision of Point to Point Passenger Transport Services in each of the Australian States:

- (a) was regulated in relation to:
  - (i) the vehicles that could lawfully be used in the provision of such services (the **Vehicle Compliance Requirements**);
  - (ii) the persons who could lawfully be engaged in driving such vehicles (the **Driver Compliance Requirements**);
  - (iii) the persons who could lawfully operate such services (the **Operator Compliance Requirements**); and
  - (iv) the lawful dispatch of vehicles providing taxi services (howsoever called) (the **Network Services Compliance Requirements**); and
- (b) had barriers to entry and ongoing compliance requirements in the form of, among other things:

- (i) requirements to acquire or purchase necessary licences, accreditations or authorisations, administrative processes connected to such acquisitions and purchases, and fees and costs payable in connection with such acquisitions and purchases;
- (ii) restrictions on the number or type of licences that could be issued;
- (iii) ongoing obligations, duties and standards, including obligations to renew relevant licences, accreditations or authorisations, duties to report prescribed conduct and requirements to comply with customer service standards; and
- (iv) in the case of taxi-cabs (howsoever called), prescription of the method for calculating the fare to be charged and of the maximum fare that could be charged;

((a) and (b) together, the **Compliance Requirements**).

#### **Particulars**

The Plaintiff refers to Schedule B.

51. At all material times, there were:

- (a) a limited number of individuals who met the Driver Compliance Requirements and Operator Compliance Requirements, as applicable in each of the Australian States; and
- (b) a limited number of vehicles which:
  - (i) met the Minimum Vehicle Requirements as alleged in paragraph 30; and
  - (ii) met the relevant Vehicle Compliance Requirements as alleged in paragraph 50(a)(i).

52. At all material times, the viability of UberX in each of the Australian States depended upon:

- (a) a rapid increase in demand for UberX by Riders;

- (b) the rapid recruitment of a large and widely dispersed network of Riders using the Uber app to obtain UberX such that it was commercially attractive for individuals to register as UberX Partners and provide UberX;
- (c) the rapid recruitment of a large and widely dispersed network of UberX Partners so that the rapid increase in demand for UberX could be met reliably and promptly; and
- (d) securing an ongoing increase in demand for UberX such that:
  - (i) UberX Partners had, when logged in, the highest possible utilisation, measured by trip time; and consequently
  - (ii) UberX could be provided as a low cost Point to Point Passenger Transport Service.

**Particulars**

1. The Plaintiff refers to the Uber Inc Prospectus, including at pp 8, 26, 29, 106-7 and 152-4.
2. A copy of the document referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
3. Further particulars may be provided after discovery.

53. At all material times, the Uber Entities intended to, and did, recruit as UberX Partners in Australia individuals who:

- (a) did not otherwise provide Point to Point Passenger Transport Services; and/or
- (b) would provide UberX on an irregular, intermittent, infrequent, part-time or casual basis; and/or
- (c) would provide UberX around their existing professional and personal commitments; and/or
- (d) would use UberX as a flexible source of income in addition to their regular income.

**Particulars**

1. The Plaintiff refers to:
  - (a) a document headed "Uber Presentation to Translink" and dated 20 May 2014;

- (b) an interview given by David Plouffe, Head of Strategy, Uber Inc, to the Grattan Institute on 9 February 2015;
- (c) a letter from Brad Kitschke, Director Public Policy, Oceania, to the Honourable Mark Bailey, Member for Yeerongpilly, Queensland Parliament dated 27 February 2015;
- (d) a submission to the Queensland Parliament Infrastructure, Planning and Natural Resources Committee inquiry into the Transport Legislation (Taxi Services) Amendment Bill 2015, marked as Submission No. 264, dated 20 October 2015 and under cover of Brad Kitschke, Director Public Policy, Oceania;
- (e) a document headed "Ridesharing: A 21<sup>st</sup> Century Transport Solution for Queensland", prepared in 2015 and otherwise undated;
- (f) a submission to the Victorian Parliament Economy and Infrastructure Committee Inquiry into Ride Sourcing Services, submitted under cover of Brad Kitschke, Director of Public Policy and dated 4 July 2016;
- (g) testimony given to the Victorian Parliament Standing Committee on the Economy and Infrastructure by Mr Lucas Groeneveld, State Manager, Victoria and Tasmania on 24 May 2017; and
- (h) the matters alleged in paragraph 29, 51 and 52.

2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
3. Further particulars may be provided after discovery.

54. At all material times, the Uber Entities intended to, and did, recruit as UberX Partners individuals for whom providing UberX would be commercially unattractive if they were required to:

- (a) meet the Compliance Requirements as applicable in each of the Australian States that required capital outlay; and/or
- (b) engage with any application or licencing process that required a significant investment of time.

#### **Particulars**

1. The Plaintiff refers to:
  - (a) a document headed "Ridesharing: A 21<sup>st</sup> Century Transport Solution for Queensland", prepared in 2015 and otherwise undated;
  - (b) a submission to the Queensland Parliament Infrastructure, Planning and Natural Resources Committee Inquiry into the Transport Legislation (Taxi Services) Amendment Bill 2015, marked as Submission No. 264, dated 20 October 2015 and under cover of Brad Kitschke, Director Public Policy, Oceania;
  - (c) a submission to the Victorian Parliament Economy and Infrastructure Committee Inquiry into Ride Sourcing Services, submitted under cover of Brad Kitschke, Director of Public Policy and dated 4 July 2016 which states, in part, that UberX Partners are "highly sensitive to increased costs and delays brought about by outdated regulatory processes" and that "costly barriers to entry make the rideshare model unworkable";
  - (d) an interview with Tom White, General Manager, Western Australia and South Australia, for one of the Uber Entities not presently known to the Plaintiff, on the 6PR radio station on 1 February 2017;
  - (e) the Queensland Government White Paper on Opportunities for Personalised Transport dated July 2016; and
  - (f) the Uber Inc Prospectus, including at pp 30 and 62.
2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
3. Further, the Uber Entities' intention can be inferred from the matters alleged in paragraphs 51 to 53.
4. Further particulars may be provided after discovery.

55. At all material times, and notwithstanding the terms of the Rasier Operations Contract and the Rasier Pacific Contract (as the case may be), the Uber Entities, did not require, alternatively typically did not require, UberX Partners to confirm, by answering any question or producing any evidence, that the UberX Partner:

- (a) met all, or some, of the Driver Compliance Requirements and Operator Compliance Requirements applicable in the relevant Australian State; and/or



- (b) nominate a vehicle for use in the provision of UberX that met the Vehicle Compliance Requirements applicable in the relevant Australian State.

56. At all material times, the Uber Entities and UberX Partners who would not, or did not, satisfy some or all of the Compliance Requirements applicable in the relevant Australian State:

- (a) would have, and did have, a competitive advantage over persons providing Point to Point Passenger Transport Services who did satisfy the applicable Compliance Requirements; and/or
- (b) thereby would give, and did give, a competitive advantage to UberX over Point to Point Passenger Transport Services provided in accordance with the applicable Compliance Requirements.

**The Uber Entities' intention and knowledge that UberX Partners would not be required to, and would not, satisfy Compliance Requirements**

57. At all material times, each of the Uber Entities intended and knew that:

- (a) UberX Partners would not be required to, and typically did not, at the time they were approved as UberX Partners:
  - (i) meet all, or some, of the Driver Compliance Requirements and/or Operator Compliance Requirements applicable in the relevant Australian State; and/or
  - (ii) nominate a vehicle for use in the provision of UberX that met the Vehicle Compliance Requirements as applicable in the relevant Australian State; and
- (b) UberX Partners typically would not, after becoming an UberX Partner:
  - (i) meet some, or all, of the Driver Compliance Requirements and/or Operator Compliance Requirements as applicable in the relevant Australian State; and/or
  - (ii) provide UberX using a vehicle that met some, or all, of the Vehicle Compliance Requirements as applicable in the relevant Australian State; and/or
  - (iii) be exposed to the upfront and/or ongoing costs associated with the Compliance Requirements as applicable in the relevant Australian State.

## Particulars

1. The intention and knowledge is to be inferred from:
  - (a) the internal guidance for Uber employees alleged in paragraph 26A;
  - (b) the analysis of laws and regulations which were or may be applicable to UberX, as alleged in paragraph 26B;
  - ~~(b)~~(c) the receipt of legal advice by one or more of the Uber Entities, as pleaded in sub-paragraphs 26C(a)(i), (b)(i), (c) and (d), and having regard to the contents of that advice;
  - ~~(c)~~(d) the engagement by Uber Inc and Uber Australia with regulators in Australia, as alleged in paragraph 27;
  - ~~(d)~~(e) the steps taken to secure regulatory change, as alleged at paragraph 27A;
  - ~~(e)~~(f) the collection of information from and about UberX Partners and their vehicles, including the licence plate number of their vehicle, as alleged in paragraph 32;
  - ~~(f)~~(g) the data held or controlled by Uber B.V and/or Rasier Operations and Rasier Pacific and available to the Uber Entities, as alleged at paragraphs 33A and 47A;
  - ~~(g)~~(h) the display of information about UberX Partners and their vehicles, including the licence plate number of the vehicle, in the Uber app, as alleged in paragraphs 46;
  - ~~(h)~~(i) the characteristics of those UberX Partners, and the limited numbers of drivers and vehicles that met the Driver Compliance Requirements and/or the Operator Compliance Requirements and the Vehicle Compliance Requirements, applicable in the relevant Australian State, and the need for rapid recruitment of UberX Partners for the viability of UberX, as alleged in paragraphs 0, 51 and 52;
  - ~~(i)~~(j) the characteristics of UberX Partners and their resultant inability or unwillingness to satisfy the Driver Compliance Requirements and/or the Operator Compliance Requirement applicable in the relevant Australian State, as alleged in paragraphs 53 and 54;
  - ~~(j)~~(k) the absence of any request or requirement by the Uber Entities that UberX Partners meet the Driver Compliance Requirements or Operator Compliance Requirements, or nominate a vehicle for use in the provision of UberX that met the Vehicle Compliance Requirements, applicable in

the relevant Australian State, as alleged in paragraph 55;

~~(k)~~(l) the competitive advantage obtained by UberX Partners and UberX over Point to Point Passenger Transport Services provided in accordance with the applicable Compliance Requirements, as alleged in paragraph 56; and

~~(j)~~(m) the Uber Inc Prospectus, including at pp 54-55 and 62;

~~(m)~~(n) the publication of an intention to pay, and the payment, of Regulatory Fines as well as the provision of other assistance to UberX Partners as alleged in paragraphs 59, 61, 63 and 65 below and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A below;

~~(n)~~(o) the attempts to avoid or delay enforcement action, as alleged in paragraph 65B below; and

~~(o)~~(p) the Evasion Tools, as alleged in paragraphs 66 and 67 below.

2. Further particulars may be provided after discovery.

### **Unlawful Competition from UberX Partners**

- 57A. Throughout the Claim Period the Industry Members were entitled to have the advantage of being the providers and facilitators of Point to Point Passenger Transport Services without unlawful competition from competitors operating in contravention of the Compliance Requirements which were applicable in the relevant Australian State.
- 57B. Throughout the Claim Period, ~~t~~The absence of unlawful competition from competitors operating in contravention of the Compliance Requirements without the costs and limitations imposed by the Compliance Requirements was critical to the maintenance of the incomes and the value of licences, permits, accreditations and authorities of Industry Members.

### **Particulars**

The entitlement to operate without unlawful competition was critical to Industry Members, including because of the burdens and limitations of satisfying the Compliance Requirements, as unlawful competition would reduce their incomes and the values of their licences, permits, accreditations and authorisations.

## **PART D – FINES AND OTHER ENFORCEMENT ACTION, AND ENFORCEMENT EVASION**

### **Victoria**

58. During the Victorian Claim Period from about May 2014, the Victorian Taxi Services Commission issued fines to, or undertook other enforcement action against, certain UberX Partners for offences, including one or both of the offences pleaded in paragraphs 68 and 70 below, committed while they were providing UberX.

#### Particulars

1. The Plaintiff refers to:
    - (a) an article published in the ABC online news reporting service on 11 December 2014 headed “Victorian taxi commissioner’s undercover investigation prompts court action against Uber drivers”;
    - (b) the judgment in *Brenner v Taxi Services Commissioner* (18 May 2016); and
    - (c) the Parliament Library and Information Service, Department of Parliamentary Services, Parliament of Victoria, “Uber and ridesharing” research paper dated 2 October 2016.
  2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
  3. Further particulars may be provided after discovery.
59. During the Victorian Claim Period from about May 2014, one or more of the Uber Entities:
- (a) publicised or otherwise communicated that it would pay fines (other than parking fines and traffic offence penalties) incurred by UberX Partners in the course of providing UberX (**Regulatory Fines**);
  - (b) informed or instructed UberX Partners to notify ‘Uber’ about any Regulatory Fines and/or to send the Regulatory Fine to ‘Uber’;
  - (c) paid, or procured payment of, Regulatory Fines including through an external law firm engaged by one or more of the Uber Entities;
  - (d) otherwise assisted UberX Partners in relation to other enforcement action, such as prosecutions, resulting from offences committed by UberX Partners in the course of providing UberX in Victoria (other than parking or traffic offences).

## Particulars

1. As to (a) to (d), the Plaintiff refers to:
  - (a) an article published in the online edition of the Sydney Morning Herald on 23 May 2014 headed "Uber Pledges to Pay \$1700 ride-sharing driver fines in Victoria" which stated that the Taxi Services Commission had issued fines totalling about \$60 000 to UberX Partners and that Corey Owens, Head of Global Public Policy at Uber Inc, had stated that Uber would pay "every ticket" issued by the Taxi Commissioner to UberX Partners in Victoria;
  - (b) an article published in the ABC online news reporting service on 11 December 2014 which quoted the Victorian Taxi Services Commissioner as stating that "a whole lot of drivers" had been fined, that 80 infringement notices had been issued totalling more than \$130 000 in fines and that the ABC 7:30 program understood that Uber had paid for all fines;
  - (c) an interview given by David Plouffe, Head of Strategy, Uber Inc, to the Grattan Institute on 9 February 2015;
  - (d) an article published in the Australian Financial Review on 13 March 2015 headed "Uber Forces Regulators to the Table";
  - (e) the Uber Inc Prospectus, including at pp 54-55;
  - (f) Brand Partners were engaged by one or more of the Uber Entities to facilitate payment of Regulatory Fines incurred by UberX Partners in the course of providing UberX in Victoria.
  - (g) Brand Partners paid at least \$1,540,433 to Civic Compliance Victoria in relation to Regulatory Fines incurred by UberX Partners in the course of providing UberX in Victoria.
  - (h) From time to time, each of Uber Australia, Uber BV and Rasier Operations deposited money into the Brand Partners trust account.
2. As to (de), the assistance provided included:
  - (a) Engagement of a legal practitioner (other than a practitioner acting for entities in the Uber Group) for the specific purpose of assisting UberX Partners subject to enforcement action.
  - (b) Making payments to UberX Partners who were subject to such enforcement action.

3. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
4. Further particulars may be provided after discovery.

### **New South Wales**

60. At all material times during the New South Wales Claim Period from about May 2014 the New South Wales Roads and Maritime Service (the **RMS**) issued fines to, or undertook other enforcement action against, certain UberX Partners for offences, including one or both of the offences pleaded in paragraphs 79 and 84 below, committed while they were providing UberX.

### **Particulars**

1. The Plaintiff refers to:
  - (a) an article published in the online edition of the Sydney Morning Herald on 17 June 2014 headed "NSW cracks down on Uber ride-sharing";
  - (b) an article published in the online edition of the Australian Financial Review on 4 October 2014 headed "Stings fail to faze Uber's management";
  - (c) an article published in the online edition of the Sydney Morning Herald on 30 July 2015 headed "Charges dropped against UberX driver, but government warns of campaign to come";
  - (d) a New South Wales Government Point to Point Transport Taskforce Discussion Paper dated August 2015;
  - (e) a New South Wales Roads and Maritime Services media release headed "Vehicle registration suspended for illegal ride sharing" dated 27 September 2015;
  - (f) a media report appearing in the online edition of the Daily Mail Australia headed "Uber crackdown: NSW Government hits 40 drivers with fines and registration suspensions for providing cheap ride-sharing services" dated 28 September 2015; and
  - (g) a NSW Government Point to Point Transport Taskforce Report to the Minister for Transport and Infrastructure dated November 2015.
2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
3. Further particulars may be provided after discovery.

61. During the New South Wales Claim Period from about May 2014, one or more of the Uber Entities (other than Rasier Pacific):
- (a) publicised or otherwise communicated that it would pay Regulatory Fines;
  - (b) informed or instructed UberX Partners to notify 'Uber' about any Regulatory Fines and/or to send the Regulatory Fine to 'Uber';
  - (c) paid, or procured payment of, Regulatory Fines, including through an external law firm engaged by one or more of the Uber Entities;
  - (d) otherwise assisted UberX Partners in relation to other enforcement action, such as prosecutions, resulting from offences committed by UberX Partners in the course of providing UberX in New South Wales (other than parking or traffic offences).

### **Particulars**

1. The Plaintiff refers to:
  - (a) an article published in the online edition of the Australian Financial Review on 3 May 2014 and headed "\$110,000 fine treat for ride-share drivers";
  - (b) an article published in the online edition of the Australian Financial Review on 4 October 2014 and headed "Stings fail to faze Uber's management";
  - (c) an article published in the online edition of the Sydney Morning Herald on 17 June 2014 headed "NSW cracks down on Uber ride-sharing";
  - (d) an article published in the online news and information site [www.zdnet.com](http://www.zdnet.com) on 15 January 2015 headed "NSW govt hauls Uber drivers to court";
  - (e) an article published in the online edition of the Sydney Morning Herald on 16 March 2015 headed "UberX drivers hauled through the courts, as Uber appeals to public for support";
  - (f) a NSW Government Point to Point Transport Taskforce Discussion Paper dated August 2015;
  - (g) a media release from the RMS dated 27 September 2015;
  - (h) an article published on the news.com.au online news reporting service on 28 September 2015 headed "NSW Government suspends licences of 40 UberX drivers";

- (i) an NSW Government Point to Point Transport Taskforce Report to the Minister for Transport and Infrastructure dated November 2015;
  - (j) the Uber Inc Prospectus, including at pp 54-55;
  - (k) Horton Rhodes Legal were engaged by one or more of the Uber Entities to facilitate payment of Regulatory Fines incurred by UberX Partners in the course of providing UberX in New South Wales;
  - (l) Horton Rhodes Legal paid at least \$29,500 to the State Debt Recovery Office in relation to at least 26 Regulatory Fines incurred by UberX Partners in the course of providing UberX in New South Wales;
  - (m) From time to time, each of Uber Australia, Uber BV and Rasier Operations deposited money into the ~~Brand Partners~~ [Horton Rhodes Legal](#) trust account.
2. As to ~~(de)~~, the assistance provided included:
    - (a) Engagement of a legal practitioner (other than a practitioner acting for entities in the Uber Group) for the specific purpose of assisting UberX Partners subject to enforcement action.
    - (b) Making payments to UberX Partners who were subject to such enforcement action.
    - (c) [Paying for rental cars for UberX Partners who were subject to enforcement action relating to the suspension of vehicle registrations.](#)
  3. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
  4. Further particulars may be provided after discovery.

## Queensland

62. At all material times during the Queensland Claim Period from about May 2014, the Queensland Department of Transport and Main Roads issued fines to, or undertook other enforcement action against, certain UberX Partners for offences, including some or all of the offences pleaded in paragraphs 91, 97 and 99 below, committed while providing UberX.

## Particulars

1. The Plaintiff refers to:
  - (a) a report published in the Courier Mail Newspaper on 2 October 2014 headed "Uber draws ire as it eyes taxi business clients";



- (b) a Queensland Department of Transport meeting brief addressed to the Minister for Infrastructure, Local Government and Planning and Minister for Trade concerning a meeting scheduled for 1 April 2015 with representatives of Uber which states, among other things, that the first compliance notice was issued in August 2014 and that 290 drivers had been repeatedly fined;
    - (c) Report No 21, 55<sup>th</sup> Queensland Parliament, Infrastructure, Planning and Natural Resources Committee 'Transport Legislation (Taxi Services) Amendment Bill 2015', dated March 2016; and
    - (d) the Queensland Government White Paper on Opportunities for Personalised Transport dated July 2016.
  - 2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
  - 3. Further particulars may be provided after discovery.
63. During the Queensland Claim Period from about May 2014, one or more of the Uber Entities:
- (a) publicised or otherwise communicated that it would pay Regulatory Fines;
  - (b) informed or instructed UberX Partners to notify 'Uber' about any Regulatory Fines and/or to send the Regulatory Fine to 'Uber';
  - (c) paid, or procured payment of, Regulatory Fines, including through an external law firm engaged by one or more of the Uber Entities;
  - (d) otherwise assisted UberX Partners in relation to other enforcement action, such as prosecutions, resulting from offences committed by UberX Partners in the course of providing UberX in Queensland (other than parking or traffic offences).

#### **Particulars**

- 1. The Plaintiff refers to:
  - (a) the transcript of a public briefing on the *Transport Legislation (Taxi Services) Amendment Bill 2015* (Qld);
  - (b) an article published in the online edition of the Brisbane Times on 25 June 2015 which stated that UberX Partners had been fined up to \$1707 for operating without authorisation, that 1536 infringement notices had been issued against 538 drivers for a total value of \$1,732,262, with 1234 of those fines paid at a total value of \$1,415,213

and that it was understood that Uber paid the fines and which quotes an Uber spokesperson as saying that Uber would “stand by its drivers”;

- (c) Report No 21, 55<sup>th</sup> Queensland Parliament, Infrastructure, Planning and Natural Resources Committee, ‘Transport Legislation (Taxi Services) Amendment Bill 2015’, dated March 2016, p 23;
- (d) a media article published in the online edition of the Brisbane Times on 20 April 2016 which stated that Queensland Transport had spent more than 18,000 hours on “compliance activities” resulting in more than 1500 infringement notices since July 2014, with almost \$2 million in fines raised since a cease and desist notice was issued in May 2014 and that it was understood that Uber paid the fines; and
- (e) the Uber Inc Prospectus, including at pp 54-55;
- (f) Horton Rhodes Legal were engaged by one or more of the Uber Entities to facilitate payment of Regulatory Fines incurred by UberX Partners in the course of providing UberX in Queensland;
- (g) Horton Rhodes Legal paid at least \$2,716,495 to the Queensland Department of Transport and Main Roads in relation to Regulatory Fines incurred by UberX Partners in the course of providing UberX in Queensland.
- (h) From time to time, each of Uber Australia, Uber BV and Rasier Operations deposited money into the [Horton Rhodes Legal Brand Partners](#) trust account

2. As to [\(de\)](#), the assistance provided included:

- (i) Engagement of a legal practitioner (other than a practitioner acting for entities in the Uber Group) for the specific purpose of assisting UberX Partners subject to enforcement action.
- (j) Making payments to UberX Partners who were subject to such enforcement action.

3. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.

4. Further particulars may be provided after discovery.

## Western Australia

64. At all material times during the Western Australian Claim Period from about October 2014, the Western Australian Department of Transport issued fines to , or undertook other enforcement action against, certain UberX Partners for offences, including some or all of the offences

pleaded in paragraphs 110, 118, 122, 128, 129, 132 and 133 below, committed while providing UberX.

### **Particulars**

1. The Plaintiff refers to:
  - (a) an article published in the Perth Now online news reporting service on 12 October 2014 headed "Ride-sharing app Uber pledges to pay traffic fines for WA drivers";
  - (b) an article published on the news.com.au online news reporting service on 6 May 2015 headed "Uber driver Sukhwinder Singh faces 'illegal taxi' charges"; and
  - (c) an article published in the Perth Now online news reporting service on 3 July 2016 headed "WA Government to prosecute 37 Uber drivers".
2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
3. Further particulars may be provided after discovery.

65. At all material times during the Western Australian Claim Period from about October 2014, one or more of the Uber Entities:

- (a) publicised or otherwise communicated that it would pay Regulatory Fines;
- (b) informed or instructed UberX Partners to notify 'Uber' about any Regulatory Fines and/or to send the Regulatory Fine to 'Uber';
- (c) paid, or procured payment of, Regulatory Fines; and/or
- (d) otherwise assisted UberX Partners in relation to other enforcement action, such as prosecutions, resulting from offences committed by UberX Partners in the course of providing UberX in Western Australia (other than parking or traffic offences).

### **Particulars**

1. The Plaintiff refers to:
  - (a) an article published in the Perth Now online news reporting service on 12 October 2014 headed "Ride-sharing app Uber pledges to pay traffic fines for WA drivers";

- (b) an article published on the ABC online news reporting service on 16 December 2014 headed “Investigation into Perth Uber drivers launched amid claims they are working outside the law”;
  - (c) an article published in the WA Today online news reporting service on 25 May 2015 headed “Uber drivers slapped with more charges after ignoring orders”;
  - (d) an article published on the news.com.au online news reporting service on 22 April 2015 headed “Uber claims huge surge in new passengers as Perth taxi drivers protest”; and
  - (e) the Uber Inc Prospectus, including at pp 54-55.
2. As to (de), the assistance provided included:
    - (a) Engagement of a legal practitioner (other than a practitioner acting for entities in the Uber Group) for the specific purpose of assisting UberX Partners subject to enforcement action.
    - (b) Making payments to UberX Partners who were subject to such enforcement action.
  3. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
  4. Further particulars may be provided after discovery.

**Support of UberX Partners was for the purpose of maintaining supply**

65A. The payment or reimbursement of Regulatory Fines and/or the provision of other assistance provided to UberX Partners as alleged in paragraphs 59, 61, 63 and 65 above was for the purpose of maintaining and/or growing the network of UberX Partners providing UberX by preventing, or trying to prevent, UberX Partners who were subject to the enforcement action, as well as other UberX Partners who did or may become aware of the enforcement action, from being discouraged from providing UberX.

**Evading and delaying enforcement action**

65B.<sup>57</sup> Throughout the Claim Period, the Uber Entities attempted to avoid or delay enforcement action in relation to UberX by:

- (a) Commencing to operate UberX:
  - (i) without the knowledge of the relevant regulatory authorities; and/or
  - (ii) by making UberX available to a select group of Riders and UberX Partners before being made publicly available;

- (b) Rapidly expanding UberX to maximise the number of Riders, UberX Partners and trips taken before enforcement action occurred, including by providing UberX temporarily for free or at reduced pricing levels; and/or
- (c) One or more of the Uber Entities representing:
  - (i) to regulatory authorities in Victoria and NSW that they intended to, or did, provide a “car pooling” service, when that was not the case; and
  - (ii) to regulatory authorities in NSW that they were launching a “low cost Uber trial”, when that was not the case.
- (d) One or more of the Uber Entities preventing or delaying access by regulatory authorities to electronic records following enforcement activity.

### Particulars

The plaintiff refers to the following emails relating to the execution of a search warrant by RMS on Uber Australia in April 2014:

- (a) an email dated 27 April 2014 from Zac de Kievit to Simon Rossi and others which states: “We have flicked the kill switch” (UBR.001.008.7066);
- (b) an email dated 28 April 2014 from Zac de Kievit which states: “Because we hit the kill switch they will request the information they want – and did not get – via a notice” (UBR.001.008.7066); and
- (c) an email dated 28 April 2014 from David Rohrsheim which states: “They figured out quickly that most of our materials were in electronic form. By the time I reached my laptop I did not have access to Tools anymore... Incidentally, on removing access to Tools - the JWS lawyers were very very nervous when they heard about that since it may look like we were not complying with the warrant, which would be a crime” (UBR.003.001.0334).

66. In about 2014, an entity or entities within the Uber Group developed or caused to be developed software tools (**Evasion Tools**) that enabled users of the tools to, among other things, identify and deny services to certain Riders

- (a) identify and deny services to certain Riders including potential transport compliance or regulatory enforcement officers;

- (b) identify locations where enforcement activity had occurred;
- (c) obfuscate driver locations and hide vehicle license plates;
- (d) prevent requests from geographic areas where the offices of transport compliance or a regulatory authority was located and/or ensure that users in those locations could not see any available vehicles; and
- (e) present particular users, including potential transport compliance or regulatory enforcement officers, with a fake view of the Uber app in which it appeared that no vehicles were available.

67. During the Claim Period from at least May 2014, one or more of the Uber Entities used the Evasion Tools in the Australian States for, among other purposes, the purpose of:

- (a) identifying Riders who were suspected:
  - (i) of being transport compliance or regulatory enforcement officers; and/or
  - (ii) of an intention to carry out law enforcement activities against UberX Partners;
- (b) preventing, or attempting to prevent, such individuals from successfully transmitting requests for UberX, including by:
  - (i) modifying the functionality of the Uber app where the SIM card inserted was suspected of being used by transport compliance or regulatory enforcement officers to book rides; and/or
  - (ii) modifying the functionality of the Uber app identified as being used by suspected transport compliance or regulatory enforcement officers to book rides; and/or
  - (iii) modifying the functionality of the Uber app where the credit card linked to the Rider's account was suspected of being used by transport compliance or regulatory enforcement officers; and/or
  - (iv) causing a different version of the Uber app to be displayed for the individuals' accounts, showing "ghost" vehicles; and
- (c) by the conduct pleaded in the preceding subparagraphs, assisting UberX Partners, when providing UberX:
  - (i) to evade regulatory or transport compliance officers; and/or

- (ii) to evade the issue of Regulatory Fines and/or compliance notices.

### Particulars

1. The Plaintiff refers to:
  - (a) an email from Keith Boyer, Director (Passenger Transport Standards and Taxis), Queensland Department of Transport and Main Roads, dated 4 June 2014;
  - (b) the transcript of the Queensland Parliament Infrastructure, Planning and Natural Resources Committee's public briefing on the Transport Legislation (Taxi Services) Amendment Bill 2015 held on 14 October 2015;
  - (c) Report No 21, 55<sup>th</sup> Queensland Parliament, Infrastructure, Planning and Natural Resources Committee, Transport Legislation (Taxi Services) Amendment Bill 2015, dated March 2016;
  - (d) an article published in the online edition of the New York Times on 3 March 2017 headed "How Uber Deceives the Authorities Worldwide";
  - (e) an article published in the online edition of the Guardian on 4 March 2017 headed "Greyball: how Uber used secret software to dodge the law";
  - (f) an article published in the online edition of the Sydney Morning Herald on 4 March 2017 headed "Uber to be investigated over 'greyball' tactics to evade authorities";
  - (g) a media release published on the webpage <https://www.uber.com/en-AU/newsroom/an-update-on-greyballing/>, dated 8 March 2017;
  - (h) the transcript of the Victorian Parliament Standing Committee of the Economy and Infrastructure Inquiry into the Commercial Passenger Vehicle Industry Bill 2017, dated 24 May 2017;
  - (i) the Parliament of Victoria, Legislative Council, Economy and Infrastructure Committee report headed 'Inquiry into the Commercial Passenger Vehicle Industry Bill 2017', dated June 2017;
  - (j) the matters recorded in the judgment in *Martin v Nalder*, including at paragraph [83(5)];
  - (k) the First Witness Statement of Thomas Elvidge dated 26 February 2018 and filed in *ULL v TfL*;
  - (l) the Third Witness Statement of Thomas Elvidge dated 19 April 2018 and filed in *ULL v TfL*; and

- (m) the First Witness Statement of Fred Jones dated 26 February 2018 and filed in *ULL v TfL*.
2. Copies of the documents referred to above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
3. Further particulars may be provided after discovery.

## **PART E – CONSPIRACY BY UNLAWFUL MEANS**

### **Commission of offences by UberX Partners in Victoria**

#### **Offences against section 158(1) of the Victorian Transport Act**

68. At all material times throughout the Victorian Claim Period, s 158(1) of the Victorian Transport Act provided that the driver and the owner of any commercial passenger vehicle which operated as a commercial passenger vehicle on any highway without being authorised to so operate by a licence, permit or other authority required by or under Division 5 of Part VI of the Act were severally guilty of an offence against that Division.
69. All material times throughout the Victorian Claim Period, UberX Partners who provided UberX in Victoria typically did so as the owners of, and/or driving, vehicles, which were not authorised to be operated as commercial passenger vehicles on highways by a licence, permit or other authority to so operate under Division 5 of Part VI of the Victorian Transport Act and thereby committed offences against s 158(1) of that Act.

#### **Particulars**

1. At all material times throughout the Victorian Claim Period, s 86 of the Victorian Transport Act provided that a “commercial passenger vehicle” meant “any motor vehicle (together with any trailer fore-car side-car or other vehicle or device, if any, attached thereto) which [was] used or intended to be used for carrying passengers for hire or reward but [did] not include a bus used to provide a bus service.”
2. At all material times throughout the Victorian Claim Period, s 87 of the Victorian Transport Act provided that a motor vehicle was deemed to operate as a commercial passenger vehicle if passengers were carried therein for hire or reward.
3. At all material times throughout the Victorian Claim Period, s 86 of the Victorian Transport Act provided that “highway” had the same meaning as in s 3(1) of the *Road Safety Act 1986 (Vic)*.



4. At all material times throughout the Victorian Claim Period, s 3(1) of the *Road Safety Act 1986* (Vic) provided that “highway” meant “a road or related area”.
5. At all material times throughout the Victorian Claim Period, vehicles used to provide UberX were commercial passenger vehicles within the meaning of s 86 of the Victorian Transport Act because:
  - (a) they were used or intended to be used for carrying passengers for hire or reward; and/or
  - (b) passengers were carried in them for reward within the meaning of s 87 of the Victorian Transport Act.
6. At all material times throughout the Victorian Claim Period, the licence, permit or other authority to so operate was that required by s 139 of the Victorian Transport Act.
7. At all material times throughout the Victorian Claim Period, UberX Partners drove or owned commercial passenger vehicles which were operated as commercial passenger vehicles because vehicles used to provide UberX were used for carrying passengers for hire or reward as alleged in paragraphs 46 and 47.
8. As to the lack of the requisite licence, permit or other authority under Division 5 of Part VI of that Act, the Plaintiff refers to:
  - (a) the engagement by Uber Inc and Uber Australia with regulators in Australia, as alleged in paragraph 27;
  - (b) the steps taken to secure regulatory change, as alleged in paragraph 27A;
  - (c) the Minimum Vehicle Requirements, as alleged in paragraph 30;
  - (d) the Vehicle Compliance Requirements as applicable in Victoria, as alleged in paragraph 50;
  - (e) the limited numbers of vehicles that met the Vehicle Compliance Requirements as applicable in Victoria and Minimum Vehicle Requirements, as alleged in paragraph 51;
  - (f) the viability of UberX in each of the Australian States depending upon a rapid recruitment of a large and widely dispersed network of drivers, as alleged in paragraph 52;
  - (g) the intention to recruit, and the recruitment of, UberX Partners who did not otherwise provide Point to Point Passenger Transport Services and who provided UberX irregularly and flexibly, as alleged in paragraph 53;
  - (h) the intention to recruit, and the recruitment of, UberX Partners for whom providing UberX would

be commercially unattractive if they were required to meet the Compliance Requirements or engage in application or licencing processes, as alleged in paragraph 54;

- (i) the lack of any requirement to provide evidence of such licence, permit or other authority, as alleged in paragraph 55;
- (j) the competitive advantage alleged in paragraph 56;
- (k) the intention to recruit, and the recruitment of, UberX Partners who did not nominate a vehicle for use, or provide UberX using a vehicle that met some, or all, of the Vehicle Compliance Requirements as applicable in Victoria, as alleged in paragraph 57;
- (l) the publication of an intention to pay, and the payment, of Regulatory Fines, [as well as the provision of other assistance to UberX Partners as alleged in paragraph 59 and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A;](#)
- (m) the attempts to avoid or delay enforcement action, as alleged in paragraph 65B;
- (n) the Evasion Tools, as alleged in paragraphs 66 and 67; and
- (o) the Jackson Affidavit and the Fine Affidavit filed in *Uber B.V. v CoT*.

9. Further particulars may be provided after discovery.

#### **Offences against section 165 of the Victorian Transport Act**

- 70. At all material times throughout the Victorian Claim Period, s 165 of the Victorian Transport Act provided that a person must not drive a commercial passenger vehicle unless that person held a driver accreditation.
- 71. All material times throughout the Victorian Claim Period, UberX Partners who provided UberX in Victoria typically did so driving a commercial passenger vehicle without holding a driver accreditation, or appropriate driver accreditation, and thereby committed offences against s 165 of the Victorian Transport Act.

#### **Particulars**

- 1. As to the allegation that vehicles used in the provision of UberX were commercial passenger vehicles, the Plaintiff refers to particulars 1-5 and 7 to paragraph 69.
- 2. At all material times throughout the Victorian Claim Period, the driver accreditation was that prescribed by s 166 of the Victorian Transport Act.

3. As to the lack of the required driver accreditation, or appropriate driver accreditation, the Plaintiff refers to:
  - (a) particulars 8(b), 8(e), 8(f), 8(g), 8(h) and 8(j)-(o) to paragraph 69;
  - (b) the Driver Compliance Requirements, as alleged in paragraph 50;
  - (c) the limited numbers of individuals who met the Driver Compliance Requirements as applicable in Victoria, as alleged in paragraph 51; and
  - (d) the lack of any requirement to provide evidence of such accreditation, as alleged in paragraph 55.
4. Further particulars may be provided after discovery.

### **Complicity by Uber Entities in the commission of offences by UberX Partners in Victoria**

72. At all material times during the Victorian Claim Period each of the Uber Entities knew of the essential matters comprising the:
- (a) commission of the offences against s 158(1) of the Victorian Transport Act by UberX Partners as alleged in paragraph 69 above; and/or
  - (b) commission of the offences against s 165 of the Victorian Transport Act by UberX Partners as alleged in paragraph 71 above.

### **Particulars**

1. The knowledge of each of the Uber Entities of the use by UberX Partners of motor vehicles to carry passengers for hire or reward is to be inferred from the fact that the Uber Entities combined to achieve the commencement and operation of UberX in each of the Australian States, as alleged in Part B, including the collection and retention of trip data as alleged in paragraph 47A.
  2. As to knowledge of UberX Partners' lack of any licence, permit or other authority under Division 5 of Part VI of that Act, the Plaintiff refers to paragraph 57 and the particulars thereto.
  3. As to knowledge of UberX Partners' lack of driver accreditation, or appropriate driver accreditation, under s 166 of the Victorian Transport Act, the Plaintiff refers to the allegations in paragraph 57 and the particulars thereto.
  4. Further particulars may be provided after discovery.
73. At all material times from at least April 2014 to 31 October 2014, Uber Inc, Uber B.V., Rasier Operations and, further or alternatively, one or more of the other Uber Entities (except Rasier

Pacific) aided, abetted, counselled or procured the commission of offences against ss 158(1) and 165 of the Victorian Transport Act as alleged in paragraphs 69 and 71:

- (a) by reason of the matters referred to in the preceding paragraph, [paragraph 26C\(a\)](#) and paragraph 57 concerning knowledge and intention; and
- (b) by engaging in the following acts:
  - (i) Uber B.V. operating and making the Uber app available to Riders on the terms of the Rider Contract, which enabled Riders to request UberX from UberX Partners who did not satisfy the Compliance Requirements;

#### **Particulars**

The allegations in paragraphs 15(a), 22 and 57 are referred to and relied upon.

- (ii) Uber Inc and/or Uber B.V. utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;

#### **Particulars**

The allegations made in paragraphs 15(a), 33, 46 and 57 are referred to and relied upon.

- (iii) further and alternatively to (ii), any other of the Uber Entities utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;
- (iv) one or more of the Uber Entities developing and implementing marketing activities, as alleged in paragraphs 28 and 29;
- (v) one or more of the Uber Entities publishing information about becoming an UberX Partner on the website [www.uber.com](http://www.uber.com) as alleged in paragraph 31, which enabled persons who did not satisfy the Compliance Requirements to become UberX Partners;
- (vi) one or more of the Uber Entities reviewing applications, and accompanying information, to become an UberX Partner and determining whether the applications would be approved, as alleged in paragraph 32, with the intention and knowledge that persons approved as UberX Partners typically did not, and would not, satisfy the Compliance Requirements;

### Particulars

The allegations made in paragraphs 32 and 57 are referred to and relied on.

- (vii) Uber B.V. activating, via the Architecture, an UberX Partner account, accessible in the Uber Partner app for successful UberX Partner applicants in Victoria who did not satisfy the Compliance Requirements, by which it enabled them to receive and accept requests for UberX from Riders;

### Particulars

The allegations made in paragraphs 33 and 57 are referred to and relied on.

- (viii) Rasier Operations entering into the Rasier Operations Contract as alleged in paragraphs 35 to 37 with UberX Partners who did not and would not satisfy the Compliance Requirements, and then performing those contracts, by which it enabled those UberX Partners to receive and accept requests for UberX from Riders;
- (ix) Rasier Operations making available a smartphone for the purpose of UberX Partners accessing the Uber Partner app, as alleged in paragraph 38 above;
- (x) Rasier Operations facilitating access to rental vehicles for UberX Partners for the purpose of them providing UberX, as alleged in paragraph 38A above;
- (xi) Uber Australia providing UberX Partners with a smartphone, further a smartphone and data plan, for the purpose of them providing UberX, as alleged in paragraph 48A above;
- (xii) Uber B.V. charging the Fare to the Rider's credit card or PayPal account, withholding an amount reflecting a fee for use of the Uber Partner app and remitting the balance to the UberX Partner, as alleged in paragraph 47;
- (xiii) one or more of the Uber Entities, either alone or in combination, communicating an intention to pay, and paying, procuring the payment of, or reimbursing UberX Partners for, Regulatory Fines incurred by UberX Partners in Victoria, [as well as the provision of other assistance](#), as alleged in paragraph 59 [and the purpose of such](#)

[payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A](#); and

- (xiv) one or more of the Uber Entities, either alone or in combination, employing the Evasion Tools, as alleged in paragraph 67.

73A. Alternatively to paragraph 73, at all material times from at least April 2014 to 31 October 2014, Uber Inc., Uber B.V., Rasier Operations and, further or alternatively, one or more of the other Uber Entities (except Rasier Pacific) intentionally assisted, encouraged or directed the commission of offences against ss 158(1) and 165 of the Victorian Transport Act as alleged in paragraphs 69 and 71 and/or intentionally assisted, encouraged or directed the commission of an offence against ss 158(1) or 165 as alleged in paragraphs 69 and 71 where the entity or entities knew that it was probable that an offence against the other of ss 158(1) and 165 would be committed:

- (a) by reason of the matters referred to in paragraph 72, [paragraph 26C\(a\)](#) and paragraph 57 concerning knowledge and intention; and
- (b) by engaging in the following acts:
  - (i) Uber B.V. operating and making the Uber app available to Riders on the terms of the Rider Contract, which enabled Riders to request UberX from UberX Partners who did not satisfy the Compliance Requirements;

#### **Particulars**

The allegations in paragraphs 15(a), 22 and 57 are referred to and relied upon.

- (ii) Uber Inc and/or Uber B.V. utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;

#### **Particulars**

The allegations made in paragraphs 15(a), 33, 46 and 57 are referred to and relied upon.

- (iii) further and alternatively to (ii), any other of the Uber Entities utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;
- (iv) one or more of the Uber Entities developing and implementing marketing activities, as alleged in paragraphs 28 and 29;

- (v) one or more of the Uber Entities publishing information about becoming an UberX Partner on the website [www.uber.com](http://www.uber.com) as alleged in paragraph 31, which enabled persons who did not satisfy the Compliance Requirements to become UberX Partners;
- (vi) one or more of the Uber Entities reviewing applications, and accompanying information, to become an UberX Partner and determining whether the applications would be approved, as alleged in paragraph 32, with the intention and knowledge that persons approved as UberX Partners typically did not, and would not, satisfy the Compliance Requirements;

#### **Particulars**

The allegations made in paragraphs [26C\(a\)](#), 32 and 57 are referred to and relied on.

- (vii) Uber B.V. activating, via the Architecture, an UberX Partner account, accessible in the Uber Partner app for successful UberX Partner applicants in Victoria who did not satisfy the Compliance Requirements, by which it enabled them to receive and accept requests for UberX from Riders;

#### **Particulars**

The allegations made in paragraphs 33 and 57 are referred to and relied on.

- (viii) Rasier Operations entering into the Rasier Operations Contract as alleged in paragraphs 35 to 37 with UberX Partners who did not and would not satisfy the Compliance Requirements, and then performing those contracts, by which it enabled those UberX Partners to receive and accept requests for UberX from Riders;
- (ix) Rasier Operations making available a smartphone for the purpose of UberX Partners accessing the Uber Partner app, as alleged in paragraph 38 above;
- (x) Rasier Operations facilitating access to rental vehicles for UberX Partners for the purpose of them providing UberX, as alleged in paragraph 38A above;
- (xi) Uber Australia providing UberX Partners with a smartphone, further a smartphone and data plan, for the purpose of them providing UberX, as alleged in paragraph 48A above;

- (xii) Uber B.V. charging the Fare to the Rider's credit card or PayPal account, withholding an amount reflecting a fee for use of the Uber Partner app and remitting the balance to the UberX Partner, as alleged in paragraph 47;
- (xiii) one or more of the Uber Entities, either alone or in combination, communicating an intention to pay, and paying, procuring the payment of, or reimbursing UberX Partners for, Regulatory Fines incurred by UberX Partners in Victoria, [as well as the provision of other assistance](#), as alleged in paragraph 59 [and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A](#); and
- (xiv) one or more of the Uber Entities, either alone or in combination, employing the Evasion Tools, as alleged in paragraph 67.

74. At all material times from 1 November 2014 and throughout the Victorian Claim Period Uber Inc, Uber B.V., Rasier Operations, Rasier Pacific (from around 21 December 2015), and, further or alternatively, one or more of the other Uber Entities intentionally assisted, encouraged or directed the commission of offences against ss 158(1) and 165 of the Victorian Transport Act as alleged in paragraphs 69 and 71 and/or intentionally assisted, encouraged or directed the commission of an offence against ss 158(1) or 165 as alleged in paragraphs 69 and 71 where the entity or entities knew that it was probable that an offence against the other of ss 158(1) and 165 would be committed:

- (a) by reason of the matters referred to at paragraph 72, [paragraph 26C\(a\)](#) and paragraph 57 concerning knowledge and intention; and
- (b) by engaging in the following acts:
  - (i) Uber B.V. operating and making the Uber app available to Riders on the terms of the Rider Contract, which enabled Riders to request UberX from UberX Partners who did not satisfy the Compliance Requirements;

#### **Particulars**

The allegations in paragraphs 15(a), 22 and 57 are referred to and relied upon.

- (ii) Uber Inc and/or Uber B.V. utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;



### **Particulars**

The allegations made in paragraphs 15(a), 33, 46 and 57 are referred to and relied upon.

- (iii) further and alternatively to (ii), any other of the Uber Entities utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;
- (iv) one or more of the Uber Entities developing and implementing marketing activities, as alleged in paragraphs 28 and 29;
- (v) one or more of the Uber Entities publishing information about becoming an UberX Partner on the website [www.uber.com](http://www.uber.com) as alleged in paragraph 31, which enabled persons who did not satisfy the Compliance Requirements to become UberX Partners;
- (vi) one or more of the Uber Entities reviewing applications, and accompanying information, to become an UberX Partner and determining whether the applications would be approved, as alleged in paragraph 32, with the intention and knowledge that persons approved as UberX Partners typically did not, and would not, satisfy the Compliance Requirements;

### **Particulars**

The allegations made in paragraphs [26C\(a\)](#), 32 and 57 are referred to and relied on.

- (vii) Uber B.V. activating, via the Architecture, an UberX Partner account, accessible in the Uber Partner app for successful UberX Partner applicants in Victoria who did not satisfy the Compliance Requirements, by which it enabled them to receive and accept requests for UberX from Riders;

### **Particulars**

The allegations made in paragraphs 33 and 57 are referred to and relied on.

- (viii) Rasier Operations entering into the Rasier Operations Contract as alleged in paragraphs 35 to 37 (up to about 20 December 2015) with UberX Partners who did not and would not satisfy the Compliance Requirements, and then performing those contracts, by which it

enabled those UberX Partners to receive and accept requests for UberX from Riders;

- (ix) Rasier Operations making available a smartphone for the purpose of UberX Partners accessing the Uber Partner app, as alleged in paragraph 38 above;
- (x) Rasier Operations facilitating access to rental vehicles for UberX Partners for the purpose of them providing UberX, as alleged in paragraph 38A above;
- (xi) Rasier Pacific entering into the Rasier Pacific Contract as alleged in paragraphs 39-41 above with UberX Partners who did not and would not satisfy the Compliance Requirements, and then performing those contracts, by which it enabled those UberX Partners to receive and accept requests for UberX from Riders;
- (xii) Rasier Pacific making available a smartphone for the purpose of UberX Partners accessing the Uber Partner app, as alleged in paragraph 43 above;
- (xiii) Rasier Pacific facilitating access to rental vehicles for UberX Partners for the purpose of them providing UberX, as alleged in paragraph 43A above;
- (xiv) Uber Australia providing UberX Partners with a smartphone, further a smartphone and data plan, for the purpose of them providing UberX, as alleged in paragraph 48A above;
- (xv) Uber B.V. charging the Fare to the Rider's credit card or PayPal account, withholding an amount reflecting a fee for use of the Uber Partner app and remitting the balance to the UberX Partner, as alleged in paragraph 47;
- (xvi) one or more of the Uber Entities, either alone or in combination, communicating an intention to pay, and paying, procuring the payment of, or reimbursing UberX Partners for, Regulatory Fines incurred by UberX Partners in Victoria, [as well as the provision of other assistance](#), as alleged in paragraph 59 [and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A](#); and

(xvii) one or more of the Uber Entities, either alone or in combination, employing the Evasion Tools, as alleged in paragraph 67.

75. In the premises:

- (a) in the period from April 2014 to 31 October 2014, by reason of the matters alleged in:
  - (i) paragraph 73, Uber Inc, Uber B.V., Rasier Operations and/or one or more of the other Uber Entities, (except Rasier Pacific), were complicit within the meaning of the common law; or, alternatively
  - (ii) paragraph 73A, Uber Inc., Uber B.V., Rasier Operations and/or one or more of the other Uber Entities (except Rasier Pacific) were involved within the meaning of s 324 of the *Crimes Act 1958* (Vic)
- (b) in the period from 1 November 2014 until about 20 December 2015, by reason of the matters alleged in paragraph 74, Uber Inc, Uber B.V., Rasier Operations and/or one or more of the other Uber Entities, (except Rasier Pacific), were involved within the meaning of s 324 of the *Crimes Act 1958* (Vic); and
- (c) in the period from about 21 December 2015 to 23 August 2017, by reason of the matters alleged in paragraph 74, Uber Inc, Uber B.V., Rasier Operations, Rasier Pacific and/or one or more of the other Uber Entities were involved within the meaning of s 324 of the *Crimes Act 1958* (Vic),

in the commission of offences against ss 158(1) and/or 165 of the Victorian Transport Act by UberX Partners as alleged in paragraphs 69 and 71.

### **Conspiracy by unlawful means in Victoria**

75A. At all material times from at least April 2014 and throughout the Victorian Claim Period, the Uber Entities, ~~(including other than Rasier Pacific from about 21 December 2015)~~, intended that:

- (a) the means by which UberX would be established and operate in Victoria would be by UberX ~~Partners unlawfully~~ competing with ~~the Industry Member whose claim the Plaintiff has acquired~~:

(i)

(A) the Victorian Taxi Licence Holders (including the Industry Member whose claim the Plaintiff has acquired); and/or

- (B) the Victorian Taxi Operators; and/or
  - (C) the Victorian Taxi Drivers; and/or
  - (D) the Victorian Network Service Providers;
- (ii) alternatively to (i):
  - (A) the Victorian Taxi Licence Holders who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Victoria (or any part thereof) in which UberX would be established and operated; and/or
  - (B) the Victorian Taxi Operators who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Victoria (or any part thereof) in which UberX would be established and operated; and/or
  - (C) the Victorian Taxi Drivers who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide Point to Point Passenger Transport Services from within the area or areas of Victoria (or any part thereof) in which UberX would be established and operated; and/or
  - (D) the Victorian Network Service Providers who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Victoria (or any part thereof) in which UberX would be established and operated;
- (iii) further or alternatively to (i):
  - (A) the Victorian Hire Car Licence Holders; and/or
  - (B) the Victorian Hire Car Operators; and/or
  - (C) the Victorian Hire Car Drivers;
- (iv) alternatively to (iii) and further or alternatively to (ii):
  - (A) the Victorian Hire Car Licence Holders who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from

within the area or areas of Victoria (or any part thereof) in which UberX would be established and operated; and/or

(B) the Victorian Hire Car Operators who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Victoria (or any part thereof) in which UberX would be established and operated; and/or

(C) the Victorian Taxi Drivers who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide Point to Point Passenger Transport Services from within the area or areas of Victoria (or any part thereof) in which UberX would be established and operated,

using UberX Partners who provided UberX in contravention of:

A. s 158 of the Victorian Transport Act, as alleged in paragraph 69; and/or

~~(a)~~ B. s 165 of the Victorian Transport Act, as alleged in paragraph 71, and

(b) ~~as a result of which the matters alleged in paragraph (a) would result in one or more of the sub-categories of Victorian Industry Members identified in sub-paragraphs (a)(i) to (iv) (as applicable) the Industry Member whose claim the Plaintiff has acquired the Victorian Taxi Industry Members and the Victorian Hire Car Industry Members would suffering~~ loss.

### Particulars

The matters alleged in paragraph 26C(a), Part C and paragraphs 68 to 71 are referred to and relied on.

76. At all material times from at least April 2014 and throughout the Victorian Claim Period, the Uber Entities other than Rasier Pacific, with the common intention to injure as alleged in paragraph 75A, agreed or combined to establish, promote and operate UberX in Victoria, which would and did involve:

(a) UberX Partners contravening s 158(1) of the Victorian Transport Act and/or s 165 of the Victorian Transport Act (as alleged in paragraphs 69 and 71); and

(b) one or more of the Uber Entities being complicit in those contraventions (howsoever described in paragraph 75) with the common intention of injuring the Industry Member whose claim the Plaintiff has acquired, the Victorian Taxi Industry Members and/or the Victorian Hire Car Industry Members Industry by establishing, promoting and operating UberX in Victoria by unlawful means, namely by the Uber Entities' complicity (howsoever described in paragraph 75) in the contraventions by UberX Partners

~~(a) of s 158(1) of the Victorian Transport Act, as alleged in paragraph 69;  
and/or~~

~~(b) of s 165 of the Victorian Transport Act, as alleged in paragraph 71.~~

#### **Particulars**

- ~~1. The agreement or combination is to be inferred from:
  - (a) the facts and matters alleged in Parts B, C and D; and
  - (b) the Uber Inc Prospectus, including at pp 54-55 and 62.~~
- ~~2. The agreement or combination was aimed at or directed to the Industry Member whose claim the Plaintiff has acquired, the Victorian Taxi Industry Members and/or the Victorian Hire Car Industry Members as the means by which the Uber Entities other than Rasier Pacific intended to establish and operate UberX in Victoria was by UberX Partners unlawfully competing with the Industry Member whose claim the Plaintiff has acquired, the Victorian Taxi Industry Members and the Victorian Hire Car Industry Members and causing them loss as alleged in paragraph 75A, which was achieved by the illegal conduct of Uber Entities alleged in paragraphs 73 and/or 73A. By reason of the above the Uber Entities, other than Rasier Pacific, had the common intention of injuring the Industry Member whose claim the Plaintiff has acquired, the Victorian Taxi Industry Members and/or the Victorian Hire Car Industry Members.~~

~~76A. In the alternative to paragraph 76, at all material times from at least April 2014 and throughout the Victorian Claim Period, the Uber Entities other than Rasier Pacific, with the common intention to injure as alleged in paragraph 75A, agreed or combined to establish, promote and operate UberX in Victoria, which would and did involve organising, setting-up and/or facilitating the contraventions by UberX Partners of s 158(1) of the Victorian Transport Act and/or of s 165 of the Victorian Transport Act as alleged in paragraphs 69 and 71.~~

#### **Particulars**

~~The agreement or combination is to be inferred from:~~

- ~~(a) the facts and matters alleged in Parts B, C and D; and~~
- ~~(b) the Uber Inc Prospectus, including at pp 54-55 and 62.~~

~~77. At all material times from about 21 December 2015 and throughout the Victorian Claim Period, Rasier Pacific joined the agreements or combinations pleaded in the preceding two paragraphs with the intention of injuring one or more sub-category of the Victorian Industry Members as set out at sub-paragraphs 75A(a)(i) to (iv) the Industry Member whose claim the Plaintiff has acquired, the Victorian Taxi Industry Members and/or the Victorian Hire Car~~

~~Industry Members~~ by operating, or assisting in the operation of, UberX in Victoria ~~by unlawful means, as pleaded in paragraphs 69 and 71.~~

### Particulars

- ~~1. That Rasier Pacific joined the agreement or combination alleged in the preceding paragraph is to be inferred from the facts and matters alleged in paragraphs 40-43, 45, 47(e), 47(f) and Parts C and D.~~
- ~~2. The agreement or combination was aimed at or directed to the Industry Member whose claim the Plaintiff has acquired, the Victorian Taxi Industry Members and/or the Victorian Hire Car Industry Members as from 21 December 2015 the means by which the Uber Entities intended to continue to establish and operate UberX was by UberX Partners unlawfully competing with the Industry Member whose claim the Plaintiff has acquired, the Victorian Taxi Industry Members and the Victorian Hire Car Industry Members and causing them loss as alleged in paragraph 75A, which was achieved by the illegal conduct of Uber Entities alleged in paragraphs 73 and/or 73A. In the result Rasier Pacific shared the common intention of injuring the Industry Member whose claim the Plaintiff has acquired, the Victorian Taxi Industry Members and/or the Victorian Hire Car Industry Members.~~

78. ~~In pursuance of the said conspiracy, t~~The Uber Entities gave effect to the conspiracies alleged at:

(a) paragraph 76; alternatively

(b) paragraph 76A,

by doingid the overt acts pleaded in paragraphs 14-15, 17-0, 23, 26-35, 37-40, 42-43A, 45, 47-48A, 53-55, 57, 59 and ~~6767~~ (each paragraph individually or in any combination).

### Commission of offences by Uber Entities and UberX Partners in New South Wales

#### Offences against s 37(1) of the NSW Transport Act

79. At all material times throughout the New South Wales Claim Period, s 37(1) of the *Passenger Transport Act 1990* (NSW) (the **NSW Transport Act**) provided that a person who carried on a private hire vehicle service, being a service operating wholly or partly within New South Wales, by means of a private hire vehicle, was guilty of an offence if:

- (a) the person was not accredited for the purpose of carrying on the service under Division 3 of that Act; and/or
- (b) the private hire vehicle was not licenced under Division 4 of that Act.

80. At all material times throughout the New South Wales Claim Period, Uber B.V. and/or Rasier Operations carried on a private hire vehicle service within the meaning of s 37(1) of the NSW Transport Act, operating partly within New South Wales, by means of private hire vehicles, being UberX.

#### Particulars

1. At all material times throughout the New South Wales Claim Period, s 36A of the NSW Transport Act provided that a “private hire vehicle service” was a public passenger service carried on by means of one or more private hire vehicles.
2. At all material times throughout the New South Wales Claim Period, s 3 of the NSW Transport Act provided that a “public passenger service” was a service for “the carriage of passengers for a fare or other consideration” “by motor vehicle (other than a light rail vehicle) along a road or road related area”.
3. At all material times throughout the New South Wales Claim Period, s 3 of the NSW Transport Act provided that a “private hire vehicle” was a “motor vehicle (other than a bus or taxi-cab) which [was] used to provide a public passenger service (other than a regular passenger service, a long-distance service, a charter service or a tourist service)”.
4. At all material times throughout the New South Wales Claim Period, UberX was a “private hire vehicle service” within the meaning of s 36A of the NSW Transport Act because:
  - (a) UberX was a “public passenger service” because it was a service for the carriage of passengers for a fare by a vehicle along roads or road related areas as alleged in paragraphs 46 and 47; and
  - (b) vehicles used to provide UberX were “private hire vehicles” within the meaning of s 3 of the NSW Transport Act because they were vehicles which provided “public passenger services”.
5. At all material times throughout the New South Wales Claim Period, the relevant accreditation was that prescribed by s 38(1) of the NSW Transport Act.
6. At all material times throughout the New South Wales Claim Period, s 38(1) of the NSW Transport Act provided that RMS may accredit persons for the purpose of carrying on private hire vehicle services, subject to and in accordance with Division 3 of Part 4A.
7. At all material times throughout the New South Wales Claim Period, Uber B.V. and/or Rasier Operations, “carried on” a private hire vehicle service by reason of:



- (a) the licencing, operating and making available of the Uber app and the Uber Partner app, as alleged in paragraphs 14, 15, 22(h), 34, , 44, 45 and 46;
- (b) operating, or causing the operation of, the Architecture, as alleged in paragraph 15;
- (c) contracting with and registering as Riders certain individuals, as alleged in paragraphs 0 and 22;
- (d) calculating, charging, or facilitating the calculation or charging of, the Fare and the Service Fee, as alleged in paragraph 47; and
- (e) UberX being a service for the carriage of passengers for fare or other consideration, as alleged in paragraphs 46 and 47.

8. Further particulars may be provided after discovery.

81. At all material times throughout the New South Wales Claim Period, neither Uber B.V. nor Rasier Operations were accredited for the purpose of carrying on a private hire vehicle service under Division 3 and thereby, in carrying on UberX, committed offences against s 37(1)(a) of the NSW Transport Act.

**Particulars**

- 1. The Plaintiff refers to, in the case of Uber B.V. the judgment in *Uber BV v Howarth* [2017] NSWSC 54, including at paragraphs [182], [187] and [189]-[192].
- 2. Rasier Operations' lack of accreditation is to be inferred from the matters in particular 1.
- 3. Further particulars may be provided after discovery.

82. At all material times throughout the New South Wales Claim Period, UberX Partners who provided UberX in New South Wales typically did so without being accredited for the purpose of carrying on a private hire vehicle service under Division 3 and thereby committed offences against s 37(1)(a) of the NSW Transport Act.

**Particulars**

- 1. UberX Partners who provided UberX in New South Wales did so driving private hire vehicles, by reason of the matters alleged in particulars 1-4 of paragraph 80.
- 2. As to UberX Partners' lack of accreditation under Division 3 of the NSW Transport Act, the Plaintiff refers to:
  - (a) the engagement by Uber Inc and Uber Australia with regulators in Australia, as alleged in paragraph 27;

- (b) the steps taken to secure regulatory change, as alleged in paragraph 27A;
- (c) the Operator Compliance Requirements as applicable in NSW, as alleged in paragraph 50;
- (d) the limited numbers of individuals who met the Operator Compliance Requirements as applicable in NSW, as alleged in paragraph 51;
- (e) the viability of UberX in each of the Australian States depending upon a rapid recruitment of a large and widely dispersed network of drivers, as alleged in paragraph 52;
- (f) the intention to recruit, and the recruitment of, UberX Partners who did not otherwise provide Point to Point Passenger Transport Services and who provided UberX irregularly and flexibly, as alleged in paragraph 53;
- (g) the intention to recruit, and the recruitment of, UberX Partners for whom providing UberX would be commercially unattractive if they were required to meet the Compliance Requirements or engage in application or licencing processes, as alleged in paragraph 54;
- (h) the lack of any requirement to provide evidence of such accreditation, as alleged in paragraph 55;
- (i) the competitive advantage alleged in paragraph 56;
- (j) the intention to recruit, and the recruitment of, UberX Partners who did not, or would not, meet some or all of the Operator Compliance Requirements as applicable in NSW, as alleged in paragraph 57;
- (k) the publication of an intention to pay, and the payment of, Regulatory Fines as well as the provision of other assistance to UberX Partners, as alleged in paragraph 61 and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A;
- (l) the attempts to avoid or delay enforcement action, as alleged in paragraph 65B;
- (m) the Evasion Tools, as alleged in paragraphs 66 and Error! Reference source not found.66; and
- (n) the Jackson Affidavit and the Fine Affidavit filed in *Uber B.V. v CoT*.

3. Further particulars may be provided after discovery.

83. At all material times throughout the New South Wales Claim Period, UberX Partners who provided UberX in New South Wales typically did so using private hire vehicles that were not

licenced under Division 4 and thereby committed offences against s 37(1)(b) of the NSW Transport Act.

#### **Particulars**

1. The Plaintiff refers to particulars 2, 3 and 4 to paragraph 80.
2. At all material times throughout the New South Wales Claim Period, the relevant licence was that prescribed by s 39 of the NSW Transport Act.
3. As to the lack of the required licence, the Plaintiff refers to:
  - (a) particulars 2(a), 2(e)-2(g), 2(i), 2(k)-2(n) to paragraph 82;
  - (b) the Minimum Vehicle Requirements, as alleged in paragraph 30;
  - (c) the Vehicle Compliance Requirements as applicable in NSW, as alleged in paragraph 50;
  - (d) the limited numbers of vehicles that met the Vehicle Compliance Requirements as applicable in NSW and Minimum Vehicle Requirements, as alleged in paragraph 51; and
  - (e) the lack of any requirement to provide evidence of such licence, as alleged in paragraph 55.
4. Further particulars may be provided after discovery.

#### **Offences against s 40(2) of the NSW Transport Act**

84. At all material times throughout the New South Wales Claim Period, s 40(2) of the NSW Transport Act provided that a person who drove a private hire vehicle was guilty of an offence unless the person was an authorised private hire vehicle driver.
85. At all material times throughout the New South Wales Claim Period, UberX Partners who provided UberX in New South Wales typically did so without being authorised, or appropriately authorised, private hire vehicle drivers and thereby committed offences against s 40(2) of the NSW Transport Act.

#### **Particulars**

1. UberX Partners who provided UberX in New South Wales did so driving private hire vehicles, by reason of the matters alleged in particulars 2, 3 and 4 to paragraph 80.
2. At all material times throughout the New South Wales Claim Period, the relevant authorisation was that prescribed by s 40(1) of the NSW Transport Act.
3. As to the lack of authorisation or appropriate authorisation, the Plaintiff refers to:

- (a) particulars 2(a), 2(e)-2(g), 2(i), 2(k)-2(n) to paragraph 82;
  - (b) the Driver Compliance Requirements as applicable in NSW, as alleged in paragraph 50;
  - (c) the limited numbers of individuals who met the Driver Compliance Requirements as applicable in NSW, as alleged in paragraph 51; and
  - (d) the lack of any requirement to provide evidence of such authorisation, as alleged in paragraph 55.
4. Further particulars may be provided after discovery.

**Complicity by Uber Entities in the commission of offences by UberX Partners in New South Wales**

86. At all material times throughout the New South Wales Claim Period, each of the Uber Entities, (except Rasier Pacific), knew of the essential matters comprising the:

- (a) commission of the offences against s 37(1) of the NSW Transport Act by UberX Partners as alleged in paragraphs 82 and 83; and/or
- (b) commission of the offences against s 40 of the NSW Transport Act by UberX Partners as alleged in paragraph 85.

**Particulars**

- 1. The knowledge of each of the Uber Entities (except Rasier Pacific) of the use by UberX Partners of motor vehicles to carry passengers for a fare is to be inferred from the fact that the Uber Entities combined to achieve the commencement and operation of UberX in each of the Australian States, as alleged in Part B, including the collection and retention of trip data as alleged in paragraph 47A.
- 2. As to knowledge of UberX Partners' lack of any accreditation under Division 3 of the Act, the Plaintiff refers to the allegations in paragraph 57, and the particulars thereto.
- 3. As to knowledge of UberX Partners' lack of any licence under Division 4 of the Act, the Plaintiff refers to the allegations in paragraph 57 and the particulars thereto.
- 4. As to knowledge of UberX Partners' lack of driver authorisation or appropriate driver authorisation, the Plaintiff refers to the allegations in paragraph 57 and the particulars thereto.
- 5. Further particulars may be provided after discovery.

87. At all material times from at least April 2014 and throughout the New South Wales Claim Period, Uber Inc, Uber B.V., Rasier Operations and, further or alternatively, one or more of the Uber Entities, (except Rasier Pacific), aided, abetted, counselled or procured the commission

of offences against ss 37(1) and 40 of the NSW Transport Act as alleged in paragraphs 82, 83 and 85:

- (a) by reason of the matters referred to in the preceding paragraph, [paragraph 26C\(b\)](#) and paragraph 57 concerning knowledge and intention; and
- (b) by engaging in the following acts:
  - (i) Uber B.V. operating and making the Uber app available to Riders on the terms of the Rider Contract, which enabled Riders to request UberX from UberX Partners who did not satisfy the Compliance Requirements;

#### **Particulars**

The allegations in paragraphs 15(a), 22 and 57 are referred to and relied upon.

- (ii) Uber Inc and/or Uber B.V. utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;

#### **Particulars**

The allegations made in paragraphs 15(a), 33, 46 and 57 are referred to and relied upon.

- (iii) further and alternatively to (ii), any other of the Uber Entities utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;
- (iv) one or more of the Uber Entities developing and implementing marketing activities, as alleged in paragraphs 28 and 29;
- (v) one or more of the Uber Entities publishing information about becoming an UberX Partner on the website [www.uber.com](http://www.uber.com) as alleged in paragraph 31, which enabled persons who did not satisfy the Compliance Requirements to become UberX Partners;
- (vi) one or more of the Uber Entities reviewing applications, and accompanying information, to become an UberX Partner and determining whether the applications would be approved, as alleged in paragraph 32, with the intention and knowledge that persons approved as UberX Partners typically did not, and would not, satisfy the Compliance Requirements;

### **Particulars**

The allegations made in paragraphs [26C\(b\)](#), 32 and 57 are referred to and relied on.

- (vii) Uber B.V. activating, via the Architecture, an UberX Partner account, accessible in the Uber Partner app for successful UberX Partner applicants in New South Wales who did not satisfy the Compliance Requirements, by which it enabled them to receive and accept requests for UberX from Riders;

### **Particulars**

The allegations made in paragraphs 33 and 57 are referred to and relied on.

- (viii) Rasier Operations entering into the Rasier Operations Contract as alleged in paragraphs 35 to 37 with UberX Partners who did not and would not satisfy the Compliance Requirements, and then performing those contracts, by which it enabled those UberX Partners to receive and accept requests for UberX from Riders;
- (ix) Rasier Operations making available a smartphone for the purpose of UberX Partners accessing the Uber Partner app, as alleged in paragraph 38 above;
- (x) Rasier Operations facilitating access to rental vehicles for UberX Partners for the purpose of them providing UberX, as alleged in paragraph 38A above;
- (xi) Uber Australia providing UberX Partners with a smartphone, further a smartphone and data plan, for the purpose of them providing UberX, as alleged in paragraph 48A above;
- (xii) Uber B.V. charging the Fare to the Rider's credit card or PayPal account, withholding an amount reflecting a fee for use of the Uber Partner app and remitting the balance to the UberX Partner, as alleged in paragraph 47;
- (xiii) one or more of the Uber Entities, either alone or in combination, communicating an intention to pay, and paying, procuring the payment of, or reimbursing UberX Partners for, Regulatory Fines incurred by UberX Partners in New South Wales, as alleged in paragraph 61; and

- (xiv) one or more of the Uber Entities, either alone or in combination, employing the Evasion Tools, as alleged in paragraph 67.

88. At all material times from at least April 2014 and throughout the New South Wales Claim Period, by reason of the matters alleged in paragraphs 86 and 87, Uber Inc, Uber B.V. and one or more of the other Uber Entities (except Rasier Pacific):

- (a) were complicit, within the meaning of the common law in the commission of offences against ss 37 and 40 of the NSW Transport Act by UberX Partners as alleged in paragraphs 82, 83 and 85; and/or
- (b) were liable to punishment as principal within the meaning of s 351B of the *Crimes Act 1900 (NSW)* for the commission of offences against ss 37 and 40 of the NSW Transport Act by UberX Partners as alleged in paragraphs 82, 83 and 85.

#### **Conspiracy by unlawful means – New South Wales**

88A. At all material times from at least April 2014 and throughout the New South Wales Claim Period, the Uber Entities, other than Rasier Pacific, intended that:

- (a) the means by which UberX would be established and operated in New South Wales would be by UberX ~~Partners unlawfully~~ competing with:

(i)

(A) the NSW Taxi Licence Holders; and/or

(B) the NSW Taxi Operators; and/or

(C) the NSW Taxi Drivers; and/or

(D) the NSW Taxi Network Providers;

(ii) alternatively to (i):

(A) the NSW Taxi Licence Holders who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of New South Wales (or any part thereof) in which UberX would be established and operated; and/or

(B) the NSW Taxi Operators who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services

- from within the area or areas of New South Wales (or any part thereof) in which UberX would be established and operated; and/or
- (C) the NSW Taxi Drivers who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide Point to Point Passenger Transport Services from within the area or areas of New South Wales (or any part thereof) in which UberX would be established and operated; and/or
- (D) the NSW Taxi Network Providers who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of New South Wales (or any part thereof) in which UberX would be established and operated;
- (iii) further or alternatively to (i):
- (A) the NSW Hire Car Licence Holders; and/or
- (B) the NSW Hire Car Operators; and/or
- (C) the NSW Hire Car Drivers;
- (iv) alternatively to (iii) and further or alternatively to (ii):
- (A) the NSW Hire Car Licence Holders who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of New South Wales (or any part thereof) in which UberX would be established and operated; and/or
- (B) the NSW Hire Car Operators who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of New South Wales (or any part thereof) in which UberX would be established and operated; and/or
- (C) the NSW Hire Car Drivers who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide Point to Point Passenger Transport Services from within the area or areas of New South Wales (or any part thereof) in which UberX would be established and operated.

using UberX Partners who provided UberX ~~the New South Wales Taxi Industry Members and the New South Wales Hire Car Industry Members~~ in contravention of:

- A. s 37(1)(a) of the *NSW Transport Act*, as alleged in paragraph 82; and/or
- B. s 37(1)(b) of the *NSW Transport Act*, as alleged in paragraph 83; and/or



C. s 40 of the *NSW Transport Act*, as alleged in paragraph 85, and

(b) the matters alleged in paragraph (a) would result in one or more of the sub-categories of New South Wales Industry Members identified in sub-paragraphs (a)(i) to (iv) (as applicable) as a result of which the New South Wales Taxi Industry Members and the New South Wales Hire Car Industry Members would suffering loss.

#### **Particulars**

The particulars matters alleged in paragraph 26C(b), Part C and paragraphs 82, 83 and 85 are referred to and relied on.

89. At all material times from at least April 2014 and throughout the New South Wales Claim Period, the Uber Entities, other than Rasier Pacific, with the common intention to injure as alleged in paragraph 88A agreed or combined with the common intention of injuring the New South Wales Taxi Industry Members and/or the New South Wales Hire Car Industry Members by establishing, promoting and operating to establish, promote and operate UberX in New South Wales which would and did involve by unlawful means, namely by:

- (a) Uber B.V.'s and Rasier Operation's contraventions of s 37(1)(a) of the NSW Transport Act, as alleged in paragraph 81; and/or
- (b) the Uber Entities' (other than Rasier Pacific) complicity (howsoever called in paragraph 88) in the contraventions by UberX Partners:
  - (i) of s 37(1)(a) of the NSW Transport Act, as alleged in paragraph 82; and/or
  - (ii) of s 37(1)(b) of the NSW Transport Act, as alleged in paragraph 83; and/or
  - (iii) of s 40 of the NSW Transport Act, as alleged in paragraph 85.

#### **Particulars**

~~1.~~ The agreement or combination is to be inferred from:

- (a) the facts and matters alleged in Parts B, C and D; and
- (b) the Uber Inc Prospectus, including at pp 54-55 and 62.

~~2. The agreement or combination was aimed at or directed to the New South Wales Taxi Industry Members and/or the New South Wales Hire Car Industry Members as the means by which the Uber Entities other than Rasier Pacific intended to establish and operate UberX in New South Wales was by UberX Partners unlawfully competing with~~

~~the New South Wales Taxi Industry Members and the New South Wales Hire Car Industry Members and causing them loss as alleged in paragraph 88A, which was achieved by the illegal conduct of Uber Entities alleged in paragraphs 81 and 88. By reason of the above the Uber Entities, other than Rasier Pacific, had the common intention of injuring the New South Wales Taxi Industry Members and/or the New South Wales Hire Car Industry Members.~~

89A. In the alternative to paragraph 89, at all material times from at least April 2014 and throughout the New South Wales Claim Period, the Uber Entities other than Rasier Pacific, with the common intention to injure as alleged in paragraph 88A, agreed or combined to establish, promote and operate UberX in New South Wales, which would and did involve organising, setting-up and/or facilitating the contraventions by UberX Partners of s 37(1)(a) of the NSW Transport Act and/or s 37(1)(b) of the NSW Transport Act and/or s 40 of the NSW Transport Act as alleged in paragraphs 82, 83 and 85.

#### Particulars

The agreement or combination is to be inferred from:

- (a) the facts and matters alleged in Parts B, C and D; and
- (b) the Uber Inc Prospectus, including at pp 54-55 and 62.

90. ~~In pursuance of the said conspiracy, †~~The Uber Entities, other than Rasier Pacific, gave effect to the conspiracies alleged at:

- (a) paragraph 89; alternatively,
- (b) paragraph 89A,

by doing ~~dit~~ the overt acts pleaded in paragraphs 14-15, 17-0, 23, 26-35, 37-38A, 45, 47-48A, 53-55, 57, 61 and 67 (each paragraph individually or in any combination).

#### **Commission of offences by Uber Entities and UberX Partners in Queensland**

##### **Offences against s 15 of the Queensland Transport Act**

91. At all material times throughout the Queensland Claim Period, s 15 of the *Transport Operations (Passenger Transport) Act 1994* (Qld) (the **Queensland Transport Act**) provided that a person must not provide a public passenger service for which operator accreditation is required under that Act unless:

- (a) the person was accredited to operate the service; and
- (b) the person used appropriately authorised drivers.

92. At all material times throughout the Queensland Claim Period, Uber B.V. and/or Rasier Operations and/or from about 21 December 2015 Rasier Pacific, provided a public passenger service, operating partly within Queensland, for which operator accreditation was required within the meaning of s 15 of the Queensland Transport Act, being UberX.

### Particulars

1. At all material times throughout the Queensland Claim Period, the dictionary in Schedule 3 to the Queensland Transport Act provided that a “public passenger service” was a “service for the carriage of passengers” where “the service [was] provided for fare or other consideration” and/or where the “service [was] provided in the course of a trade or business”.
2. At all material times throughout the Queensland Claim Period, s 12 of the Queensland Transport Act mandated operator accreditation for public passenger services, which was provided for in Part 2 of the *Transport Operations (Passenger Transport) Regulation 2005* (Qld).
3. At all material times throughout the Queensland Claim Period, UberX was a “public passenger service” for which operator accreditation was required because it was a service for the carriage of passengers provided for a fare and/or provided in the course of a trade or business, as alleged in paragraphs 46 and 47 and the Jackson Affidavit filed in *Uber B.V. v CoT*.
4. At all material times throughout the Queensland Claim Period, Uber B.V. and/or Rasier Operations, and/or from around 21 December 2015 Rasier Pacific, “provided” a public passenger service for which operator accreditation was required by reason of:
  - (a) the licencing, operating and making available of the Uber app and the Uber Partner app, as alleged in paragraphs 14, 15, 22(h), 34, 39(a), 41(o), 44, 45 and 46;
  - (b) operating, or causing the operation of, the Architecture, as alleged in paragraph 15;
  - (c) contracting with and registering as Riders certain individuals, as alleged in paragraphs 0 and 22;
  - (d) calculating, charging, or facilitating the calculation or charging of, the Fare and the Service Fee, as alleged in paragraph 47; and
  - (e) UberX being a service provided for fare or other consideration and/or provided in the course of a trade or business, as alleged in paragraphs 46 and 47 and the Jackson Affidavit filed in *Uber B.V. v CoT*.
5. Further particulars may be provided after discovery.

93. At all material times throughout the Queensland Claim Period, Uber B.V. and Rasier Operations, and from about 21 December 2015 Rasier Pacific, were not accredited to operate a public passenger service and thereby, in providing UberX, committed offences against s 15(a) of the Queensland Transport Act.

**Particulars**

1. The Plaintiff refers to Report No 21, 55<sup>th</sup> Queensland Parliament, Infrastructure, Planning and Natural Resources Committee, 'Transport Legislation (Taxi Services) Amendment Bill 2015', dated March 2016, p 15.
2. A copy of the document referred to in the preceding particular may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
3. Further particulars may be provided after discovery.

94. At all material times throughout the Queensland Claim Period, Uber B.V. and/or Rasier Operations, and/or from about 21 December 2015 Rasier Pacific, typically provided UberX in Queensland without authorised drivers, or appropriately authorised drivers, and thereby committed offences against s 15(b) of the Queensland Transport Act.

**Particulars**

1. UberX was a "public passenger service" for which operator accreditation was required by reason of the matters set out in particulars 1-3 to paragraph 92.
2. The Plaintiff refers to particular 4 to paragraph 92 in relation to the provision of a public passenger service for which operator accreditation was required by Uber B.V. and/or Rasier Operations, and/or from about 21 December 2015 Rasier Pacific.
3. At all material times throughout the Queensland Claim Period, s 24 of the Queensland Transport Act provided that driver authorisation was a qualification a driver of a vehicle providing a public passenger service was required to attain and maintain to operate the vehicle while providing the service.
4. As to the lack of authorisation, or appropriate authorisation, of UberX Partners, the Plaintiff refers to:
  - (a) the engagement by Uber Inc and Uber Australia with regulators in Australia, as alleged in paragraph 27;
  - (b) the steps taken to secure regulatory change, as alleged in paragraph 27A;
  - (c) the Driver Compliance Requirements as applicable in Queensland, as alleged in paragraph 50;

- (d) the limited numbers of individuals who met the Driver Compliance Requirements as applicable in Queensland, as alleged in paragraph 51;
- (e) the viability of UberX in each of the Australian States depending upon a rapid recruitment of a large and widely dispersed network of drivers, as alleged in paragraph 52;
- (f) the intention to recruit, and the recruitment of, UberX Partners who did not otherwise provide Point to Point Passenger Transport Services and who provided UberX irregularly and flexibly, as alleged in paragraph 53;
- (g) the intention to recruit, and the recruitment of, UberX Partners for whom providing UberX would be commercially unattractive if they were required to meet the Compliance Requirements or engage in application or licencing processes, as alleged in paragraph 54;
- (h) the lack of any requirement to provide evidence of such authorisation, as alleged in paragraph 55;
- (i) the competitive advantage alleged in paragraph 56;
- (j) the intention to recruit, and the recruitment of, UberX Partners who did not, or would not, meet some or all of the Driver Compliance Requirements as applicable in Queensland, as alleged in paragraph 57;
- (k) the publication of an intention to pay, and the payment of, Regulatory Fines as well as the provision of other assistance to UberX Partners, as alleged in paragraph 63 and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A;
- (l) the attempts to avoid or delay enforcement action, as alleged in paragraph 65B;
- (m) the Evasion Tools, as alleged in paragraphs 66 and 67;
- (n) the Jackson Affidavit and the Fine Affidavit filed in *Uber B.V. v CoT*;
- (o) a record of a meeting between certain officers of the Queensland Department of Transport and Main Roads – Translink Division and representatives of Uber Inc, dated 20 May 2014;
- (p) a letter addressed to Mike Abbott, General Manager, Uber, under cover of Keith Boyer, Director (Passenger Transport Standards and Taxis), Translink Division, Queensland Department of Transport and Main Roads, dated 21 May 2014;
- (q) an email from Keith Boyer, Director (Passenger Transport Standards and Taxis), Translink

Division, Queensland Department of Transport and Main Roads to certain officers of the Queensland Department of Transport and Main Roads, dated 4 June 2014;

- (r) a letter from Keith Boyer, Director (Passenger Transport Standards and Taxis), Translink Division, Queensland Department of Transport and Main Roads to Mike Abbott, General Manager – Uber, dated 11 June 2014;
- (s) an email chain between Jordon Condo of Uber Inc and Keith Boyer, Director (Passenger Transport Standards and Taxis), Translink Division, Queensland Department of Transport and Main Roads, dated 30 September 2014;
- (t) notes of a meeting between officers of the Translink Division, Queensland Department of Transport and Main Roads and Jordon Condo of Uber Inc and a Matthew McCahon, dated 1 October 2014;
- (u) a letter from Jordon Condo of Uber Inc to Keith Boyer, Director (Passenger Transport Standards and Taxis), Translink Division, Queensland Department of Transport, dated 13 October 2014; and
- (v) a Department of Transport and Main Roads Meeting Brief to the Deputy Premier, Minister for Transport, Minister for Infrastructure, Local Government and Planning and Minister for Trade, dated 1 April 2015.

- 5. Copies of the documents referred to in particulars 4(m)-(t) above may be inspected by appointment at the Melbourne offices of the solicitors for the Plaintiff.
- 6. Further particulars may be provided after discovery.

95. At all material times throughout the Queensland Claim Period, UberX Partners who provided UberX in Queensland typically did so without being accredited to operate a public passenger service and thereby committed offences against s 15(a) of the Queensland Transport Act.

### **Particulars**

- 1. UberX Partners who provided UberX in Queensland provided a “public passenger service for which operator accreditation was required”, by reason of the matters set out in particulars 1-3 to paragraph 92.
- 2. As to the Uber Partners’ lack of the required accreditation, the Plaintiff refers to:
  - (a) particulars 4(a), 4(e)-4(g), 4(j), 4(k)-4(v) to the preceding paragraph;
  - (b) the Operator Compliance Requirements as applicable in Queensland, as alleged in paragraph 50;

- (c) the limited numbers of individuals who met the Operator Compliance Requirements as applicable in Queensland, as alleged in paragraph 51; and
  - (d) the lack of any requirement to provide evidence of such accreditation, as alleged in paragraph 55.
3. Further particulars may be provided after discovery.

96. At all material times throughout the Queensland Claim Period, UberX Partners who provided UberX in Queensland typically did so without using an authorised, or appropriately authorised, driver and thereby committed offences against s 15(b) of the Queensland Transport Act.

#### **Particulars**

- 1. UberX Partners who provided UberX in Queensland provided a “public passenger service for which operator accreditation was required”, by reason of the matters set out in particulars 1-3 to paragraph 92.
- 2. As to the lack of authorisation, or appropriate authorisation, of UberX Partners, the Plaintiff refers to particular 4 to paragraph 94.

#### **Offences against s 27 of the Queensland Transport Act**

97. At all material times throughout the Queensland Claim Period, s 27 of the Queensland Transport Act provided that a person must not drive a vehicle providing a public passenger service for which driver authorisation was required unless the person was an authorised driver for a service of that kind.

98. At all material times throughout the Queensland Claim Period, UberX Partners who provided UberX in Queensland typically did so without holding the required driver authorisation and thereby committed offences against s 27 of the Queensland Transport Act.

#### **Particulars**

- 1. UberX Partners who provided UberX in Queensland provided a public passenger service, by reason of the matters set out in particulars 1-3 to paragraph 92.
- 2. At all material times throughout the Queensland Claim Period, the dictionary in Schedule 3 to the Queensland Transport Act provided that a “public passenger vehicle” was a vehicle of a prescribed kind used to transport members of the public including a vehicle classified by regulation as a public passenger vehicle.
- 3. At all material times throughout the Queensland Claim Period, Schedule 8 to the *Transport Operations (Passenger Transport) Regulation 2005 (Qld)*, read with s 137 of that Regulation, provided that a forward-control passenger vehicle or a passenger car providing a taxi service was a public passenger vehicle.

4. At all material times throughout the Queensland Claim Period, Schedule 3 to the Queensland Transport Act provided that a “taxi service” included a “public passenger service” other than an “excluded public passenger service” provided by a motor vehicle under which the vehicle provided:
  - (a) a demand responsive service; and
  - (b) under which members of the public were able to hire vehicles through electronic communication.
5. At all material times throughout the Queensland Claim Period, the dictionary in Schedule 3 to the Queensland Transport Act provided that “demand responsive service” was a service that was:
  - (a) held out as being able to respond to requests for service immediately or within a period of time appropriate to a taxi or within a similar period;
  - (b) held out as being a service providing taxis or a service similar to a service providing taxis; or
  - (c) conducted in a way that may reasonably be expected to give prospective customers or the public the impression that the service is, or operates in a way similar to, a service providing taxis.
6. At all material times throughout the Queensland Claim Period, Schedule 2 to the *Electronic Transactions (Queensland) Act 2001* (Qld), “electronic communication” meant a “communication of information in the form of data, text or images by guided or unguided electromagnetic energy”.
7. At all material times throughout the Queensland Claim Period, UberX was a demand responsive service because it was a service held out as being able to respond to requests promptly and was conducted in a way that may reasonably be expected to give prospective customers or the public the impression that the service operated in a way similar to a service providing taxis.
8. At all material times throughout the Queensland Claim Period, members of the public were able to request the provision of UberX by way of electronic communication because a request made using the Uber app was communication of information in the form of data, text or images by guided or unguided electromagnetic energy within the meaning of Schedule 2 to the *Electronic Transactions (Queensland) Act 2001* (Qld).
9. By reason of the matters set out in particulars 2-8 above, UberX was a “taxi service” within the meaning of Schedule 3 to the Queensland Transport Act.



10. Vehicles providing UberX were therefore “public passenger vehicles” in that they were a passenger car providing a taxi service.
11. The required driver authorisation was that prescribed by s 24 of the Queensland Transport Act, for drivers of vehicles providing public passenger services.
12. UberX Partners who provided UberX in Queensland provided a public passenger service for which driver authorisation was required, by reason of the matters alleged in paragraphs 46 and 47 and the Jackson Affidavit filed in *Uber B.V. v CoT*.
13. As to the lack of authorisation, or appropriate authorisation, the Plaintiff refers to particular 4 to paragraph 94 above.
14. Further particulars may be provided after discovery.

### **Offences against s 70 of the Queensland Transport Act**

99. At all material times throughout the Queensland Claim Period until 27 April 2016, s 70 of the Queensland Transport Act provided that a person must not provide a taxi service using a vehicle unless:
  - (a) the person had a taxi service licence to provide the service with the vehicle;  
and
  - (b) the person had a peak demand taxi permit to provide the service with the vehicle.
100. At all material times throughout the Queensland Claim Period from 28 April 2016, s 70 of the Queensland Transport Act provided that a person must not provide a taxi service using a motor vehicle that is not a taxi.
101. At all material times throughout the Queensland Claim Period until 27 April 2016, UberX Partners who provided UberX in Queensland typically did so using vehicles without holding a taxi service licence to provide the service with the vehicle and without holding a peak demand taxi permit to provide the service with the vehicle and thereby committed offences against s 70 of the Queensland Transport Act.

### **Particulars**

1. UberX Partners who provided UberX in Queensland provided a public passenger service, by reason of the matters set out in particular 1 to paragraph 92.
2. By reason of the matters set out in particular 1 above and 2-9 to paragraph 98, UberX Partners provided “taxi

services” within the meaning of s 70 of the Queensland Transport Act.

3. At all material times throughout the Queensland Claim Period up to 27 April 2016, the taxi service licence was that provided for in s 69, the peak demand taxi permit was that provided for in s 80D and a substitute taxi was that provided for in s 74B of the Queensland Transport Act.
4. As to the lack of the required licence or permit, the Plaintiff refers to:
  - (a) the engagement by Uber Inc and Uber Australia with regulators in Australia, as alleged in paragraph 27;
  - (b) the steps taken to secure regulatory change, as alleged in paragraph 27A;
  - (c) the Minimum Vehicle Requirements, as alleged in paragraph 30;
  - (d) the Vehicle Compliance Requirements as applicable in Queensland, as alleged in paragraph 50;
  - (e) the limited numbers of vehicles that met the Vehicle Compliance Requirements as applicable in Queensland and Minimum Vehicle Requirements, as alleged in paragraph 51;
  - (f) the viability of UberX in each of the Australian States depending upon a rapid recruitment of a large and widely dispersed network of drivers, as alleged in paragraph 52;
  - (g) the intention to recruit, and the recruitment of, UberX Partners who did not otherwise provide Point to Point Passenger Transport Services and who provided UberX irregularly and flexibly, as alleged in paragraph 53;
  - (h) the intention to recruit, and the recruitment of, UberX Partners for whom providing UberX would be commercially unattractive if they were required to meet the Compliance Requirements or engage in application or licencing processes, as alleged in paragraph 54;
  - (i) the lack of any requirement to provide evidence of such licence or permit, as alleged in paragraph 55;
  - (j) the competitive advantage alleged in paragraph 56;
  - (k) the intention to recruit, and the recruitment of, UberX Partners who did not nominate a vehicle for use, or provide UberX using, a vehicle that met some, or all, of the Vehicle Compliance Requirements as applicable in Queensland, as alleged in paragraph 57;
  - (l) the publication of an intention to pay, and the payment of, Regulatory Fines, [as well as the](#)

[provision of other assistance to UberX Partners as alleged in paragraph 63 and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A;](#)

- (m) the attempts to avoid or delay enforcement action, as alleged in paragraph 65B;
- (n) the Evasion Tools, as alleged in paragraphs 66 and 67; and
- (o) the Jackson Affidavit and the Fine Affidavit filed in *Uber B.V. v CoT*.

5. Further particulars may be provided after discovery.

102. At all material times throughout the Queensland Claim Period from 28 April 2016, UberX Partners who provided UberX in Queensland provided a taxi service and typically did so without using vehicles that were taxis and thereby committed offences against s 70 of the Queensland Transport Act.

#### **Particulars**

- 1. At all material times throughout the Queensland Claim Period from 28 April 2016, the dictionary in Schedule 3 to the Queensland Transport Act provided that “taxi” meant “other than in the definition of demand responsive service” “a motor vehicle for which a taxi service licence or peak demand taxi permit [was] in force” or “a substitute taxi”.
- 2. At all material times throughout the Queensland Claim Period from 28 April 2016, a taxi service licence was that provided for in s 69 of the Queensland Transport Act, a peak demand taxi permit was that provided for in s 80D of the Queensland Transport Act and a substitute taxi was that provided for in s 74B of the Queensland Transport Act, whereby a vehicle other than that specified in a taxi service licence may be used under the licence.
- 3. As to the definition of “taxi services” and the provision of “taxi services” by UberX Partners, the Plaintiff refers to particular 1 to paragraph 92 and particulars 2-9 to paragraph 98.
- 4. As to the lack of the required licence or permit, the Plaintiff refers to particular 4 to the preceding paragraph.
- 5. Further particulars may be provided after discovery.

#### **Complicity by Uber Entities in the commission of offences by UberX Partners in Queensland**

103. At all material times during the Queensland Claim Period, each of the Uber Entities knew of the essential matters comprising the:

- (a) commission of the offences against s 15 of the Queensland Transport Act by UberX Partners as alleged in paragraphs 95-96; and/or
- (b) commission of offences against s 27 of the Queensland Transport Act by UberX Partners as alleged in paragraph 98; and/or
- (c) commission of the offences against s 70 of the Queensland Transport Act (as in force at the applicable time) by UberX Partners as alleged in paragraphs 101-102.

### **Particulars**

1. The knowledge of each of the Uber Entities of the use by UberX Partners of motor vehicles to carry passengers for a fare in the course of a trade of business is to be inferred from the fact that the Uber Entities combined to achieve the commencement and operation of UberX in each of the Australian States, as alleged in Part B, including the collection and retention of trip data as alleged in paragraph 47A.
2. As to knowledge of UberX Partners' lack of any accreditation, the Plaintiff refers to the allegations in paragraph 57 and the particulars thereto.
3. As to knowledge of UberX Partners' lack of any driver authorisation, or appropriate driver authorisation, the Plaintiff refers to the allegations in paragraph 57 and the particulars thereto.
4. As to knowledge of UberX Partners' lack of any licence or permit, the Plaintiff refers to the allegations in paragraph 57 and the particulars thereto.
5. Further particulars may be provided after discovery.

104. At all material times from at least April 2014 and throughout the Queensland Claim Period, Uber Inc, Uber B.V., Rasier Operations, Rasier Pacific (from about 21 December 2015) and, further or alternatively, one or more of the other Uber Entities did or omitted to do acts for the purpose of enabling or aiding UberX Partners, aided UberX Partners and/or counselled or procured UberX Partners to commit the offences against ss 15, 27 and 70 of the Queensland Transport Act as alleged in paragraphs 95-96, 98 and 101-102:

- (a) by reason of the matters referred to in the preceding paragraph, [paragraph 26C\(c\)](#) and paragraph 57 concerning knowledge and intention; and
- (b) by engaging in the following acts:
  - (i) Uber B.V. operating and making the Uber app available to Riders on the terms of the Rider Contract, which enabled Riders to request

UberX from UberX Partners who did not satisfy the Compliance Requirements;

**Particulars**

The allegations in paragraphs 15(a), 22 and 57 are referred to and relied upon.

- (ii) Uber Inc and/or Uber B.V. utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;

**Particulars**

The allegations made in paragraphs 15(a), 33, 46 and 57 are referred to and relied upon.

- (iii) further and alternatively to (ii), any other of the Uber Entities utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;
- (iv) one or more of the Uber Entities developing and implementing marketing activities, as alleged in paragraphs 28 and 29;
- (v) one or more of the Uber Entities publishing information about becoming an UberX Partner on the website [www.uber.com](http://www.uber.com) as alleged in paragraph 31, which enabled persons who did not satisfy the Compliance Requirements to become UberX Partners;
- (vi) one or more of the Uber Entities reviewing applications, and accompanying information, to become an UberX Partner and determining whether the applications would be approved, as alleged in paragraph 32, with the intention and knowledge that persons approved as UberX Partners typically did not, and would not, satisfy the Compliance Requirements;

**Particulars**

The allegations made in paragraphs [26C\(c\)](#), 32 and 57 are referred to and relied on.

- (vii) Uber B.V. activating, via the Architecture, an UberX Partner account, accessible in the Uber Partner app for successful UberX Partner applicants in Queensland who did not satisfy the Compliance

Requirements, by which it enabled them to receive and accept requests for UberX from Riders;

### **Particulars**

The allegations made in paragraphs 33 and 57 are referred to and relied on.

- (viii) Rasier Operations entering into the Rasier Operations Contract as alleged in paragraphs 35 to 37 (up to about 20 December 2015) with UberX Partners who did not and would not satisfy the Compliance Requirements, and then performing those contracts, by which it enabled those UberX Partners to receive and accept requests for UberX from Riders;
- (ix) Rasier Operations making available a smartphone for the purpose of UberX Partners accessing the Uber Partner app, as alleged in paragraph 38 above;
- (x) Rasier Operations facilitating access to rental vehicles for UberX Partners for the purpose of them providing UberX, as alleged in paragraph 38A above;
- (xi) Rasier Pacific entering into the Rasier Pacific Contract as alleged in paragraphs 39-41 above with UberX Partners who did not and would not satisfy the Compliance Requirements, and then performing those contracts, by which it enabled those UberX Partners to receive and accept requests for UberX from Riders;
- (xii) Rasier Pacific making available a smartphone for the purpose of UberX Partners accessing the Uber Partner app, as alleged in paragraph 43 above;
- (xiii) Rasier Pacific facilitating access to rental vehicles for UberX Partners for the purpose of them providing UberX, as alleged in paragraph 43A above;
- (xiv) Uber Australia providing UberX Partners with a smartphone, further a smartphone and data plan, for the purpose of them providing UberX, as alleged in paragraph 48A above;
- (xv) Uber B.V. charging the Fare to the Rider's credit card or PayPal account, withholding an amount reflecting a fee for use of the Uber

Partner app and remitting the balance to the UberX Partner, as alleged in paragraph 47;

(xvi) one or more of the Uber Entities, either alone or in combination, communicating an intention to pay, and paying, procuring the payment of, or reimbursing UberX Partners for, Regulatory Fines incurred by UberX Partners in Queensland, as alleged in paragraph 63; and

(xvii) one or more of the Uber Entities, either alone or in combination, employing the Evasion Tools, as alleged in paragraph 67.

105. The commission by UberX Partners of the offences against ss 15, 27 and 70 of the Queensland Transport Act as alleged in paragraphs 95-96, 98 and 101-102 was a probable consequence of the matters referred to at paragraphs 104(b) within the meaning of s 9 of Schedule 1 of the *Criminal Code Act 1899* (Qld) (the **Queensland Criminal Code**).

106. By reason of the matters alleged in paragraphs 104 and/or 105 from at least April 2014 and throughout the Queensland Claim Period, the Uber Entities were principal offenders within the meaning of s 7 of the Queensland Criminal Code of the offences against ss 15, 27 and 70 of the Queensland Transport Act as alleged in paragraphs 95-96, 98 and 101-102.

### **Conspiracy by unlawful means – Queensland**

106A. At all material times from at least April 2014 and throughout the Queensland Claim Period, the Uber Entities, ~~other than~~ (including Rasier Pacific from about 21 December 2015), intended that:

(a) the means by which UberX would be established and operated in Queensland would be by UberX ~~Partners unlawfully~~ competing with:

(i)

(A) the Queensland Taxi Licence Holders; and/or

(B) the Queensland Taxi Operators; and/or

(C) the Queensland Taxi Drivers; and/or

(D) the Queensland Taxi Administrators;

(ii) alternatively to (i):

(A) the Queensland Taxi Licence Holders who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport

- Services from within the area or areas of Queensland (or any part thereof) in which UberX would be established and operated; and/or
- (B) the Queensland Taxi Operators who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Queensland (or any part thereof) in which UberX would be established and operated; and/or
  - (C) the Queensland Taxi Drivers who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide Point to Point Passenger Transport Services from within the area or areas of Queensland (or any part thereof) in which UberX would be established and operated; and/or
  - (D) the Queensland Taxi Administrators who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Queensland (or any part thereof) in which UberX would be established and operated;
- (iii) further or alternatively to (i):
- (A) the Queensland Hire Car Licence Holders; and/or
  - (B) the Queensland Hire Car Operators; and/or
  - (C) the Queensland Hire Car Drivers;
- (iv) alternatively to (iii) and further or alternatively to (ii):
- (A) the Queensland Hire Car Licence Holders who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Queensland (or any part thereof) in which UberX would be established and operated; and/or
  - (B) the Queensland Hire Car Operators who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Queensland (or any part thereof) in which UberX would be established and operated; and/or
  - (C) the Queensland Hire Car Drivers who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide Point to Point Passenger Transport Services from within the area or areas of



Queensland (or any part thereof) in which UberX would be established and operated,

using UberX Partners who provided UberX the Queensland Taxi Industry Members and the Queensland Hire Car Industry Members in contravention of:

- ~~(a)A.~~ s 15 of the *Queensland Transport Act* as alleged in paragraphs 95-96; and/or
- ~~B.~~ s 27 of the *Queensland Transport Act* as alleged in paragraph 98; and/or
- ~~(b)C.~~ s 70 of the *Queensland Transport Act* as alleged in paragraphs 101-102, and

(b) the matters alleged in paragraph (a) would result in one or more of the sub-categories of Queensland Industry Members identified in sub-paragraphs (a)(i) to (iv) (as applicable) as a result of which the Queensland Taxi Industry Members and the Queensland Hire Car Industry Members would suffering loss.

#### **Particulars**

The matters alleged in paragraph 26C(c), Part C and paragraphs 95, 96, 98, 101 and 102 are referred to.

107. At all material times from at least April 2014 and throughout the Queensland Claim Period, the Uber Entities, other than Rasier Pacific, with the common intention to injure as alleged in paragraph 106A, agreed or combined ~~with the common intention of injuring the Queensland Taxi Industry Members and/or the Queensland Hire Car Industry Members by establishing, promoting and operating to establish, promote and operate~~ UberX in Queensland ~~by unlawful means, namely by which would and did involve:~~

- (a) at all material times, Uber B.V.'s and Rasier Operations', and at all material times from around 21 December 2015, Uber B.V.'s, Rasier Operations' and Rasier Pacific's contraventions of s 15 of the *Queensland Transport Act*, as alleged in paragraphs 93 and 94; and/or
- (b) the Uber Entities' complicity in the contraventions by UberX Partners of:
  - (i) ~~of~~ s 15 of the *Queensland Transport Act*; as alleged in paragraphs 95-96; and/or
  - (ii) ~~of~~ s 27 of the *Queensland Transport Act* as alleged in paragraph 98; and/or
  - (iii) ~~of~~ s 70 of the *Queensland Transport Act* as alleged in paragraphs 101-102.

### Particulars

- 4- The agreement or combination is to be inferred from:
- (a) the facts and matters alleged in Parts B, C and D; and
  - (b) the Uber Inc Prospectus, including at pp 54-55 and 62.

107A. In the alternative to paragraph 107, at all material times from at least April 2014 and throughout the Queensland Claim Period, the Uber Entities other than Rasier Pacific, with the common intention to injure as alleged in paragraph 106A, agreed or combined to establish, promote and operate UberX in Queensland, which would and did involve organising, setting-up and/or facilitating the contraventions by UberX Partners of:

- (i) s 15 of the Queensland Transport Act; as alleged in paragraphs 95-96; and/or
- (ii) s 27 of the Queensland Transport Act as alleged in paragraph 98; and/or
- (iii) s 70 of the Queensland Transport Act as alleged in paragraphs 101-102.

### Particulars

The agreement or combination is to be inferred from:

- (a) the facts and matters alleged in Parts B, C and D; and
- (b) the Uber Inc Prospectus, including at pp 54-55 and 62.

108. At all material times from about 21 December 2015 and throughout the Queensland Claim Period, Rasier Pacific joined the agreements or combinations pleaded in the preceding two paragraphs with the intention of injuring one or more sub-category of the Queensland Industry Members as set out at sub-paragraphs ~~the 106A(a)(i) to (iv)~~ Queensland Taxi Industry Members and/or the Queensland Hire Car Industry Members by operating, or assisting in the operation of, UberX in Queensland by unlawful means, as pleaded in paragraphs 95-96, 98 and 101-102.

### Particulars

- 4- That Rasier Pacific joined the agreement or combination alleged in the preceding paragraph is to be inferred from

the facts and matters alleged in paragraphs 40-43, 45, 47(e), 47(f) and Parts C and D.

~~2. The agreement or combination was aimed at or directed to the Queensland Taxi Industry Members and/or the Queensland Hire Car Industry Members, as from 21 December 2015 the means by which the Uber Entities intended to continue to establish and operate UberX in Queensland was by UberX Partners unlawfully competing with the Queensland Taxi Industry Members and the Queensland Hire Car Industry Members and causing them loss as alleged in paragraph 106A, which was achieved by the illegal conduct of Uber Entities alleged in paragraphs 93, 94 and 104 to 106. In the result Rasier Pacific shared the common intention of injuring the Queensland Taxi Industry Members and/or the Queensland Hire Car Industry Members.~~

109. ~~In pursuance of the said conspiracy, t~~The Uber Entities gave effect to the conspiracies alleged at:

(a) paragraph 107; alternatively,

(b) paragraph 107A.

~~by doing die~~ the overt acts pleaded in paragraphs 14-15, 17-0, 23, 26-35, 37-40, 42-43A, 45, 47-48A, 53-55, 57, 63 and 67 (each paragraph individually or in any combination).

### **Commission of offences by Uber Entities and UberX Partners in Western Australia**

#### **Offences against section 15 of the Taxi Act (WA)**

110. At all material times throughout the Western Australian Claim Period, s 15(1) of the *Taxi Act 1994* (WA) (the **Taxi Act (WA)**) provided that a vehicle could not be operated as a taxi within a control area unless the vehicle was operated using taxi plates.

111. At all material times throughout the Western Australian Claim Period, s 15(2) of the *Taxi Act* (WA) provided that where a vehicle was operated as a taxi contrary to s 15(1) of that Act an offence was committed by:

(a) the owner of the vehicle;

(b) the driver of the vehicle;

(c) the operator of the vehicle as a taxi; and

(d) the provider of the taxi dispatch service involved, if any.

112. At all material times throughout the Western Australian Claim Period, UberX Partners who provided UberX in a control area in Western Australia typically did so as the driver, owner or

operator of a vehicle without using taxi plates and thereby committed offences against s 15(2) of the Taxi Act (WA).

### Particulars

1. At all material times throughout the Western Australian Claim Period, s 3 of the Taxi Act (WA) provided that a “taxi” was a vehicle used “for the purpose of standing or plying for hire, or otherwise for the carrying of passengers for reward, but did not include an omnibus licensed under the *Transport Co-ordination Act 1966* (WA) or a vehicle of a class declared by the Director General under subsection (2) not to be a taxi”.
2. At all material times throughout the Western Australian Claim Period, s 3 of the Taxi Act (WA) provided that “operate” meant, among other things, to “drive a vehicle as a taxi”.
3. At all material times throughout the Western Australian Claim Period, UberX Partners drove, owned or operated “taxis” within the meaning of the Taxi Act (WA) because the vehicles used to provide UberX were used for carrying passengers for reward by reason of the matters alleged in paragraphs 46 and 47, but were not licensed omnibuses or vehicles declared by the Director General not to be taxis.
4. At all material times throughout the Western Australian Claim Period, UberX was provided in a control area as prescribed by s 3 of the Taxi Act (WA) and reg 4 of the *Taxi Regulations 1995* (WA) and Department of Land Administration Miscellaneous Plan No 850.
5. As to the lack of taxi plates, the Plaintiff refers to:
  - (a) the engagement by Uber Inc and Uber Australia with regulators in Australia, as alleged in paragraph 27;
  - (b) the steps taken to secure regulatory change, as alleged in paragraph 27A;
  - (c) the Minimum Vehicle Requirements, as alleged in paragraph 30;
  - (d) the Vehicle Compliance Requirements as applicable in Western Australia, as alleged in paragraph 50;
  - (e) the limited numbers of vehicles that met the Vehicle Compliance Requirements as applicable in Western Australia and Minimum Vehicle Requirements, as alleged in paragraph 51;
  - (f) the viability of UberX in each of the Australian States depending upon a rapid recruitment of a large and widely dispersed network of drivers, as alleged in paragraph 52;
  - (g) the intention to recruit, and the recruitment of, UberX Partners who did not otherwise provide

Point to Point Passenger Transport Services and who provided UberX irregularly and flexibly, as alleged in paragraph 53;

- (h) the intention to recruit, and the recruitment of, UberX Partners for whom providing UberX would be commercially unattractive if they were required to meet the Compliance Requirements or engage in application or licencing processes, as alleged in paragraph 54;
- (i) the lack of any requirement to provide evidence of such taxi plates as alleged in paragraph 55;
- (j) the competitive advantage alleged in paragraph 56;
- (k) the intention to recruit, and the recruitment of, UberX Partners who did not nominate a vehicle for use, or provide UberX using a vehicle that met some, or all, of the Vehicle Compliance Requirements as applicable in West Australia, as alleged in paragraph 57;
- (l) the publication of an intention to pay, and the payment of, Regulatory Fines as well as the provision of other assistance to UberX Partners, as alleged in paragraph 65 and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A;
- (m) the attempts to avoid or delay enforcement action, as alleged in paragraph 65B;
- (n) the Evasion Tools, as alleged in paragraphs 66 and 67;
- (o) the Jackson Affidavit and the Fine Affidavit filed in *Uber B.V. v CoT*;
- (p) the matters recorded in the judgment in *Martin v Valder*, including at paragraph [11]; and
- (q) an interview with Tom White, General Manager, Western Australia and South Australia, for one of the Uber Entities not presently known to the Plaintiff, on the 6PR radio station on 1 February 2017.

6. A recording of the interview referred to in particular 5(o) may be listened to by appointment at the Melbourne offices of the solicitors for the Plaintiff.

7. Further particulars may be provided after discovery.

113. At all material times throughout the Western Australian Claim Period, one or more of Uber Inc, Uber B.V. and Rasier Operations, and from about 21 December 2015 Rasier Pacific, provided a taxi dispatch service for vehicles operated as taxis within a control area.

### Particulars

1. At all material times throughout the Western Australian Claim Period, s 3 of the Taxi Act (WA) provided that a “taxi dispatch service” was “a service that provide[d]” “radio base, computer or telephone services for taxis or made arrangements for taxis to be provided with such services” and “controlling, co-ordinating, administrative and other services to the taxi industry”.
2. At all material times throughout the Western Australian Claim Period, one or more of Uber Inc, Uber B.V. and Rasier Operations, and from about 21 December 2015 Rasier Pacific, provided a taxi dispatch service for vehicles providing UberX by reason of:
  - (a) the licencing, operating and making available of the Uber app and the Uber Partner app, as alleged in paragraphs 14, 15, 22(h), 34, 39(a), 41(o), 44, 45 and 46;
  - (b) operating, or causing the operation of, the Architecture, as alleged in paragraph 15;
  - (c) contracting with and registering as Riders certain individuals, as alleged in paragraphs 0 and 22; and
  - (d) calculating, charging, or facilitating the calculation or charging of, the Fare and the Service Fee, as alleged in paragraph 47.
3. Further particulars may be provided after discovery.

114. At all material times throughout the Western Australian Claim Period, by reason of the matters set out in the preceding paragraph and the provision of UberX in a control area without taxi plates as alleged in paragraph 112, one or more of Uber Inc, Uber B.V. and Rasier Operations, and from about 21 December 2015 Rasier Pacific, committed offences against s 15(2) of the Taxi Act (WA).

**Offences against section 26 of the Taxi Act (WA)**

115. At all material times throughout the Western Australian Claim Period, s 26 of the Taxi Act (WA) provided that a person shall not:

- (a) provide or advertise that he or she provided, or was willing to provide, a taxi dispatch service; or
- (b) co-operate in any manner which was not approved by the Director General with another person to provide a taxi dispatch service;

within a control area unless the person was registered as the provider of a taxi dispatch service.

116. At all material times throughout the Western Australian Claim Period, one or more of the Uber Entities:
- (a) provided and/or advertised that it provided, and was willing to provide, a taxi dispatch service; and/or
  - (b) co-operated with one or other of the remaining Uber Entities to provide a taxi dispatch service,
- within a control area.

#### **Particulars**

1. As to the definition of a “taxi dispatch service” and one or more Uber Entities satisfying that definition, the Plaintiff refers to particulars 1 and 2 to paragraph 113.
2. As to advertising UberX and co-operating with other of the Uber Entities, the Plaintiff refers to Parts B and Part C and Part D above.
3. At all material times throughout the Western Australian Claim Period, one or more of the Uber Entities provided a taxi dispatch service in a control area as prescribed by s 3 of the Taxi Act (WA) and reg 4 of the *Taxi Regulations 1995* (WA) and Department of Land Administration Miscellaneous Plan No 850.
4. Further particulars may be provided after discovery.

117. At all material times throughout the Western Australian Claim Period, none of the Uber Entities were registered as providers of a taxi dispatch service and thereby committed offences against s 26 of the Taxi Act (WA).

#### **Particulars**

1. The Plaintiff refers to the matters recorded in the judgment in *Martin v Nalder*, including at paragraphs [12], [81]-[84] and [86].
2. Further particulars may be provided after discovery.

#### **Offences against section 50 of the Transport Co-ordination Act (WA)**

118. At all material times throughout the Western Australian Claim Period, s 50(1)(a) of the *Transport Co-ordination Act 1966* (WA) (the **Transport Co-ordination Act (WA)**) provided that the driver and owner of a public vehicle, and any person who consigned or sent or caused to be consigned, sent or conveyed, or offered or agreed to consign, send or convey, any goods or passenger by a public vehicle that was operated where the vehicle was not appropriately licenced as such under the Act were, subject to s 50(2), severally guilty of an offence.

119. At all material times throughout the Western Australian Claim Period, s 24 of the Transport Co-ordination Act (WA) provided for the grant of omnibus licences.
120. At all material times throughout the Western Australian Claim Period, UberX Partners who provided UberX in Western Australia typically did so by conveying passengers by public vehicles that were not appropriately licenced as omnibuses under s 24 of the Transport Co-ordination Act (WA) and thereby committed offences against s 50 of that Act.

### Particulars

1. At all material times throughout the Western Australian Claim Period, s 4 of the Transport Co-ordination Act (WA) provided that a “public vehicle” was any vehicle that was required to be licensed under that Act and s 24 of that Act provided for the grant of omnibus licences.
  2. At all material times throughout the Western Australian Claim Period, s 4 of the Transport Co-ordination Act (WA) provided that an “omnibus” meant a “motor vehicle used or intended to be used as a passenger vehicle to carry passengers for hire or reward” “but [did] not include a vehicle operating as a taxi using taxi plates issued under the *Taxi Act 1994* or licensed as a taxi-car under Part IIIB”.
  3. At all material times throughout the Western Australian Claim Period, vehicles providing UberX were omnibuses within the meaning of s 4 of the Transport Co-ordination Act (WA) and required omnibus licenses under s 24 of that Act because they:
    - (a) were used or intended to be used to carry passengers for reward;
    - (b) did not use taxi plates, as alleged in paragraph 112; and
    - (c) were not licensed as taxi-cars, as alleged in paragraph 124 below.
  4. As to the lack of the required licence, the Plaintiff refers to:
    - (a) particular 5, other than 5(i) to paragraph 112 above; and
    - (b) the lack of any requirement to provide evidence of such licence as alleged in paragraph 55.
  5. Further particulars may be provided after discovery.
121. At all material times throughout the Western Australian Claim Period, one or more of Uber Inc, Uber B.V. and Rasier Operations, and from about 21 December 2015 Rasier Pacific, caused to be conveyed, or offered to convey, passengers by public vehicles that were not appropriately licenced as omnibuses under s 24 of the Transport Co-ordination Act (WA) and thereby committed offences against s 50 of that Act.



## Particulars

1. At all material times throughout the Western Australian Claim Period, one or more of Uber Inc, Uber B.V. and Rasier Operations, and from about 21 December 2015 Rasier Pacific, caused to be conveyed, or offered to convey, passengers in vehicles providing UberX by reason of:
  - (a) the licencing, operating and making available of the Uber app and the Uber Partner app, as alleged in paragraphs 14, 15, 22(h), 34, 39(a), 41(o), 44, 45 and 46;
  - (b) operating, or causing the operation of, the Architecture, as alleged in paragraph 15;
  - (c) contracting with and registering as Riders certain individuals, as alleged in paragraphs 0 and 22; and
  - (d) calculating, charging, or facilitating the calculation or charging of, the Fare and the Service Fee, as alleged in paragraph 47.
2. Further particulars may be provided after discovery.

### **Offences against section 47ZD of the Transport Co-ordination Act (WA)**

122. At all material times throughout the Western Australian Claim Period, s 47ZD(1) of the Transport Co-ordination Act (WA) provided that no taxi-car shall be operated within a district unless the owner of the taxi-car was the holder of a taxi-car licence under Part IIIB of that Act issued in respect of that vehicle for that district.
123. At all material times throughout the Western Australian Claim Period, s 47ZD(6) of the Transport Co-ordination Act (WA) provided that:
  - (a) any person who contravened s 47ZD; and
  - (b) any person who permitted or suffered another person to contravene s 47ZD, committed an offence.
124. At all material times throughout the Western Australian Claim Period, UberX Partners who provided UberX in Western Australia in one or more districts typically did so using vehicles they owned and/or drove without a taxi-car licence having been issued under Part IIIB of the Transport Co-ordination Act (WA) in respect of that vehicle and thereby committed offences against s 47ZD of that Act.

### Particulars

1. At all material times throughout the Western Australian Claim Period, s 47Z of the Transport Co-ordination Act (WA) provided that a “taxi-car” meant a “vehicle that [was] used for the purpose of standing or plying for hire or otherwise for the carrying of passengers for reward”.
2. At all material times throughout the Western Australian Claim Period, vehicles providing UberX were “taxi-cars” within the meaning of s 47Z of the Transport Co-ordination Act (WA) because they were vehicles used for the carrying of passengers for reward, as alleged in paragraphs 46 and 47.
3. At all material times throughout the Western Australian Claim Period, s 47Z of the Transport Co-ordination Act (WA) provided that:
  - (a) “operate”, as it applied to taxi-cars, included to drive that taxi-car; and
  - (b) “owner”, as it applied to a taxi-car, meant a person being the sole, part or joint owner of the vehicle and included a person having the use of the vehicle under an agreement for its hire, lease or loan under a hire purchase agreement and also included a person repossessing or purporting to repossess the vehicle under such an agreement.

In the premises, UberX Partners “owned” and “operated” taxi-cars within the meaning of s 47Z of the Transport Co-ordination Act (WA).
4. At all material times throughout the Western Australian Claim Period, s 47Z of the Transport Co-ordination Act (WA) provided that “district” meant an area declared to be a district under the *Local Government Act 1995* (WA).
5. As to the lack of the required licence, the Plaintiff refers to:
  - (a) particular 5, excluding 5(i), to paragraph 112; and
  - (b) the lack of any requirement to provide evidence of such licence, as alleged in paragraph 55.
6. Further particulars may be provided after discovery.

125. At all material times throughout the Western Australian Claim Period, one or more of the Uber Entities operated taxi-cars in one or more districts in Western Australia.

### Particulars

1. At all material times throughout the Western Australian Claim Period, s 47Z of the Transport Co-ordination Act (WA) provided that “operate”, as it applied to taxi-cars, included “to permit, cause or employ another person to drive” that taxi-car.

2. At all material times throughout the Western Australian Claim Period, one or more of the Uber Entities “operated” UberX within the meaning of s 47Z because, by reason of the matters alleged in Parts B, C and D, they permitted or caused UberX Partners to drive vehicles providing UberX.
3. As to vehicles providing UberX being “taxi-cars”, the Plaintiff refers to and repeats particulars 1 and 2 to the preceding paragraph.
4. Further particulars may be provided after discovery.

126. At all material times throughout the Western Australian Claim Period, by reason of the matters set out in the preceding paragraph and vehicles providing UberX without holding taxi-car licences under Part IIIB of the Transport Co-ordination Act (WA) as alleged in paragraph 124, one or more of the Uber Entities committed offences against s 47ZD of that Act.

127. Further, at all material times throughout the Western Australian Claim Period, one or more of the Uber Entities permitted or suffered UberX Partners to provide UberX in Western Australia without the vehicles they used being licenced as taxi-cars and thereby committed offences against s 47ZD of the Transport Co-ordination Act (WA).

#### **Particulars**

1. At all material times throughout the Western Australian Claim Period, by reason of the matters alleged in Parts B, C and D one or more of the Uber Entities permitted or suffered UberX Partners providing UberX in contravention of s 47ZD.
2. As to the Uber Entities’ knowledge that UberX Partners provided UberX in Western Australia without the vehicles being licenced as taxi-cars, the Plaintiff relies on:
  - (a) the allegations in paragraph 57 and the particulars thereto; and
  - (b) the matters recorded in the judgment in *Martin v Nalder* [2016] WASC 138, including at paragraphs [30]-[31].

#### **Offences against section 47ZE of the Transport Co-ordination Act (WA)**

128. At all material times throughout the Western Australian Claim Period until 26 April 2015, s 47ZE of the Transport Co-ordination Act (WA) provided that a person shall not drive a taxi-

car within a district unless he or she was licenced to drive a taxi-car under the *Road Traffic Act 1974 (WA)* (the **Road Traffic Act (WA)**).

129. At all material times throughout the Western Australian Claim Period from 27 April 2015, s 47ZE of the Transport Co-ordination Act (WA) provided that a person shall not drive a taxi-car within a district unless he or she holds a driver's licence under the *Road Traffic (Authorisation to Drive) Act 2008 (WA)* that authorises that person to drive a taxi-car.
130. At all material times throughout the Western Australian Claim Period until 26 April 2015, UberX Partners who provided UberX within a district in Western Australia typically did so without holding a driver's licence under the Road Traffic Act (WA) that authorised, or appropriately authorised, the person to drive a taxi-car, and thereby committed offences against s 47ZE of the Transport Co-ordination Act (WA).

### Particulars

1. At all material times throughout the Western Australian Claim Period until 26 April 2015, s 42 of the Road Traffic Act (WA) provided for regulations for a driver licensing scheme.
2. At all material times throughout the Western Australian Claim Period until 26 April 2015, r 11 of the *Road Traffic (Authorisation to Drive) Regulations 2008 (WA)* provided that, “[u]nless endorsed as described in regulation 12 to give that authorisation, a driver's licence [did] not authorise the holder to drive a motor vehicle when it [was] being used for the purpose of carrying passengers for reward, either in a taxi or in any other circumstance.”
3. At all material times throughout the Western Australian Claim Period until 26 April 2015, r 12 of the *Road Traffic (Authorisation to Drive) Regulations 2008 (WA)* provided for the endorsement:
  - (a) “extension T” where the driving authorised by the licence included driving when it was for the purpose of carrying passengers for reward, except where the driver was under 21 years of age whereby the driving authorised was to drive a taxi only; and
  - (b) “extension F” where the driving authorised by the licence included driving when it was for the purpose of carrying passengers for reward except in a taxi.

In the premises, where the driving was in a “taxi”, the relevant endorsement was “extension T”.
4. At all material times throughout the Western Australian Claim Period until 26 April 2015, r 12(3) of the *Road Traffic (Authorisation to Drive) Regulations 2008 (WA)* provided that “taxi” in rr 11 and 12 of those Regulations had the same meaning as “taxi” under the Taxi Act (WA),

whether or not that Act applied to the operation of the vehicle.

5. At all material times throughout the Western Australian Claim Period, “taxi” under s 3 of the Taxi Act (WA) meant a vehicle which was used for the purpose of standing or plying for hire, or otherwise for the carrying of passengers for reward, but did not include an omnibus licensed under the Transport Co-ordination Act (WA) or a vehicle of a class declared by the Director General not to be a taxi.
6. At all material times throughout the Western Australian Claim Period until 26 April 2015, UberX Partners were required to hold a licence with “extension T” authorisation under the Road Traffic Act (WA) and rr 11 and 12 of the *Road Traffic (Authorisation to Drive) Regulations 2008* (WA), because they were “taxis” within the meaning of those Regulations and within s 3 of the Taxi Act (WA) because they used vehicles to carry passengers for reward but were not licensed omnibuses or vehicles declared by the Director General not to be taxis.
7. As to the meaning of “district”, the Plaintiff refers to and repeats particular 4 to paragraph 124.
8. As to the lack of authorisation, or the appropriate authorisation, the Plaintiff refers to:
  - (a) the engagement by Uber Inc and Uber Australia with regulators in Australia, as alleged in paragraph 27;
  - (b) the steps taken to secure regulatory change, as alleged in paragraph 27A;
  - (c) the Driver Compliance Requirements as applicable in Western Australia, as alleged in paragraph 50;
  - (d) the limited numbers of individuals who met the Driver Compliance Requirements as applicable in Western Australia, as alleged in paragraph 51;
  - (e) the viability of UberX in each of the Australian States depending upon a rapid recruitment of a large and widely dispersed network of drivers, as alleged in paragraph 52;
  - (f) the intention to recruit, and the recruitment of, UberX Partners who did not otherwise provide Point to Point Passenger Transport Services and who provided UberX irregularly and flexibly, as alleged in paragraph 53;
  - (g) the intention to recruit, and the recruitment of, UberX Partners for whom providing UberX would be commercially unattractive if they were required to meet the Compliance Requirements or engage in application or licencing processes, as alleged in paragraph 54;

- (h) the lack of any requirement to provide evidence of such authorisation, as alleged in paragraph 55;
- (i) the competitive advantage alleged in paragraph 56;
- (j) the intention to recruit, and the recruitment of, UberX Partners who did not, or would not, meet some or all of the Driver Compliance Requirements as applicable in Western Australia, as alleged in paragraph 57;
- (k) the publication of an intention to pay, and the payment of, Regulatory Fines as well as the provision of other assistance to UberX Partners, as alleged in paragraph 65 and the purpose of such payment and/or assistance being to maintain and/or grow the network of UberX Partners as alleged in paragraph 65A;
- (l) the attempts to avoid or delay enforcement action, as alleged in paragraph 65B
- (m) the Evasion Tools, as alleged in paragraphs 66 and 67;
- (n) the Jackson Affidavit and the Fine Affidavit filed in *Uber B.V. v CoT*;
- (o) the matters recorded in the judgment in *Martin v Nalder*, including at paragraph [83]; and
- (p) an interview with Tom White, General Manager, Western Australia and South Australia, for one of the Uber Entities not presently known to the Plaintiff, on the 6PR radio station on 1 February 2017.

9. Further particulars may be provided after discovery.

131. At all material times throughout the Western Australian Claim Period from 27 April 2015, UberX Partners who provided UberX in Western Australia typically did so driving vehicles without holding a driver's licence under the *Road Traffic (Authorisation to Drive) Act 2008 (WA)* that authorised, or appropriately authorised, the person to drive a taxi-car, and thereby committed offences against s 47ZE of the Transport Co-ordination Act (WA).

### Particulars

1. At all material times throughout the Western Australian Claim Period from 27 April 2015, Division 1 of Part 2 of the *Road Traffic (Authorisation to Drive) Act 2008 (WA)* provided for regulations for a driver licensing scheme.
2. At all material times throughout the Western Australian Claim Period from 27 April 2015, r 11 of the *Road Traffic (Authorisation to Drive) Regulations 2014 (WA)* provided that "[u]nless endorsed as described in regulation 12 to give that authorisation, a driver's licence [did] not authorise the licence holder to drive a motor vehicle when it [was] being used for the carrying of passengers

for reward, either in a taxi, as defined in regulation 12(4), or in any other circumstance”.

3. At all material times throughout the Western Australian Claim Period from 27 April 2015, r 12 of the *Road Traffic (Authorisation to Drive) Regulations 2014* (WA) provided for the endorsement:
  - (a) “extension T” where the driving authorised by the licence included driving when it was for the purpose of carrying passengers for reward, except where the driver was under 21 years of age whereby the driving authorised was to drive a taxi only; and
  - (b) “extension F” where the driving authorised by the licence included driving when it was for the purpose of carrying passengers for reward except in a taxi.

In the premises, where the driving was in a “taxi”, the relevant endorsement was “extension T”.

4. At all material times throughout the Western Australian Claim Period from 27 April 2015, r 12(4) of the *Road Traffic (Authorisation to Drive) Regulations 2014* (WA) provided that “taxi” had the same meaning given in the Taxi Act (WA) whether or not that Act applied to the operation of the vehicle.
5. At all material times throughout the Western Australian Claim Period, “taxi” under s 3 of the Taxi Act (WA) meant a vehicle which was used for the purpose of standing or plying for hire, or otherwise for the carrying of passengers for reward, but did not include an omnibus licensed under the *Transport Co-ordination Act* (WA) or a vehicle of a class declared by the Director General not to be a taxi.
6. At all material times throughout the Western Australian Claim Period from 27 April 2015, UberX Partners were required to hold a licence with “extension T” authorisation under the *Road Traffic (Authorisation to Drive) Act 2008* (WA) and r 11 and 12 of the *Road Traffic (Authorisation to Drive) Regulations 2014* (WA), because they were “taxis” within the meaning of the Regulations and within s 3 of the Taxi Act (WA) because they used vehicles to carry passengers for reward but were not licensed omnibuses or vehicles declared by the Director General not to be taxis.
7. As to the meaning of “district”, the Plaintiff refers to and repeats particular 4 to paragraph 124.
8. As to the lack of authorisation, or appropriate authorisation, the Plaintiff refers to particular 8 to paragraph 130.
9. Further particulars may be provided after discovery.

### **Offences against section 49 of the Road Traffic Act (WA)**

132. At all material times throughout the Western Australian Claim Period until 26 April 2015, s 49 of the Road Traffic Act (WA) provided that a person who drove a motor vehicle on a road while not authorised under Part IVA of that Act to do so committed an offence.
133. At all material times throughout the Western Australian Claim Period from 27 April 2015, s 49 of the Road Traffic Act (WA) provided that a person who drove a motor vehicle on a road while not authorised under the *Road Traffic (Authorisation to Drive) Act 2008* (WA) Part 2 to do so committed an offence.
134. At all material times throughout the Western Australian Claim Period until 26 April 2015, UberX Partners, when providing UberX in Western Australia, typically did so driving motor vehicles on roads while not authorised, or not appropriately authorised, under Part IVA of the Road Traffic Act (WA) to do so and thereby committed offences against s 49 of that Act.

#### **Particulars**

1. At all material times throughout the Western Australian Claim Period until 26 April 2015, s 42 in Part IVA of the Road Traffic Act (WA) provided for regulations for a driver licensing scheme.
  2. The Plaintiff otherwise refers to the particulars to paragraph 130, save as to particular 7 which relates the meaning of “district”.
  3. Further particulars may be provided after discovery.
135. At all material times throughout the Western Australian Claim Period from 27 April 2015, UberX Partners, when providing UberX in Western Australia, typically did so driving a motor vehicle on a road while not authorised, or appropriately authorised, under the *Road Traffic (Authorisation to Drive) Act 2008* (WA) to do so and thereby committed offences against s 49 of the Road Traffic Act (WA).

#### **Particulars**

1. At all material times throughout the Western Australian Claim Period from 27 April 2015, s 4 in Division 1 of Part 2 of the *Road Traffic (Authorisation to Drive) Act 2008*



(WA) provided for regulations for a driver licensing scheme.

2. The Plaintiff otherwise refers to particulars 1-6 to paragraph 131.
3. As to the lack of the required authorisation, the Plaintiff refers to particular 8 to paragraph 130.
4. Further particulars may be provided after discovery.

### **Complicity by Uber Entities in the commission of offences by UberX Partners in Western Australia**

136. At all material times throughout the Western Australian Claim Period, each of the Uber Entities knew of the essential matters comprising the:

- (a) commission of the offences against s 15 of the Taxi Act (WA) by UberX Partners as alleged in paragraph 112; and/or
- (b) commission of the offences against s 50 of the Transport Co-ordination Act (WA) by UberX Partners as alleged in paragraph 120; and/or
- (c) commission of the offences against s 47ZD of the Transport Co-ordination Act (WA) by UberX Partners as alleged in paragraph 124; and/or
- (d) commission of the offences against s 47ZE of the Transport Co-ordination Act (WA) (as in force at the applicable time) by UberX Partners as alleged in paragraphs 130 and 131; and/or
- (e) commission of the offences against s 49 of the Road Traffic Act (WA) (as in force at the applicable time) by UberX Partners as alleged in paragraphs 134 and 135.

### **Particulars**

1. The knowledge of each of the Uber Entities of the use by UberX Partners of motor vehicles to carry passengers for reward is to be inferred from the fact that the Uber Entities combined or achieve the commencement and operation of UberX in each of the Australian States, as alleged in Part B, including the collection and retention of trip data as alleged in paragraph 47A.
2. As to knowledge of UberX Partners' lack of taxi plates as required under s 15 of the Taxi Act (WA), the Plaintiff refers to:
  - (a) the allegations in paragraph 57 and the particulars thereto;

- (b) the matters recorded in the judgment in *Martin v Valder*, including at paragraphs [30]-[31]; and
    - (c) an interview with Tom White, General Manager, Western Australia and South Australia, for one of the Uber Entities not presently known to the Plaintiff, on the 6PR radio station on 1 February 2017.
  - 3. As to knowledge of UberX Partners' lack of licences required under the s 50 of the Transport Co-ordination Act (WA), the Plaintiff refers to particulars 2(a) to (c) above.
  - 4. As to knowledge of UberX Partners' lack of licences required under ss 47ZD of the Transport Co-ordination Act (WA), the Plaintiff refers to particulars 2(a) to (c) above.
  - 5. As to knowledge of UberX Partners' lack of driver authorisation, or appropriate authorisation, under s 47ZE of the Transport Co-ordination Act (WA), the Plaintiff refers to particulars 2(a) to (c) above.
  - 6. As to knowledge of UberX Partners' lack of any authorisation, or appropriate authorisation, under s 49 of the Road Traffic Act (WA), the Plaintiff refers to particulars 2(a) to (c) above.
137. At all material times from at least October 2014 and throughout the Western Australian Claim Period, Uber Inc, Uber B.V., Rasier Operations, Rasier Pacific (from about 21 December 2015) and one or more of the other Uber Entities did or omitted to do acts for the purpose of enabling or aiding UberX Partners, aided UberX Partners and/or counselled or procured UberX Partners to commit the offences against s 15 of the Taxi Act (WA), ss 47ZD, 47ZE and 50 of the Transport Co-ordination Act (WA) and s 49 of the Road Traffic Act (WA) as alleged in paragraphs 112, 120, 124, 130, 131, 134 and 135:
- (a) by reason of the matters referred to in the preceding paragraph, [paragraph 26C\(d\)](#) and paragraph 57 concerning knowledge and intention; and
  - (b) by engaging in the following acts:
    - (i) Uber B.V. operating and making the Uber app available to Riders on the terms of the Rider Contract, which enabled Riders to request UberX from UberX Partners who did not satisfy the Compliance Requirements;

### **Particulars**

The allegations in paragraphs 15(a), 22 and 57 are referred to and relied upon.

- (ii) Uber Inc and/or Uber B.V. utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;

### **Particulars**

The allegations made in paragraphs 15(a), 33, 46 and 57 are referred to and relied upon.

- (iii) further and alternatively to (ii), any other of the Uber Entities utilising or making available the Architecture to communicate Rider requests for UberX to UberX Partners who did not satisfy the Compliance Requirements;
- (iv) one or more of the Uber Entities developing and implementing marketing activities, as alleged in paragraphs 28 and 29;
- (v) one or more of the Uber Entities publishing information about becoming an UberX Partner on the website [www.uber.com](http://www.uber.com) as alleged in paragraph 31, which enabled persons who did not satisfy the Compliance Requirements to become UberX Partners;
- (vi) one or more of the Uber Entities reviewing applications, and accompanying information, to become an UberX Partner and determining whether the applications would be approved, as alleged in paragraph 32, with the intention and knowledge that persons approved as UberX Partners typically did not, and would not, satisfy the Compliance Requirements;

### **Particulars**

The allegations made in paragraphs [26C\(d\)](#), 32 and 57 are referred to and relied on.

- (vii) Uber B.V. activating, via the Architecture, an UberX Partner account, accessible in the Uber Partner app for successful UberX Partner applicants in Western Australia who did not satisfy the Compliance Requirements, by which it enabled them to receive and accept requests for UberX from Riders;

## Particulars

The allegations made in paragraphs 33 and 57 are referred to and relied on.

- (viii) Rasier Operations entering into the Rasier Operations Contract as alleged in paragraphs 35 to 37 (up to about 20 December 2015) with UberX Partners who did not and would not satisfy the Compliance Requirements, and then performing those contracts, by which it enabled those UberX Partners to receive and accept requests for UberX from Riders;
- (ix) Rasier Operations making available a smartphone for the purpose of UberX Partners accessing the Uber Partner app, as alleged in paragraph 38 above;
- (x) Rasier Operations facilitating access to rental vehicles for UberX Partners for the purpose of them providing UberX, as alleged in paragraph 38A above;
- (xi) Rasier Pacific entering into the Rasier Pacific Contract as alleged in paragraphs 39-41 above with UberX Partners who did not and would not satisfy the Compliance Requirements, and then performing those contracts, by which it enabled those UberX Partners to receive and accept requests for UberX from Riders;
- (xii) Rasier Pacific making available a smartphone for the purpose of UberX Partners accessing the Uber Partner app, as alleged in paragraph 43 above;
- (xiii) Rasier Pacific facilitating access to rental vehicles for UberX Partners for the purpose of them providing UberX, as alleged in paragraph 43A above;
- (xiv) Uber Australia providing UberX Partners with a smartphone, further a smartphone and data plan, for the purpose of them providing UberX, as alleged in paragraph 48A above;
- (xv) Uber B.V. charging the Fare to the Rider's credit card or PayPal account, withholding an amount reflecting a fee for use of the Uber Partner app and remitting the balance to the UberX Partner, as alleged in paragraph 47;

(xvi) one or more of the Uber Entities, either alone or in combination, communicating an intention to pay, and paying, procuring the payment of, or reimbursing UberX Partners for, Regulatory Fines incurred by UberX Partners in Western Australia, as alleged in paragraph 65; and

(xvii) one or more of the Uber Entities, either alone or in combination, employing the Evasion Tools, as alleged in paragraph 67.

138. The commission by UberX Partners of the offences against s 15 of the Taxi Act (WA), ss 47ZD, 47ZE and 50 of the Transport Co-ordination Act (WA) and s 49 of the Road Traffic Act (WA) as alleged in paragraphs 112, 120, 124, 130, 131, 134 and 135 was a probable consequence of the matters referred to at paragraph 137(b) within the meaning of s 9 of the Schedule to the *Criminal Code Act Compilation Act 1913* (WA) (the **Western Australian Criminal Code**).

139. By reason of the matters alleged in paragraph 137 and/or 138, from at least October 2014 and throughout the Western Australian Claim Period, the Uber Entities were principal offenders within the meaning of s 7 of the Western Australian Criminal Code of the offences against:

- (a) section 15 of the Taxi Act (WA), as alleged in paragraph 112; and/or
- (b) sections 47ZD, 47ZE and 50 of the Transport Co-ordination Act (WA), as alleged in paragraphs 120, 124, 130 and 131; and/or
- (c) section 49 of the Road Traffic Act (WA), as alleged in paragraphs 134 and 135.

#### **Conspiracy by unlawful means – Western Australia**

139A. At all material times from at least October 2014 and throughout the Western Australian Claim Period, the Uber Entities, ~~other than~~ (including Rasier Pacific from about 21 December 2015), intended that:

- (a) the means by which UberX would be established and operated in Western Australia would be by UberX ~~Partners unlawfully~~ competing with:

- (i)

  - (A) the WA Taxi Plate Holders; and/or
  - (B) the WA District Taxi Licence Holders; and/or
  - (C) the WA Taxi Operators; and/or
  - (D) the WA Taxi Drivers; and/or
  - (E) the WA Taxi Dispatch Service Providers;
- (ii) alternatively to (i)

  - (A) the WA Taxi Plate Holders who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Western Australia (or any part thereof) in which UberX would be established and operated; and/or
  - (B) the WA District Taxi Licence Holders who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Western Australia (or any part thereof) in which UberX would be established and operated; and/or
  - (C) the WA Taxi Operators who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Western Australia (or any part thereof) in which UberX would be established and operated; and/or
  - (D) the WA Taxi Drivers who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide Point to Point Passenger Transport Services from within the area or areas of Western Australia (or any part thereof) in which UberX would be established and operated; and/or
  - (E) the WA Taxi Dispatch Service Providers who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Western Australia (or any part thereof) in which UberX would be established and operated;
- (iii) further or alternatively to (i):

  - (A) the WA District Taxi Licence Holders; and/or
  - (B) the WA Taxi Operators; and/or
  - (C) the WA Taxi Drivers;
- (iv) alternatively to (iii) and further or alternatively to (ii):

  - (A) the WA District Taxi Licence Holders who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport

Services from within the area or areas of Western Australia (or any part thereof) in which UberX would be established and operated; and/or  
(B) the WA Taxi Operators who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services from within the area or areas of Western Australia (or any part thereof) in which UberX would be established and operated; and/or  
(C) the WA Taxi Drivers who by reason of the matters alleged in paragraph 50 (as applicable) were entitled to provide Point to Point Passenger Transport Services from within the area or areas of Western Australia (or any part thereof) in which UberX would be established and operated,  
using UberX Partners who provided UberX the Western Australian Taxi Industry Members and the Western Australian Hire Car Industry Members in contravention of:

~~(a)A.~~ s 15 of the *Taxi Act* (WA) as alleged in paragraph 112; and/or

~~(b)B.~~ ss 47ZD, 47ZE and/or 50 of the *Transport Co-ordination Act* (WA), as alleged in paragraphs 120, 124, 130 and 131; and/or

~~(c)C.~~ s 49 of the *Road Traffic Act* (WA) as alleged in paragraphs 134 and 135, and

(b) the matters alleged in paragraph (a) would result in one or more of the sub-categories of Western Australian Industry Members identified in sub-paragraphs (a)(i) to (iv) (as applicable) as a result of which the Western Australian Taxi Industry Members and the Western Australian Hire Car Industry Members would suffering loss.

### Particulars

The matters alleged in paragraph 26C(d), Part C and paragraphs 112, 120, 124, 130, 131, 134 and 135 are referred to and relied on.

140. At all material times from at least October 2014 and throughout the Western Australian Claim Period, the Uber Entities other than Rasier Pacific, with the common intention to injure as alleged in paragraph 139A, agreed or combined ~~with the common intention of injuring the Western Australian Taxi Industry Members and/or the Western Australian Hire Car Industry Members by establishing, promoting and operating to establish, promote and operate~~ UberX in Western Australia by unlawful means, which would and did involve, namely by:

(a) Uber Inc's, Uber B.V's, Rasier Operations and Rasier Pacific's contraventions of:

(i) section 15 of the *Taxi Act* (WA), as alleged in paragraph 114; and/or

- (ii) section 50 of the Transport Co-ordination Act (WA), alleged in paragraph 121; and/or
- (b) one or more of the Uber Entities' contraventions of:
  - (i) section 26 of the Taxi Act (WA), as alleged in paragraph 117; and or
  - (ii) section 47ZD of the Transport Co-ordination Act (WA), as alleged in paragraphs 126 and 127; and/or
- (c) the Uber Entities' complicity in the contraventions by UberX Partners of:
  - (i) section 15 of the Taxi Act (WA), as alleged in paragraph 112; and or
  - (ii) sections 47ZD, 47ZE and or 50 of the Transport Co-ordination Act (WA), as alleged in paragraphs 120, 124, 130 and 131; and or
  - ~~(d)(iii)~~ section 49 of the Road Traffic Act (WA), as alleged in paragraphs 134 and 135.

#### **Particulars**

- ~~1.~~ The agreement or combination is to be inferred from:
  - (a) the facts and matters alleged in Parts B, C and D; and
  - (b) the Uber Inc Prospectus, including at pp 54-55 and 62.

~~2. The agreement or combination was aimed at or directed to the Western Australian Taxi Industry Members and/or the Western Australian Hire Car Industry Members, as the means by which the Uber Entities other than Rasier Pacific intended to establish and operate UberX in Western Australia was by UberX Partners unlawfully competing with the Western Australian Taxi Industry Members and the Western Australian Hire Car Industry Members and thereby causing them loss as alleged in paragraph 139A, which was achieved by the illegal conduct of Uber Entities as alleged in paragraphs 114, 121, 117, 126, 127 and 137 to 139. By reason of the above the Uber entities, other than Rasier Pacific, had the common intention of injuring the Western Australian Taxi Industry Members and/or the Western Australian Hire Car Industry Members.~~

140A. In the alternative to paragraph 140, at all material times from at least October 2014 and throughout the Western Australian Claim Period, the Uber Entities other than Rasier Pacific, with the common intention to injure as alleged in paragraph 139A, agreed or combined to establish, promote and operate UberX in Western Victoria, which would and did involve organising, setting-up and/or facilitating the contraventions by UberX Partners of:



- (a) section 15 of the Taxi Act (WA), as alleged in paragraph 112; and/or
- (b) sections 47ZD, 47ZE and/or 50 of the Transport Co-ordination Act (WA), as alleged in paragraphs 120, 124, 130 and 131; and/or
- (c) section 49 of the Road Traffic Act (WA), as alleged in paragraphs 134 and 135.

#### Particulars

The agreement or combination is to be inferred from:

- (a) the facts and matters alleged in Parts B, C and D; and
- (b) the Uber Inc Prospectus, including at pp 54-55 and 62.

141. At all material times from about 21 December 2015 and throughout the Western Australian Claim Period, Rasier Pacific joined the agreements or combinations pleaded in the two preceding paragraphs with the intention of injuring one or more sub-category of the Western Australian Industry Members as set out at sub-paragraphs ~~the 139A(a)(i) to (iv) Western Australian Taxi Industry Members and/or the Western Australian Hire Car Industry Members~~ by operating, or assisting in the operation of, UberX in Western Australia by unlawful means, as pleaded in paragraphs 112, 114, 117, 120-121, 124, 126-127, 130-131 and 134-135.

#### **Particulars**

- ~~4. That Rasier Pacific joined the agreement or combination alleged in the preceding paragraph is to be inferred from the facts and matters alleged in paragraphs 40-43, 45, 47(e) and 47(f) and Parts C and D.~~
- ~~2. The agreement or combination was aimed at or directed to the Western Australian Taxi Industry Members and/or the Western Australian Hire Car Industry Members, as from 21 December 2015 the means by which the Uber Entities intended to continue to establish and operate UberX in Western Australia was by UberX Partners unlawfully competing with the Western Australian Taxi Industry Members and the Western Australian Hire Car Industry Members and causing them loss as alleged in paragraph 139A, which was achieved by the illegal conduct of Uber Entities as alleged in paragraphs 114, 121, 117, 126, 127 and 137 to 139. In the result Rasier Pacific shared the common intention of injuring the Western Australian Taxi Industry Members and/or the Western Australian Hire Car Industry Members.~~

142. The Uber Entities gave effect to the conspiracies alleged at:

- (a) paragraph 140; alternatively,
- (b) paragraph 140A,

~~by doing~~ In pursuance of the said conspiracy, ~~the Uber Entities did~~ the overt acts pleaded in paragraphs 14-15, 17-0, 23, 26-35, 37-40, 42-43A, 45, 47-48A, 53-55, 57, 65 and 67 (each paragraph individually or in any combination).

## **PART F – LOSS AND DAMAGE**

142A. The income to be derived by Industry Members (by reason of the provision of Point to Point Passenger Transport Services and/or the value of licences, permits, accreditations or authorisations held by Industry Members (howsoever described in each of the Australian States as set out in Schedule A), who by reason of the matters alleged in paragraph 50 were exclusively entitled to provide or otherwise facilitate the provision of Point to Point Passenger Transport Services in respect of each of those states, was reduced as a result of the operation of UberX in those states.

143. By reason of the matters in the preceding paragraph and the:

- (a) ~~conspiracy~~ conspiracies alleged in paragraphs 75A, ~~Error! Reference source not found.~~, and 77 to 78, the Victorian Industry Members, suffered loss and damage;
- (b) ~~conspiracy~~ conspiracies alleged in paragraphs ~~88A, 0~~ 88A, 0 to 90, the New South Wales Industry Members, suffered loss and damage;
- (c) ~~conspiracy~~ conspiracies alleged in paragraphs 106A, ~~107, and 108 to 109~~, the Queensland Industry Members, suffered loss and damage; and
- (d) ~~conspiracy~~ conspiracies alleged in paragraphs 139A, ~~140, and 141 to 142~~, the Western Australian Industry Members, suffered loss and damage.

143A. By reason of:

- (a) the matters alleged in the preceding paragraph; and
- (b) the claim of an Industry Member being vested in, assigned, devolved or transferred to the Plaintiff and Derivative Group Member,

the Plaintiff and the Derivative Group Members are entitled to recover the loss and damage suffered by the Industry Member whose claim has been vested in, assigned, devolved or transferred to them, or whose claim they are entitled to bring.

### Particulars

1. Mr Salem suffered the loss of the equity value of the licence pleaded in paragraph 1(b). That loss is the value of a taxi licence in April 2014 (being approximately \$275,000 per licence), less the value, if any, as at 22 August 2017.
2. Mr Salem's monthly income from the assignment of the taxi-cab licence pleaded at paragraph 1(c) fell from \$2,650 as at 30 June 2013 to \$1,775 as at 30 June 2017.
3. Further particulars of Mr Salem's loss will be provided after the filing of expert evidence.
4. Particulars relating to the claims of the Derivative Group Members will be provided following the trial of common questions or otherwise as the Court may direct.

### PART G – COMMON QUESTIONS OF LAW OR FACT

144. The questions of law or fact common to the claims of the Plaintiff and each of the Derivative Group Members are:

- (a) whether the Uber Entities committed the acts and/or engaged in the conduct alleged in the Further Amended Statement of Claim;
- (b) whether the Uber Entities engaged in the strategy to compete with other Point to Point Passenger Transport Services and to recruit UberX Partners who did not satisfy the Compliance Requirements as alleged in the Further Amended Statement of Claim;
- (c) whether the UberX Partners, and/or the Uber Entities, committed the offences alleged in the Further Amended Statement of Claim;
- (d) whether the Uber Entities were complicit (howsoever described in each of the Australian States) in the commission of offences by the UberX Partners as alleged in the Further Amended Statement of Claim;
- (e) whether the Uber Entities entered into agreements or combinations as alleged in the Further Amended Statement of Claim;
- (f) whether the Uber Entities shared a common intention to injure the Industry Members as alleged in the Further Amended Statement of Claim;
- (g) whether the Uber Entities carried into effect the conspiracies as alleged in the Further Amended Statement of Claim; and

- (h) what are the principles for identifying and measuring losses suffered by Industry Members, the Plaintiff and Derivative Group Members as a result of the conspiracies alleged in the Further Amended Statement of Claim.

**AND THE PLAINTIFF CLAIMS on her own behalf and on behalf of the group members:**

- A. Declarations that the Uber Entities by conduct alleged in the Further Amended Statement of Claim committed the conspiracies alleged in the Further Amended Statement of Claim;
- B. Damages;
- C. Interest pursuant to statute; and
- D. Costs.

Dated: [19 June 2023](#)

*Maurice Blackburn Lawyers*

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**Maurice Blackburn Lawyers**  
**Lawyers for the Plaintiff**

~~The second further amended statement of claim was prepared by D Collins, M Szydzik, T Farhall and A Staker of Counsel. The further amendments to this pleading were prepared by M Szydzik, T Farhall and A Staker of Counsel. The third further amended statement of claim was prepared by M Szydzik, T Farhall and A Staker of Counsel. The further amendments to this pleading were prepared by P H Solomon, M Szydzik, T Farhall and A Staker of Counsel.~~

## Schedule A –

### Industry Members

1. For the purposes of the Victorian Industry Members:
  - (a) a ~~taxi-cab licence holder~~ Victorian Taxi Licence Holder was a person who or which held a taxi-cab licence as defined ~~at~~in s 86 of ~~that Act~~ the Victorian Transport Act;
  - (b) an ~~accredited taxi-cab operator~~ Victorian Taxi Operator was a person who or which held accreditation under Division 4 of Part VI of the Victorian Transport Act as a taxi-cab operator;
  - (c) an ~~accredited taxi-cab driver~~ Victorian Taxi Driver was a person accredited under Division ~~56~~56 of Part VI of the Victorian Transport Act to drive a taxi-cab as defined ~~at~~in s 86 of that Act;
  - (d) an ~~accredited taxi-cab network service operator~~ Victorian Network Service Provider was a person accredited under Division ~~54~~54 of Part VI of the Victorian Transport Act to provide a “taxi-cab network service”, as defined ~~at~~in s 130A of that Act;
  - (e) a ~~hire car licence holder~~ Victorian Hire Car Licence Holder was a person who or which held a hire car licence ~~under Division 4 of Part VI of the Victorian Transport Act and~~ as defined ~~at~~in s 86 of ~~that~~ the Victorian Transport Act ~~but which licence was not in respect of a vehicle that was a “Stretched Limousine Type Vehicle” as defined in:~~
    - (i) Schedule 1 to “Victorian hire cars – hire car age and type requirements”, published by the Victorian Taxi Services Commission and dated 9 December 2013 (the 2013 Hire Car Policy);
    - (ii) Schedule 1 to “Victorian hire cars – hire car age and type requirements”, published by the Victorian Taxi Services Commission and dated 30 June 2014 (the 2014 Hire Car Policy),and irrespective of the date on which the 2014 Hire Car Policy ceased to apply;
  - (f) a ~~hire car operator~~ Victorian Hire Car Operator was a person who ~~or which~~ operated a hire car, as defined ~~at~~in s 86 of the Victorian Transport Act ~~but which hire car was not a “Stretched Limousine Type Vehicle” as defined in:~~

(i) Schedule 1 to the 2013 Hire Car Policy;

(ii) Schedule 1 to the 2014 Hire Car Policy,

and irrespective of the date on which the 2014 Hire Car Policy ceased to apply; and

- (g) ~~an accredited hire car driver~~ Victorian Hire Car Driver was a person accredited under Division ~~46~~ of Part VI of the Victorian Transport Act to drive a hire car as defined ~~at in~~ s 86 of that Act but which hire car was not a "Stretched Limousine Type Vehicle" as defined in:

(i) Schedule 1 to the 2013 Hire Car Policy;

(ii) Schedule 1 to the 2014 Hire Car Policy,

and irrespective of the date on which the 2014 Hire Car Policy ceased to apply.

2. For the purposes of the New South Wales Industry Members:

- (a) a ~~taxi-cab licence holder~~ NSW Taxi Licence Holder was a person who or which held a licence for a taxi-cab as defined ~~at in~~ s 3 of the NSW Transport Act;
- (b) an ~~accredited taxi-cab operator~~ NSW Taxi Operator was a person who or which was an accredited taxi-cab operator as defined ~~at in~~ s 29A of the NSW Transport Act;
- (c) an ~~authorised taxi-cab driver~~ NSW Taxi Driver was a person who was an authorised taxi-cab driver as defined ~~at in~~ s 29A of the NSW Transport Act;
- (d) an ~~authorised taxi-cab network provider~~ NSW Taxi Network Provider was an authorised taxi-cab network provider as defined ~~at in~~ s 29A of the NSW Transport Act);
- (e) a ~~private hire vehicle licence holder~~ NSW Hire Car Licence Holder was a person who or which held a licence for a private hire vehicle, as defined ~~under in~~ s 3 of the NSW Transport Act, and which vehicle was a Category 1, Category 2 or Category 3 (convertible, coupe and sedan vehicles only) "unrestricted" Private Hire Vehicle", as defined in part A of the Schedule to the "Notice of Specifications and Criteria for Private Hire Vehicles" published in the New South Wales Government Gazette No 37 (28 March 2008) (page 2556);

- (f) ~~an accredited private hire vehicle operator~~ NSW Hire Car Operator was a person who or which was an accredited private hire vehicle operator, as defined ~~at~~in s 36A of NSW Transport Act, and who or which carried on a private hire vehicle service by means of one or more private hire vehicles that were Category 1, Category 2 or Category 3 (convertible, coupe and sedan vehicles only) “unrestricted’ Private Hire Vehicles”, as defined in part A of the Schedule to the “Notice of Specifications and Criteria for Private Hire Vehicles” published in the New South Wales Government Gazette No 37 (28 March 2008) (page 2556); and
- (g) ~~an authorised private hire vehicle driver~~ NSW Hire Car Driver was a person who was an authorised private hire vehicle driver, as defined ~~at~~in s 36A of the NSW Transport Act, and who was authorised to drive a private hire vehicle that was a Category 1, Category 2 or Category 3 (convertible, coupe and sedan vehicles only) “unrestricted’ Private Hire Vehicle”, as defined in part A of the Schedule to the “Notice of Specifications and Criteria for Private Hire Vehicles” published in the New South Wales Government Gazette No 37 (28 March 2008) (page 2556).

3. For the purposes of the Queensland Industry Members:

- (a) a ~~taxi service licence holder~~ Queensland Taxi Licence Holder was a person who or which:
- (i) held a taxi service licence as defined ~~under~~in s 69 of the Queensland Transport Act; or
  - (ii) owned a peak demand taxi permit as defined ~~under~~in s 80D of the Queensland Transport Act;
- (b) ~~an accredited taxi service operator~~ Queensland Taxi Operator was an accredited operator as defined in Schedule 3 to the Queensland Transport Act, accredited under Part 2 ~~of~~ Division 2 of the *Transport Operations (Passenger Transport) Regulation 2005* (Qld) (the **Queensland Transport Regulation**) to operate a “taxi service”, as defined in Schedule 3 to the Queensland Transport Act;
- (c) ~~an authorised taxi driver~~ Queensland Taxi Driver was a person who was an authorised driver as defined in Schedule 3 to the Queensland Transport Act, authorised under Part 3 of the Queensland Transport Regulation to drive a taxi as defined in Schedule 3 to the Queensland Transport Act;

- (d) a ~~taxi service administrator~~ Queensland Taxi Administrator was a person who or which administered a taxi service within the meaning of Part 3 of Chapter 6 of the Queensland Transport Act;
- (e) a ~~limousine service licence holder~~ Queensland Hire Car Licence Holder was a person who or which held a limousine service licence as defined ~~under~~ in s 82 of the Queensland Transport Act but which licence:
- (i) was not a “special purpose limousine service licence” as defined in Schedule 3 to the Queensland Transport Act; and
- (ii) did not require the limousine service to be provided by a “luxury motor vehicle” of the kind referred to in r 105(b) of the Queensland Transport Regulation or which fell within Category D, E, F or G of Schedule 4 to the Queensland Transport Regulation;
- (f) an ~~accredited limousine service operator~~ Queensland Hire Car Operator was a person who or which was an accredited operator, as defined in Schedule 3 to the Queensland Transport Act, accredited under Part 2 ~~of Division 3~~ of the Queensland Transport Regulation to operate a “limousine service”, as defined in Schedule 3 to the Queensland Transport Act, but which service was not provided by:
- (i) a “special purpose limousine”, as defined in Schedule 3 to the Queensland Transport Act; or
- (ii) a “luxury motor vehicle” of the kind referred to in r 105(b) of the Queensland Transport Regulation or which fell within Category D, E, F or G of Schedule 4 to the Queensland Transport Regulation; and
- (g) an ~~authorised limousine driver~~ Queensland Hire Car Driver was a person who was an authorised driver, as defined in Schedule 3 to the Queensland Transport Act, authorised under Part 3 of the Queensland Transport Regulation to ~~drive~~ operate a “luxury motor vehicle” while providing a “limousine service”, as those terms are defined in Schedule 3 to the Queensland Transport Act, which luxury motor vehicle:
- (i) was not a luxury motor vehicle of the kind referred to in r 105(b) of the Queensland Transport Regulation; and
- (ii) did not fall within Category D, E, F or G of Schedule 4 to the Queensland Transport Regulation.



4. For the purposes of the Western Australian Industry Members:
- (a) a ~~taxi-plate holder~~ WA Taxi Plate Holder was a person who or which owned or leased one or more taxi plates as defined by-in s 3 of the Taxi Act (WA);
  - (aa) a ~~district taxi-car licence holder~~ WA District Taxi Licence Holder was a person who or which held a taxi-car licence under Part IIIB of the Transport Co-ordination Act (WA); and
  - (b) a ~~taxi operator~~ WA Taxi Operator was a person who or which:
    - (i) was an operator of a taxi within the meaning of s 3 of the Taxi Act (WA) because that person:
      - (1) drove the vehicle as a taxi; or
      - (2) was a ~~taxi-plate holder~~ WA Taxi Plate Holder referred to in 4(a) above; or
      - (3) caused another person to ~~driver-drive~~ a vehicle as a taxi by providing to the person the vehicle, under a lease or otherwise and taxi plates for use on or in the vehicle, under a ~~plates-plate~~ owner's lease or otherwise,

and where the vehicle being operated as a taxi used taxi plates;  
or
    - (ii) operated a taxi-car within the meaning of s 47Z and Part IIIB of the Transport Co-ordination Act (WA) because that person:
      - (1) drove a taxi-car; or
      - (2) permitted, caused or employed another person to drive that taxi-car;

and where the owner of the ~~taxi-car-taxi-car~~ was a ~~district taxi-car licence holder~~ WA District Taxi Licence Holder referred to in 4(aa) above.
  - (c) a ~~taxi-driver~~ WA Taxi Driver was a person who held a driver's licence endorsed with an extension T under r 12 of the *Road Traffic (Authorisation to Drive) Regulations 2008* (WA) or the *Road Traffic (Authorisation to Drive) Regulations 2014* (WA) and who drove one or more taxis as defined in s 3 of the Taxi Act (WA) and/or one or more taxi-cars as defined at-in s 47Z of the Transport Co-ordination Act (WA);

- (d) a ~~taxi dispatch service provider~~ WA Taxi Dispatch Service Provider was a ~~provider of person who or which provided~~ a taxi dispatch service as defined ~~by~~ in s 3 of the Taxi Act (WA) and was registered under Division 2 of Part 3 of the Taxi Act (WA);
- (e) an ~~omnibus licence holder~~ WA Hire Car Licence Holder was a person granted a licence under Division 2 of Part III of the Transport Co-ordination Act (WA) in respect of an omnibus ~~under Division 2 of Part III of the Transport Co-ordination Act (WA)~~, as defined in s 4 of the Transport Co-ordination Act (WA), which omnibus was a “Small Charter Vehicle” as defined in the “Small Charter Vehicle Licence Policy” published by the Western Australian Department of Transport (the WA SCV Policy) ~~and~~ but which omnibus did not fall within Group B or C of Schedule 1 to the WA SCV Policy “Small Charter Vehicle Licence Policy” published by the Western Australian Department of Transport;
- (f) an ~~omnibus operator~~ WA Hire Car Operator was a person who or which operated an omnibus within the meaning of ~~carried, offered or agreed to carry, or to be responsible for arranging the carriage of passengers or goods in an omnibus, as defined by~~ s 4 of the Transport Coordination Act (WA), in respect of which omnibus a licence had been granted for hire or for any consideration or in the course of or in connection with any trade or business, and who is licenced under Division 2 of Part III of the Transport Co-ordination Act (WA), which omnibus was a “Small Charter Vehicle” as defined in the WA SCV Policy and but which omnibus did not fall within Group B or C of Schedule 1 to the WA SCV Policy “Small Charter Vehicle Licence Policy” published by the Western Australian Department of Transport; and
- (g) an ~~omnibus driver~~ WA Hire Car Driver was a person who held a driver’s licence endorsed with an extension F under r 12 of the *Road Traffic (Authorisation to Drive) Regulations 2008* (WA) or the *Road Traffic (Authorisation to Drive) Regulations 2014* (WA) and who drove ~~one or more omnibuses~~ an omnibus as defined by s 4 of the Transport Co-ordination Act (WA) in respect of which a licence had been granted under Division 2 of Part III of the Transport Co-ordination Act (WA) and which omnibus was a “Small Charter Vehicle” as defined in the WA SCV Policy and but which omnibus did not fall within Group B or C of Schedule 1 to the WA SCV Policy “Small Charter Vehicle Licence Policy” published by the Western Australian Department of Transport.

## Schedule B –

### Compliance Requirements

1. As to the Vehicle Compliance Requirements the Plaintiff refers to:
  - (a) in the case of Victoria, the Victorian Transport Act s 139;
  - (b) in the case of New South Wales, the NSW Transport Act ss 32 and 39;
  - (c) in the case of Queensland, the Queensland Transport Act ss 70, 80D and 83; and
  - (d) in the case of Western Australia:
    - (i) the Taxi Act (WA) s 15; and
    - (ii) the Transport Co-ordination Act (WA) ss 20, 24, 47ZD.
2. As to the Driver Compliance Requirements the Plaintiff refers to:
  - (a) in the case of Victoria, the Victorian Transport Act s 166;
  - (b) in the case of New South Wales, the NSW Transport Act ss 33 and 40;
  - (c) in the case of Queensland, the Queensland Transport Act s 24; and
  - (d) in the case of Western Australia:
    - (i) the Road Traffic Act (WA) s 49;
    - (ii) the Transport Coordination Act (WA) s 47ZE.
    - (iii) the *Road Traffic (Authorisation to Drive) Regulations 2008* (WA) r 11-12;
    - (iv) the *Road Traffic (Authorisation to Drive) Regulations 2014* (WA) r 11-12.
3. In the case of the Operator Compliance Requirements, the Plaintiff refers to:
  - (a) in the case of Victoria, the Victorian Transport Act s 131;
  - (b) in the case of New South Wales, the NSW Transport Act ss 31 and 38;
  - (c) in the case of Queensland, the Queensland Transport Act s 12; and
  - (d) in the case of Western Australia:
    - (i) the Taxi Act (WA) ss 15; and
    - (ii) the Transport Co-ordination Act (WA) ss 20, 24, 47ZD.
4. In the case of the Network Services Compliance Requirements, the Plaintiff refers to:
  - (a) in the case of Victoria, the Victorian Transport Act s 131A;
  - (b) in the case of New South Wales, the NSW Transport Act s 34;

- (c) in the case of Queensland, the Queensland Transport Act ss 64-66; and
- (d) in the case of Western Australia, the Taxi Act (WA) ss 26.

As to paragraph 50(b) of the Further Amended Statement of Claim:

- 5. In Victoria, the Plaintiff refers to the requirements and restrictions contained in:
  - (a) the Victorian Transport Act:
    - (i) Part VI – Licensing of certain vehicles and driver accreditation; and
    - (ii) Part VII – Prosecutions, Enforcement and Penalties and Other Matters;
  - (b) *Transport (Buses, Taxi-Cabs and Other Commercial Passenger Vehicles) Regulations 2005* (Vic):
    - (i) Part 2 – Driver accreditation, photo cards, licences and records;
    - (ii) Part 3 – Vehicles;
    - (iii) Part 5 – Vehicle operations;
    - (iv) Part 5A – Taxi non-cash payment surcharges; and
    - (v) Part 5B – Trading in taxi-cab licences;
  - (c) *Transport (Buses, Taxi-Cabs and Other Commercial Passenger Vehicles) Regulations 2016* (Vic):
    - (i) Part 2 – Driver Accreditation, photo cards, licences and records;
    - (ii) Part 3 – Vehicles;
    - (iii) Part 4 – Livery, lamps, signs etc;
    - (iv) Part 5 – Vehicle operations;
    - (v) Part 6 – Taxi non-cash surcharges; and
    - (vi) Part 7 – Trading in taxi-cab licences;
  - (d) *Traffic Accident Act 1986* (Vic) s 109, 110;
  - (e) *Transport Accident Charges Order (No.1) 2014*; and
  - (f) *Transport Accident Charges Order (No.2) 2015*.

6. In New South Wales, the Plaintiff refers to the requirements and restrictions contained in:

- (a) the NSW Transport Act:
  - (i) Part 4 – Taxi-cabs;
  - (ii) Part 4A – Private hire vehicles; and
  - (iii) Part 4B – Taxi-cabs and private hire vehicles: transfer tax;
- (b) *Passenger Transport Regulation 2007* (NSW):
  - (i) Part 1 - Preliminary;
  - (ii) Part 2 – Accreditation to carry on public passenger services;
  - (iii) Part 3 – Authorities for drivers of public passenger vehicles;
  - (iv) Part 4 – General obligations of drivers of public passenger vehicles;
  - (v) Part 8 – Special provisions relating to taxi-cabs; and
  - (vi) Part 9 – Special provisions relating to private hire vehicles;
- (c) *Passenger Transport Act 2014* (NSW) s 125;
- (d) *Motor Accidents Compensation Act 1999* (NSW) s 8, 24; and
- (e) *Motor Accident Premiums Determination Guidelines*.

7. In Queensland, the Plaintiff refers to the requirements and restrictions contained in:

- (a) the Queensland Transport Act:
  - (i) Chapter 3 – Operator accreditation;
  - (ii) Chapter 4 – Driver authorisation;
  - (iii) Chapter 4A – Taxi service bailment agreements;
  - (iv) Chapter 5 – Market entry restrictions;
  - (v) Chapter 6, Part 3 – Administration of taxi services;
  - (vi) Chapter 7 – Taxi service licences;
  - (vii) Chapter 7A – Peak demand taxi permits;
  - (viii) Chapter 8 – Limousine service licences; and
  - (ix) Chapter 9 – Standards;
- (b) *Transport Operations (Passenger Transport) Regulation 2005* (Qld):
  - (i) Part 2 – Operator accreditation;
  - (ii) Part 3 – Driver authorisation;

- (iii) Part 4 – Market entry restrictions;
  - (iv) Part 5 – Service contracts (s 50);
  - (v) Part 6 – Taxi services provided under a taxi service licence;
  - (vi) Part 7 – Limousine services;
  - (vii) Part 8 – Obligations of operators;
  - (viii) Part 9 – Rights and obligations of passengers and drivers; and
  - (ix) Part 11 – General;
- (c) *Motor Accident Insurance Act 1994* (Qld) ss 20, 25; and
  - (d) *Motor Accident Insurance Regulation 2004* (Qld) ss 4, 9.

8. In Western Australia, the Plaintiff refers to the requirements and restrictions contained in:

- (a) the *Taxi Act* (WA), Part 3 – Operation of taxis;
- (b) the *Taxi Regulations 1995* (WA), r 7-8;
- (c) the *Transport Co-ordination Act* (WA):
  - (i) Part III – Licences;
  - (ii) Part III B – Taxi-cars in country districts;
  - (iii) Part IV – Miscellaneous;
- (d) the *Road Traffic Act* (WA):
  - (i) Part III – Licensing of vehicles;
  - (ii) Part IV A – Authorisation to drive;
- (e) *Road Traffic (Authorisation to Drive) Act 2008* (WA):
  - (i) Part II – Authorisation to drive;
- (f) *Road Traffic (Authorisation to Drive) Regulations 2008* (WA):
  - (i) Part 2 – Driver licensing;
- (g) *Road Traffic (Authorisation to Drive) Regulations 2014* (WA):
  - (i) Part 2 – Driver licensing;
- (h) *Road Traffic (Vehicles) Act 2012* (WA) ss 5, 7;
- (i) *Motor Vehicle (Third Party Insurance) Act 1943* (WA) ss 3T, 4; and
- (j) *Motor Vehicle (Third Party Insurance) Regulations 2009* (WA) ss 4, 8.

**Schedule C –**

**Glossary of Defined Terms**

<b>Term</b>	<b>Definition</b>	<b>Paragraph</b>
<a href="#"><u>2013 Hire Car Policy</u></a>	<a href="#"><u>“Victorian hire cars – hire car age and type requirements”, published by the Victorian Taxi Services Commission and dated 9 December 2013.</u></a>	<a href="#"><u>Schedule A(1(e)(i))</u></a>
<a href="#"><u>2014 Hire Car Policy</u></a>	<a href="#"><u>“Victorian hire cars – hire car age and type requirements”, published by the Victorian Taxi Services Commission and dated 30 June 2014.</u></a>	<a href="#"><u>Schedule A(1(e)(ii))</u></a>
<b>Architecture</b>	The technical architecture which supported the Uber app and Uber Partner app and was comprised of the computer hardware and software required for the support and operation of the Uber app and Uber Partner app including servers, computer programs (applications) and databases.	[15(a)]
<b>Australian States</b>	Victoria, New South Wales, Queensland and Western Australia.	[23(b)]
<b>Claim Period</b>	The Victorian Claim Period, New South Wales Claim Period, Queensland Claim Period and Western Australian Claim Period.	[2(d)]
<b>Compliance Requirements</b>	The regulatory requirements and the barriers to entry and ongoing compliance requirements in relation to Point to Point Passenger Transport Services in each of the Australian States.	[50]
<b>Derivative Group Members</b>	All persons who or which as at the date this Further Amended Statement of Claim was filed:  (i) have had vested in, assigned, devolved or transferred to them the claim for a tort alleged in the pleading of a Victorian Industry Member, New South Wales Industry Member, Queensland Industry Member or Western Australian Industry Member, as alleged in subparagraphs 2A(a) to (c); and/or  (ii) is the beneficiary of a trust who is entitled to bring a claim for a tort alleged in the pleading in the circumstances alleged in subparagraph 2A(d)	[2B]
<b>Driver Compliance Requirements</b>	The regulations in relation to the persons who could lawfully be engaged in driving vehicles in the provision of Point to Point Passenger Transport Services in each of the Australian States.	[50(a)(ii)]

<b>Term</b>	<b>Definition</b>	<b>Paragraph</b>
<b>Evasion Tools</b>	Software tools that enable users of the tool to, among other things, identify and deny service to certain Riders	[66]
<b>Fare</b>	The amount charged for each UberX trip.	[47]
<b>Fine Affidavit</b>	The affidavit of Brian Colin Fine affirmed 15 October 2015 filed in the matter of <i>Uber B. V. v CoT</i> .	[38(c)], particular 2(b)
<b>GPS</b>	Global positioning system.	[46(b)]
<b>Industry Members</b>	The Victorian Industry Members, New South Wales Industry Members, Queensland Industry Members and Western Australian Industry Members.	[2]
<b>Jackson Affidavit</b>	The affidavit of Craig Walther Jackson sworn 31 July 2015 filed in the matter of <i>Uber B. V. v CoT</i> .	[15(b)], particular 2
<b>Minimum Vehicle Requirements</b>	<p>The minimum vehicle standards for vehicles used to provide UberX, that such vehicles, or to the effect that, such vehicles:</p> <ul style="list-style-type: none"> <li>(i) were to be registered in the relevant State or Territory;</li> <li>(j) were to be in good condition;</li> <li>(k) were not to be more than 10 years old;</li> <li>(l) were to have four doors;</li> <li>(m) could not be taxis (howsoever called in each State or Territory) or have commercial branding;</li> <li>(n) could not be vehicles previously used as taxis (howsoever called in each State or Territory); and</li> <li>(o) could not be utility vehicles, buses, vans or vehicles with more than eight seats.</li> </ul>	[30]
<b><i>Martin v Nalder</i></b>	<i>Martin v Nalder</i> [2016] WASC 138	[27(c)], particular 1(n)
<b>Network Services Compliance Requirements</b>	The regulatory requirements in relation to the lawful dispatch of vehicles providing taxi services (howsoever called) in the provision of Point to Point Passenger Transport Services in each of the Australian States.	[50(a)(iv)]
<b>New South Wales Claim Period</b>	The period 7 April 2014 to 18 December 2015.	[2(b)]



<b>Term</b>	<b>Definition</b>	<b>Paragraph</b>
<b>New South Wales Industry Members</b>	The New South Wales Taxi Industry Members and the New South Wales Hire Car Industry Members as defined in Item 2 of Schedule A to this <a href="#">Fourth</a> Further Amended Statement of Claim.	[2(b)], Schedule A(2)
<b>New South Wales Hire Car Industry Members</b>	A private hire vehicle licence holder; accredited private hire vehicle operator; or an authorised private hire vehicle driver as defined in Item 2 of Schedule A to this <a href="#">Fourth</a> Further Amended Statement of Claim.	[2(b)]
<b>New South Wales Taxi Industry Members</b>	A taxi-cab licence holder; an accredited taxi-cab operator; an authorised taxi-cab driver; or an authorised taxi-cab network provider as defined in Item 2 of Schedule A to this <a href="#">Fourth</a> Further Amended Statement of Claim.	[2(b)]
<b><a href="#">NSW Hire Car Driver</a></b>	<a href="#">An authorised private hire vehicle driver as defined in item 2 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	<a href="#">[2(b)(vii)]</a>
<b><a href="#">NSW Hire Car Licence Holder</a></b>	<a href="#">A private hire vehicle licence holder as defined in item 2 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	<a href="#">[2(b)(v)]</a>
<b><a href="#">NSW Hire Car Operator</a></b>	<a href="#">An accredited private hire vehicle operator as defined in item 2 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	<a href="#">[2(b)(vi)]</a>
<b><a href="#">NSW Taxi Driver</a></b>	<a href="#">An authorised taxi-cab driver as defined in item 2 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	<a href="#">[2(b)(iii)]</a>
<b><a href="#">NSW Taxi Licence Holder</a></b>	<a href="#">A holder of a licence for a taxi-cab as defined in item 2 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	<a href="#">[2(b)(i)]</a>
<b><a href="#">NSW Taxi Network Provider</a></b>	<a href="#">An authorised taxi-cab network provider as defined in item 2 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	<a href="#">[2(b)(iv)]</a>
<b><a href="#">NSW Taxi Operator</a></b>	<a href="#">An accredited taxi-cab operator as defined in item 2 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	<a href="#">[2(b)(ii)]</a>
<b>NSW Transport Act</b>	The <i>Passenger Transport Act 1990</i> (NSW).	[79]
<b>Operator Compliance Requirements</b>	The regulatory requirements in relation to the persons who could lawfully operate services in the provision of Point to Point Passenger Transport Services in each of the Australian States.	[50(a)(iii)]
<b>Point to Point Passenger Transport Service</b>	A form of passenger transport service in which the passenger determines the pickup time and location and the destination.	[12]

Term	Definition	Paragraph
<b>Queensland Claim Period</b>	The period 17 April 2014 to <del>9 June 2017</del> 5 September 2016.	[2(c)]
<b>Queensland Criminal Code</b>	The <i>Criminal Code Act 1899</i> (Qld).	[105]
<b>Queensland Industry Members</b>	The individuals as defined in Item 3 of Schedule A to this Further Amended Statement of Claim.	[2(c)], Schedule A(3)
<b><u>Queensland Hire Car Driver</u></b>	<u>An authorised limousine driver as defined in item 3 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(c)(vii)]</u>
<b>Queensland Hire Car Industry Members</b>	A limousine service licence holder; an accredited limousine service operator; or an authorised limousine driver as defined in Item 3 of Schedule A to this Further Amended Statement of Claim.	[2(c)]
<b><u>Queensland Hire Car Licence Holder</u></b>	<u>A limousine service licence holder as defined in item 3 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(c)(i)]</u>
<b><u>Queensland Hire Car Operator</u></b>	<u>An accredited limousine service operator as defined in item 3 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(c)(ii)]</u>
<b><u>Queensland Taxi Administrator</u></b>	<u>A taxi service administrator as defined in item 3 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(c)(iv)]</u>
<b><u>Queensland Taxi Driver</u></b>	<u>An authorised taxi driver as defined in item 3 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(c)(iii)]</u>
<b>Queensland Taxi Industry Members</b>	A taxi licence holder; an accredited taxi service operator; an authorised taxi driver; a taxi service administrator as defined in Item 3 of Schedule A to this <u>Fourth</u> Further Amended Statement of Claim.	[2(c)]
<b><u>Queensland Taxi Licence Holder</u></b>	<u>A taxi service licence holder as defined in item 3 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(c)(i)]</u>
<b><u>Queensland Taxi Operator</u></b>	<u>An accredited taxi service operator as defined in item 3 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(c)(ii)]</u>
<b>Queensland Transport Act</b>	The <i>Transport Operations (Passenger Transport) Act 1994</i> (Qld).	[91]
<b>Rasier Operations</b>	Rasier Operations B.V. (Chamber of Commerce number 59888261) or the Fifth Defendant.	[8]

<b>Term</b>	<b>Definition</b>	<b>Paragraph</b>
<b>Rasier Operations Contract</b>	A standard form agreement entered into by Rasier Operations and each UberX Partner in Australia, between about February 2014 to 20 December 2015, as in force from time to time.	[35]
<b>Rasier Pacific</b>	Rasier Pacific V.O.F. (Chamber of Commerce number 64788075) or the Sixth and Seventh Defendants.	[9]
<b>Rasier Pacific Contract</b>	A standard form agreement entered into by Rasier Pacific and each UberX Partner in Australia, between about 21 December 2015 and the end of the Claim Period, as in force from time to time.	[40]
<b>Regulatory Fines</b>	Fines (other than parking fines and traffic offence penalties).	[59(a)]
<b>Rider</b>	A person who has downloaded and is registered to use the Uber app.	[12]
<b>Rider Contract</b>	A standard form contract entered into by individual Riders with Uber B.V..	[21(a)(iii)]
<b>RMS</b>	The New South Wales Roads and Maritime Service.	[60]
<b>Road Traffic Act (WA)</b>	The <i>Road Traffic Act 1974</i> (WA).	[128]
<b>Service Fee</b>	A fee for use of the Uber Partner app by the Uber Partner which was calculated and deducted from the Fare.	[47(d)]
<b>Software</b>	The software in the Uber app and the Uber Partner app.	[14]
<b>Taxi Act (WA)</b>	The <i>Taxi Act 1994</i> (WA).	[110]
<b>Transport Co-ordination Act (WA)</b>	The <i>Transport Co-ordination Act 1966</i> (WA).	[118]
<b>Uber Australia</b>	Uber Australia Pty Ltd (ACN 160 299 865) or the Fourth Defendant.	[7]
<b>Uber Business</b>	<p>A business established and operated by the Uber Group in a number of countries utilising the Software and Architecture to, relevantly:</p> <ul style="list-style-type: none"> <li>(a) enable Riders to use the Uber app to request Point to Point Passenger Transportation services;</li> <li>(b) enable Uber Partners using the Uber Partner App to receive, accept and fulfil such requests; and</li> <li>(c) facilitate payment by the Rider to the Uber Partner of a fare for the provision of those services;</li> </ul> <p>in consideration for a fee paid by the Uber Partner out of the fare charged for the provision of the Point to Point Passenger Transportation Services.</p>	[16]

<b>Term</b>	<b>Definition</b>	<b>Paragraph</b>
<b>Uber B.V.</b>	Uber B.V. (Chamber of Commerce number 56317441) or the Third Defendant.	[6]
<b><i>Uber B.V. v CoT</i></b>	<i>Uber B.V. v The Commissioner of Taxation of the Commonwealth of Australia</i> (2017) 247 FCR 462	[15(b)], particular 2
<b>Uber Entities</b>	Uber Inc., Uber Holding, Uber B.V., Uber Australia, Rasier Operations and from about 21 December 2015 Rasier Pacific.	[28]
<b>Uber Group</b>	A group of more than 110 entities, including the Second to Seventh Defendants, for which Uber Inc. was the parent, or ultimate holding, company.	[10]
<b>Uber Holding</b>	Uber International Holding B.V. (Chamber of Commerce number 55976255) or the Second Defendant.	[5]
<b>Uber Inc</b>	Uber Technologies Inc. (File Number 4849283) or the First Defendant.	[4]
<b>Uber Inc Prospectus</b>	Uber Inc's Form S-1 Registration Statement filed with the United States Securities and Exchange Commission on 11 April 2019.	[28], particular 2(c)
<b>Uber Partner</b>	A person who has downloaded the Uber Partner App onto a smartphone and entered into an agreement permitting the use of the Uber Partner app to receive requests for the provision of Point to Point Passenger Transport Services, and to accept such requests and provide such services.	[13]
<b>UberX Partners</b>	Uber Partners who provided UberX.	[25(c)(iv)]
<b>UberX</b>	A ride sharing service that was marketed as a "low cost" Point to Point Passenger Transport Service; was available to Riders through the Uber app and to Uber Partners through the Uber Partner app; and was a service: <ul style="list-style-type: none"> <li>(p) through which Riders could request Point to Point Passenger Transport Services;</li> <li>(q) to be provided by an Uber Partner as soon as possible after the request was made (subject to availability);</li> <li>(r) whereby requests for such services could not be made in advance of the time that they were required; and</li> <li>(s) through which was provided using motor vehicles which were typically owned by the UberX Partner.</li> </ul>	[24]-[25]

Term	Definition	Paragraph
<b>ULL v TfL</b>	<i>Uber London Limited v Transport for London</i> , Westminster Magistrates Court.	[18(b)] particular 1(a)
<b>Vehicle Compliance Requirements</b>	The regulatory requirements in relation to the vehicles that could lawfully be used in the provision of Point to Point Passenger Transport Services in each of the Australian States.	[50(a)(i)]
<b>Victorian Claim Period</b>	The period 1 April 2014 to 23 August 2017.	[2(a)]
<b>Victorian Industry Members</b>	The Victorian Taxi Industry Members and the Victorian Hire Car Industry Members as defined in Item 1 of Schedule A to this Further Amended Statement of Claim.	[2(a)], Schedule A(1)
<b><u>Victorian Hire Car Driver</u></b>	<a href="#">An accredited hire car driver as defined in item 1 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	[2(a)(vii)]
<b>Victorian Hire Car Industry Members</b>	A hire car licence holder; a hire car operator; or an accredited hire car driver as defined in Item 1 of Schedule A to this Further Amended Statement of Claim.	[2(a)]
<b><u>Victorian Hire Car Licence Holder</u></b>	<a href="#">A hire car licence holder as defined in item 1 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	[2(a)(v)]
<b><u>Victorian Hire Car Operator</u></b>	<a href="#">A hire car operator as defined in item 1 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	[2(a)(vi)]
<b><u>Victorian Network Service Provider</u></b>	<a href="#">An accredited taxi-cab network service operator as defined in item 1 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	[2(a)(iv)]
<b><u>Victorian Taxi Driver</u></b>	<a href="#">An accredited taxi-cab driver as defined in item 1 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	[2(a)(iii)]
<b>Victorian Taxi Industry Members</b>	A taxi-cab licence holder; an accredited taxi-cab operator; an accredited taxi-cab driver; or an accredited taxi-cab network service operator as defined in Item 1 of Schedule A to this Further Amended Statement of Claim.	[2(a)]
<b><u>Victorian Taxi Licence Holder</u></b>	<a href="#">A taxi-cab licence holder as defined in item 1 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	[2(a)(i)]
<b><u>Victorian Taxi Operator</u></b>	<a href="#">An accredited taxi-cab operator as defined in item 1 of Schedule A to this Fourth Further Amended Statement of Claim.</a>	[2(a)(ii)]

<b>Term</b>	<b>Definition</b>	<b>Paragraph</b>
<b>Victorian Transport Act</b>	The <i>Transport (Compliance and Miscellaneous) Act 1983</i> (Vic).	[1(a)(i)]
<b><u>WA District Taxi Licence Holder</u></b>	<u>A district taxi-car licence holder as defined in item 4 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(d)(v)]</u>
<b><u>WA Hire Car Driver</u></b>	<u>An omnibus driver as defined in item 4 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(d)(vii)]</u>
<b><u>WA Hire Car Licence Holder</u></b>	<u>An omnibus licence holder as defined in item 4 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(d)(v)]</u>
<b><u>WA Hire Car Operator</u></b>	<u>An omnibus operator as defined in item 4 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(d)(vi)]</u>
<b><u>WA SCV Policy</u></b>	<u>The <i>Small Charter Vehicle Licence Policy</i> as published by the Western Australian Department of Transport</u>	<u>Schedule A(4)(e)</u>
<b><u>WA Taxi Dispatch Service Provider</u></b>	<u>A taxi dispatch service provider as defined in item 4 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(d)(iv)]</u>
<b><u>WA Taxi Driver</u></b>	<u>A taxi driver as defined in item 4 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(d)(iii)]</u>
<b><u>WA Taxi Operator</u></b>	<u>A taxi operator as defined in item 4 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(d)(ii)]</u>
<b><u>WA Taxi Plate Holder</u></b>	<u>A taxi plate holder as defined in item 4 of Schedule A to this Fourth Further Amended Statement of Claim.</u>	<u>[2(d)(i)]</u>
<b>Western Australian Claim Period</b>	The period 10 October 2014 to 4 July 2016.	[2(d)]
<b>West Australian Criminal Code</b>	The <i>Criminal Code Act Compilation Act 1913</i> (WA).	[138]
<b>Western Australian Industry Members</b>	The Western Australian Taxi Industry Members and the Western Australian Hire Car Industry members as defined in Item 4 of Schedule A to this Further Amended Statement of Claim.	[2(d)], Schedule A(4)
<b>Western Australian Hire Car Industry Members</b>	An omnibus licence holder; an omnibus operator; or an omnibus driver as defined in Item 4 of Schedule A to this Further amended Statement of Claim.	[2(d)]
<b>Western Australian Taxi Industry Members</b>	A taxi licence holder; a taxi operator; a taxi driver; or a taxi dispatch service provider as defined in Item 4 of Schedule A to this Further Amended Statement of Claim.	[2(d)]

**SCHEDULE OF PARTIES**

**JAMAL SALEM**

**Plaintiff**

**- and -**

**UBER TECHNOLOGIES INCORPORATED (4849283)**

**First Defendant**

**UBER INTERNATIONAL HOLDING B.V. (RSIN 851 929 357)**

**Second Defendant**

**UBER B.V. (RSIN 852 071 589)**

**Third Defendant**

**UBER AUSTRALIA PTY LTD (ACN 160 299 865)**

**Fourth Defendant**

**RASIER OPERATIONS B.V. (RSIN 853 682 318)**

**Fifth Defendant**

**UBER PACIFIC HOLDINGS B.V. (RSIN 855 779 330)**

**Sixth Defendant**

**UBER PACIFIC HOLDINGS PTY LTD (ACN 609 590 463)**

**Seventh Defendant**