Submission
No 47

INQUIRY INTO NSW TAXI INDUSTRY

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The Director
Select Committee on the NSW Taxi Industry
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Dear Sir,

The following is my submission to the NSW Taxi Industry Inquiry by the Legislative Council of the Parliament of NSW.

I am a bailee taxi cab driver of 30 years continuous experience in the Sydney workplace jurisdiction.

I trust that the Inquiry finds this submission of use.

Yours Sincerely,

Michael Hatrick

NB. A hard copy has also been posted today.

SUBMISSION

An archaic taxi industry

Every cabbie of any length of time in the Sydney taxi industry has a number of anecdotes that in their telling are not remarkable in themselves but illustrate how an unexpected poignancy that taking on kitchen table variety reflection, lends to things deducted through unmistakable observation and the conclusion that arises.

Take for instance : One of the first things that I noticed 30 years ago when I started out driving Sydney taxi cabs, was how Japanese customers would, ever the polite people they are, pay the fare, bid the driver an utterance of gratitude for the journey just completed, then alight from the cab and without closing the cab door that they had just alighted from, walk off into the world. Every cabbie in those days of high Nippon tourist numbers knew 'Japanese seldom close the cab door'. Even back in the 1970's this was the practice. Most cabbies also knew that the reason for this was that in Japan "hey the doors are remotely closed by the driver" as the passenger walks off. Sydney cabs in those days were and still are by the many accounts that I hear : of such sub standard that they wouldn't even pass roadworthiness examination in Japan. Now I am noticing Chinese nationals......
The relevance of such things goes not so much to such matters as motor vehicle standards of repair but how archaic the NSW taxi cab industry has become in the light of most facets that may be held to scrutiny. Another : many a British passenger will express surprise on learning that there is not a levy added to the fare on public holidays here in NSW.
Well what drives this state of affairs ? All too often drivers and industry stakeholders just shrug shoulders and walk away from the situation without even acknowledging a problem, let alone that a manifest systemic debacle exists.

How can these corruptions arise out of a Western democracy, especially so in NSW where even industrial law through the NSW IR Act has special mention of the players (bailors and bailees) of the industry ?
It seems that through the crucible of this jurisdiction having evolved from a penal regime dedicated to the forced labour and unjust imprisonment of folk, from time to time as NSW has evolved individuals and institutions have arisen that have drawn their power, their ability to manufacture advantage not from this or that edge or competitive advantage but from reliance on vestiges of corruption that hark back to more shambolic times.

Conversely at intervals in time when the people have had enough of this they exercise the tools of democracy in such a way that in their articulation produce people coming to power of high office that managed to substantially erode the ability of the poison of corruption to manifest again, at least for a short time.

Bailee driver exploitation

Take for instance how the 1940 Justice Edwards report (1) dealt with bailee driver exploitation over the duration of the Great depression and how, a key plank of that report was dedicated to protecting bailee drivers by awarding them status as deemed- employees so that they had certain protections in law from the unscrupulous practices that were evident in the industry. The Industrial Arbitration Act of the day was amended. A generation in time later the same problems came back to visit the NSW community and thus the body politic of that day instituted the Justice Beattie Report (2) and after a year and a half of hearings matters that Justice Beattie canvassed and ruled on were further nailed down so as to protect the basic industrial protections of bailee drivers – this time key points were the scrapping of deeming bailee drivers as employees but to have bailee drivers entitled to various protections by virtue of nothing other than legislation.
Other protections were that bailee drivers not be forced into paying maintenance costs and other running costs such as fuel. And that is how things have stood until this day. There have been no more Inquiries into the industrial law above the legal ranking of Beattie or Edwards.

Yet in 1984 a codified documentation setting out the face value of bailee rights Taxi Industry [Contract Drivers] Contract Determination 1984, (TI [CD]CD1984) was brought in after much legal sparring culminating in the passing away of a union leader, that led to a key plank of what Beattie tried to forbid. Most significantly the practice of renting in a bailment. Several years later the liberal government of the Hon Nick Greiner codified the treatment bailee drivers could expect from the industrial relations in the Ind. Rel. Act 1991 (that Act was the first redrawing of the Act since 1938.

(1)Taxi-cab Industry in the State of NSW. Report of the Industrial Commission of NSW on Reference from the Hon. The Minister for Labour and Industry, 1940.

(2) "REPORT to the HONOURABLE E.A. WILLIS, B.A., MLA, MINISTER FOR LABOUR AND INDUSTRY on SECTION 88E of the INDUSTRIAL ARBITRATION ACT, 1940 – 1968 in so far as it concerns DRIVERS OF TAXICABS, PRIVATE HIRE CARS, MOTOR OMNIBUSES, PUBLIC MOTOR VEHICLES and LORRY OWNER-DRIVERS" conducted as the Commission in Court Session by Justice Sir Alexander Beattie, Mr Justice Sheehy and Mr Justice Sheldon.

In it bailee drivers were accorded protections not hitherto enjoyed that were granted other workers – years before - under the concept of Victimisation (carrying criminal sanction). After hearing evidence of much seriousness a Commission of Inquiry chaired by Mrs Hilder Rolfe under the Trades Practices Commission convinced the Greiner government to amend the newly conceived Ind. Rel. Act 1991 to afford such protection from Victimisation. At no juncture in the history of the 1991 Act did the Act provide for an ambiguity that would allow the bald faced contradistinction that existed since 1984 when the apparatus of an Act of Parliament, a legally registered class of contract TI [CD]CD1984 provided utility to one party to it, to subject another party to it, to a regime of commerce forbidden by the Justice Beattie Report. No, that was to come later. In fact shortly thereafter. In 1996 the whole 1991 Act was replaced. In Section 312(1)(f) the Hon. Bob Carr Labor government inserted two words "other conditions", to king-hit bailee drivers with a mailed fist that only a well provisioned with gratuities advocate of workers rights could expect.

Nevertheless bailee drivers still had some consolations to fall back on. Oversights, anomalies that arise from the nefarious meddling with justice, the unprincipled make in trying simultaneously in attempting to serve the devil and protect their professional integrity considerations. Gall always has its range limitations. When striking the final crystallisation of the TI [CD]CD1984 little did the imagination of folk involved in putting it together extend out to wrapping up, in of course legal nicety, a compulsion for drivers to pay for the fuel. After all it was self evident in the tenor of the base document TI [CD]CD1984 that allowed for, as a minimum condition 'of' worker engagement (Cl .1) and 'terminate bailment' (Cl .10) – base TI [CD]CD1984 – the manifestly unjust practices of wilful sacking for no reason and no notice. With such Baygon you can rectify anything. Officers of the law know that there are areas of law that are thin ice. Making bailee taxi drivers in such a jurisdiction pay for fuel, the significant running cost of a taxi cab, flying in the face of a convening of the NSW Industrial Relations Commission at full bench sitting (Justice Beattie Report) that has ruled against just this gives rise to a belief that if this parliamentary Inquiry has any meaningful purpose then such scope as to rectify the anomalies, not just the fuel anomaly but the continuing anomaly running concomitant to it (Method 2) be meaningfully addressed. It is a major factor in the impoverishment of a significant group of the NSW community namely the bailee drivers.

From this impoverishment come all the problems of low income that people subject to operating public passenger vehicles generate beyond their debauched immediate welfare. A big wheel in today's Sydney taxi industry reportedly triumphed 'give me taxi drivers and I'll give you monkeys'. He would have had good reason to say it. It was the gloat of the triumphant.

When the taxi catching public can't get drivers who know where they are going – look no further than the high labour turnover of the industry and speculate why. When it is impossible to get a cab at the farcical changeover times, think about all the single owner-driver cabs sitting around the suburbs idle because many opt not to have bailee labour. Why ?

Because the insurer costs owing to accident rates reflective of a high percentage of drivers fatigued to a dangerous hourly level by way of an industrial compulsion to work for peanuts gives rise to those cabs not being driven other than in the periods of time that the operators of those cabs are working. From this impoverishment flow not only issues relating to the welfare of the drivers and their families, likewise the passenger and other road users are all either direct or indirect victims of an industrial contract that offers very limited protection but also a serious issue of social justice.

Taxi Depots and ethnic drivers

For over two decades two very significant trends have emerged in the industry within the Sydney area. One is the emergence of depots of taxis being operated for virtually syndicates of investors (often absent overseas) as identifiable brand name entities and the other trend is for there to be a huge representation of bailee drivers coming from the African, South Asia, Sub Continent and Middle East. The practices of labour utilisation in many of these depots is Dickensian. Much has been reported in the media of late relating to the maltreatment of workers in the wider community. It is regarded by many in the media not least by the Indian media as an Australian social justice issue of great dimension. There is a dismissiveness in the Australian community that if they are only slopes or wogs – " who cares".

Driver fatigue

Every holiday period we are deluged with media messages about the need to take breaks while driving greater than normal distances yet here in the taxi industry we have a document TI[CD]CD1984 that fosters the notion of driving to dangerous levels of fatigue in order to live. A document that doesn't just naively stumble into some unforeseen side effect of arriving at a common good. No, it is the by product of a series of deliberately wielded machinations in order that an elite of rich and powerful rule over an industry whose chief asset the taxi license was and still does remain public property. All the more reason to have this state of affairs rectified by a government instrument.

Many years ago I became involved in a court action challenging the ability that the TI [CD]CD1984 gave to bailors to arbitrarily sack bailees. The Transport Workers Union represented me. Commissioner McKenna of the NSW IRC subsequently passed judgement in a Decision IRC 734 1993 that I thought at the time would mark a real turning point in how the Industrial Relations Commission would rectify matters. It turned out to be the last time McKenna CC would hear a taxi matter.
The attitude of one of the Commissioners toward his /her responsibilities can best be described as appalling. 'Bleachers' at New York tennis tournaments are one thing....the person that I refer to allegedly used the term to refer to those bailee taxi drivers present at the commission that day albeit this was not spoken in session.

Taxi Inspections

A major area of driver exploitation involves the compulsion of many bailee drivers to drive vehicles of such substandard roadworthiness that in many other situations their lethality would give rise to the word 'murderous'. The choice is a stark one. Drive it or go home. The compulsion to replace or decommission a cab exists. Many, in fact nearly all depot vehicles, start life second hand. As these vehicles approach use-by date they get very few expensive repairs and are death traps. In the 1990's I participated in an Inquiry run by a Ms Anne Matheson. The Inquiry was at the behest of the Carr Labor government if I remember rightly. Recently I tried through Freedom of Information legislation to have the report from the Inquiry released. I tried two FoI actions directly to the Ministry of Transport. I was treated disdainfully. I eventually engaged the NSW Ombudsman. No luck there. In the end I gave up. I wonder – is the report listed as a cabinet-in-confidence category ? Many taxis, particularly in depot operated situations are of sub standard because the drivers get little or no downtime. Downtime is demurrage paid by the bailor to the bailee as compensation for vehicle maintenance time. Please read the clause relating to downtime, Clause 23(a)(ii), where the driver is stung mercilessly by the TI [CD]CD1984. One needs a legal mind to grasp its literal meaning. It is clear that if interpreted correctly the bailee would be most fairly remunerated under the circumstances. Whether intentional or not, the upshot of the way most drivers interpret it is such that the thinking is that bailee drivers are only entitled to one component in assessing the downtime figure when in fact it is two components and the driver ends up fobbing the problematic often unroadworthy vehicle to the next shift. All too often the Authorised Inspection Stations pass the vehicles that I personally have experience in observing glaring instances of defects that would render the said vehicles unroadworthy.

The Anne Matheson Report was instituted to report on just this, Authorised Taxi Inspection Stations. For the reasons highlighted here, I submit :

1. ***that fatalities occurring involving taxi cab on road accidents be investigated as workplace deaths and not as they currently are, to wit on road accidents.***

Too often I as a workplace union delegate observe and hear of cabs being taken out with serious defects – often steering and brake faults. Brake faults are commonly in the form of bad suspension in tandem with ABS braking systems. If this is further in tandem with another problem such as a faulty windscreen demister, a fatigued driver, or blaring AM/FM (passenger rights – Ministry sticker on windscreen) and you have a taxi ride from hell. The full title of the Anne Matheson material is, I am informed : "Roy Morgan Report regarding Authorised Taxi Inspection Stations conducted by Anne Matheson".

Contract Determination manipulation

The Taxi Industry [Contract Drivers] Contract Determination 1984 as the name suggest should be a document principally concerned with the welfare of bailee drivers. From the time of its conception it was an attempt by certain parties to straight jacket bailee drivers in something totally at odds with what its Orwellian titled spirit sought to achieve. When TWU Secretary Ted McBeatty heralded the TWU's wish to achieve the noble goal of formulation of industrial rights, legally binding rights, a letter stating as much to the Taxi Industry Association was despatched. In it was a key plank : No other method of payment for the use of a taxi other than by commission of earnings. After all anything else would fly in the face of legal precedent. Almost at the outset counsel for the TIA put pressure on for a flat rental system to be included. Reading the transcripts of the 1083-84 case reveals much subterfuge. What was the 'average fare'. Too hard ? Never mind. Think of a figure – that'll do. Two Justices heard the case. One seems honourable. What we are left with is a document that is putty in the hands of the knavishly inclined.

Recently the Contract Determination was subject to some redrafting. Clause 3(c) is most illustrative of how things have drifted to favour those who are supposed to be that party that the Contract Determination purportedly seeks to protect bailees from. The wording is a clear reference to those on Method 1 of the document : that unless their takings are commensurate with what the bailor returns on Method 2 would be then grounds to sack come in. What else can it mean? This can and does lead to much anxiety. It is absolutely outrageous – Method 2 should by legal precedent not even be there.

Fuel costs – who pays?

This issue also goes to the only recourse a bailee driver has when trying to exercise his statutory right not to be encumbered with having to pay for the running cost of the vehicle. The law of bailment has roots in an era when the fuel was oats and fodder. Case law nailed down that the party to the bailment responsible for the costs associated with fuel and maintenance of the vehicle and animal drawing the vehicle. That party known in law as the bailor.

Despite this the NSW IRC saw fit in the mid 1990's to change the TI [CD]CD1984 to the preposterous end that the legal compulsion for bailees to be responsible for the fuel was given effect. I was materially effected by this damage to my income. I pointed out to all around me that responsibility for fuel did not translate to 'pay' for the fuel and so successfully continued to have the other party, the bailor, pay. In short time the TI [CD]CD1984 was amended again to give greater definition to this outrage.
However there was one recourse for me left open. To the credit of the NSW IRC in the immediate year or two following the abovementioned an order was made that there would be an opportunity for bailee drivers to re-elect as to what Method of the two choices of payment for the use of the taxicab. Method 1 (the 50% split of metered fare income) still necessitated that the bailor pay for the expenses of fuel and end of shift wash. Despite the elections being in most workplaces non events or at best in most places where they did occur, a sham, I made sure that at the time these elections occurred I had and took up the right to elect to work under Method 1 of the TI [CD]CD1984. That was in August 1997 and with the exception of a brief hiatus I have been working to Method 1 since.

At taxi depots across Sydney a common occurrence at change over time (when the day and night shifts change) there are verbal sometimes physical brawls over the non filling of fuel tanks. The fuel gauges often do not work an that just compounds the friction. When a LPG powered vehicle runs out of fuel a tow back to a LPG outlet is the only option. In many instances the cars run inefficiently with regard to fuel consumption. The bailor's responsibility. Does he care? Is he paying for the fuel?
And that brings me back to the recent re-drafting of the TI [CD]CD1984. What recourse does a bailee driver have to such a fundamental right as exemplified by the only option left open giving access to not having to pay fuel and wash costs when the TI [CD]CD1984 is so worded that Method 1 returns meet Method 2 returns. Returns obviously to the bailor *or so it would seem.*

Entitlements

To move on : *The issue of entitlements and the yearly convening of the IRC – so as to ratchet up the Method 2 rentals and other tabulated items.*

I have included the event of the annual convening of the IRC and the ratcheting up of rentals in one heading because the two belong together now like never before. Owing to the over supply in terms of such an abundance of cabs plying for the same given pool of available revenue, there has been a drift away from bailors charging amounts of money approaching the monetary ceiling limitations of the TI [CD]CD1984 for rental rates (of maximum pay-ins as the lingua franca of the industry has it).

The practice since circa 2000 has been for the NSW IRC to convene after the annual convening of the Independent Pricing and Regulatory Tribunal (IPART) has fixed the taxi meter rate (TMR) for 12 months. At the hearings of the NSW IRC consequent to this the Taxi Industry Association (TIA) almost always argues that the pay-ins should go up in line with the IPART determination – that is specific to the Operator /Driver split of the fare increase. The Transport Workers Union almost invariably argues that the monetary ceiling limitations – maximum pay-ins have a big degree of irrelevancy because no one on the bailor side of the fence can competitively charge those amounts anyway. Only once in the entire history of the TI [CD]CD1984 has an officer of the court namely Justice Liddy in Matter No 628 of 1986 raised the obvious and enquired of counsel before him as to :

His Honour : " What I am putting to you is how does the government fix say a higher rate for taxi hire without taking into account the wages to be paid to the drivers? "

What then do irrelevantly high maximum pay-ins achieve? Much. Bailee drivers have been so hammered over the years with assault to their workplace rights that they feel cowered by bailors who cite their right not to pay entitlements on the thrust of bailees not paying "maximum pay-ins". SMH journalist Linton Besser touched on this recently when he wrote of a bailor who even goes so far as to have the bailees at her large managed taxi cab depot sign agreements (not worth a legal cracker) renouncing right to entitlements on account of the pay-in ceilings issue. Imagine an employer telling a worker " I pay above the award therefore you don't get holiday or sick pay".

Result : Washed out shadows of people. Think penal system. Think rum colony.

Other glaring anomalies are too numerous to canvas in the time I have but let me mention two.

Superannuation

In the mid 1990's the TWU successfully applied to the NSW IRC for there to be a component itemised in the TI [CD]CD1984 for bailee superannuation.

The matter was then referred to IPART so that the appropriate measures could be enacted to accommodate superannuation in the TMR. No chance. After some years of the most perfidious duck and weave vide the annual IPART reports of that time on the issue of superannuation, IPART now glosses the whole issue of superannuation in a fog that looks like bailees now get it indirectly and sotto voce the message is if bailees are too dumb to take out their own superannuation too bad. It's a pity that the Australian Taxation Office is not active in this area.

While on IPART, I have on two occasions availed IPART of my (Method 1) verifiable records of earnings and my taxation returns. The staff that I have encountered have been most professional and welcoming. On both occasions it was obvious to me that my records were irrelevant to them as the final reports for those occasions attest. I can only conclude that public servants further up quash any item that their canny radar tells them 'does not suit McQuarie St'.

Fare evasion

The other item that I wish to canvas is the problem of taxi fare evasion. All too often this occurs with regard to fares evaded involving long distances. Very often these evaded fares involve fares originating in a populated hub. At such locations the availability of police assistance is higher than at the end of the journey. At present the driver is only entitled to request proof of ability to pay. Very often the driver is of ethnic origin and the passenger is some stripe of racist white Australian and the situation is delicate. The driver is fatigued, his guard was down, he let types into his cab that he ordinarily would not.

I propose :

2. ***that the Passenger Transport Act be amended to permit a driver to terminate a hiring on the basis that the passenger has not come across (unprompted by the driver) of a sum 75% of the estimated fare. In such event that the police are called (remembering that this is at the journey's outset) then the police can facilitate matters as they see fit.***

I also propose :

3. ***that fare evasion be restored to the classification of criminal offense.***

4. ***That the NSW Parliament enact an Judicial Inquiry consistent with Edward and Beattie into the taxi cab industry with regard to the industrial legal rights.***

5. ***That there be a levy of $5.00 per passenger during public holidays.***