

INQUIRY INTO NSW TAXI INDUSTRY

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**Taxi Industry Council of Australia's
Submission to the
New South Wales Parliamentary
Inquiry into the Taxi Industry**

The Director
Select Committee on the NSW Taxi Industry
Parliament House
Macquarie St
Sydney NSW 2000

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The New South Wales Parliamentary
Inquiry into the Taxi Industry**

The Taxi Industry Council of Australia, welcomes this well overdue inquiry into the Taxi Industry, and congratulates the Parliament of New South Wales for having the foresight in commissioning it with the powers, and detailed scope as outlined in the terms of reference.

Let me state from the outset that there is **no** quick fix approach to resolving the issues raised in the terms of reference that leads to NSW or any other State providing the best possible taxi service in NSW specifically, or Australia in general.

The short solution is for the States to hand all powers pertaining to Taxicabs to the Federal Government, and then to de-regulate the Industry, or to flood the market with taxi licences (Plates), so as to devalue those in the market place now.

As a respected authority on policies, practices and procedures, pertaining to the Taxi Industry, I have been asked how much a taxi licence is worth, my honest answer is \$1.

I have formed my opinion based on legal precedent, the way the industry is operated and controlled by a cartel, who claim to represent the industry, namely the NSW Taxi Council, Controlled Radio Depots (Networks), and Owners (Plate-holders), Assignees (Plate-Operators), and the way they exploit their Drivers.

There are like-minded organisations in every state, and Federal Associations.

How Much is a Taxicab Licence Worth.

This is determined by the market place, the current licence plate in NSW is sold and transferred for \$300,000 – 500,000 depending

Legal Precedent.

In 1998 the High Court of Australia decided in Commissioner of Taxation v Murry, that there was **no goodwill** in a taxi plate.

A taxi licence is not like a corner milk bar, where you buy goods and chattels, stock and clientele based on the profit / loss of the business.

The goodwill in the taxi industry is vested in the Controlled Radio Depots (Networks), for their customer base, the turnover of credit card transactions and 5% commission paid back to the Networks who are the merchants for the EFPOS machines, in all vehicles operating under their network.

Credit Facilities in Taxicabs

Cabcharge is the major provider of credit facilities in the taxi industry.

When Cabcharge was introduced they provided a credit facility to replace the Taxi Networks charge accounts known as Taxi Service Orders or TSO.

This service is whereby a customer could apply for an account with the network in the same way, as with a major department store or garage and a 10% account-keeping fee would be charged on accounts not fully paid within a 30-day period from the statement date.

Cabcharge, for some time have been charging the 10% surcharge, as they believe they are providing credit to those who use this facility. This would be the allowable by law if the surcharge was payable for those customers who are account holders of Cabcharge.

This is not always the case currently the surcharge is on all credit card transactions, which is wrong as Cabcharge is not the provider of the credit for those transactions such as Visa, MasterCard, American Express, Diners Card, JCB and Motor pass.

We believe that a small transaction fee equal to the merchant fee is the only charge that should be made on these transactions, this surcharge caused chaos in 2000 when Visa withdrew there participation with Cabcharge.

Furthermore, the Networks were provided amounts equal to 5% of the 10% surcharge for providing advertising, livery on vehicles (decals, etc.) and the depots prior to the public listing of Cabcharge Ltd. purchased non-profit, non-voting, non-dividend shares in Cabcharge Pty Ltd.

The problem with this was that the shareholders in the Networks did not receive benefit, however Office Bearers of the Networks received benefit when Cabcharge listed.

Taxi Drivers are required to use the EFPOS system, by using the Cabcharge EFPOS machine, it generates a Cabcharge Tax Invoice, which is false and misleading.

The Taxi Driver is not the merchant, nor is Cabcharge, however the Taxi Driver must provide his / her Australian Business Number (ABN) in breach of the Goods and Services Act.

The Networks are the Merchant and neither Cabcharge, or the Network provide their ABN on the Taxi Invoice provided to the customer.

The Drivers ABN is being used fraudulently as they are neither the Merchant or the Supplier of Credit,

Under the GST Act The Commissioner of Taxation has allowed for the Statements from credit providers to be acceptable as Taxi Invoices anyway.

Employer / Employee Relationship

The issue as to the employment arrangements between a Taxi-owner / operator and his driver has a long history in legislation and awards in each state since around 1913.

Prior to 1913, local government authorities had local laws / by-laws that specifically refer to drivers of hackney carriages the forerunner of taxis as we know them today as being employed in a Master / Servant relationship. I attach a copy of the by-law of the Melbourne City Council who was the regulatory body at that time for Metropolitan Melbourne.

With the introduction of the Trade Unions and the State award system came the establishment of the Motor Drivers and Chauffers Association as the trade union in all states that advocated on behalf of Taxi Driver members, and the Motor Drivers and Chauffers Award.

Over the years unions amalgamated and the state awards were consolidated into Passenger Vehicle Awards, Transport Awards in all states except Victoria who still had the Motor Drivers and Chauffers Award in force until 1992.

In 1992 the then Liberal Minister for Industrial Relations issued direction to the Employee Relations Commission Victoria to review, consolidate and repeal old awards, and replace employees rights to those displaced workers by way of minimum wage orders. The Motor Drivers and Chauffers Award were one of those awards repealed.

Susan Zeitz was the President who headed the ERCV at that time and the full-bench, determined that taxi drivers were specific employees who were so displaced and established taxi drivers as Level 4 employees. These minimum wage orders held until December 31, 1997, when the Liberal State Government gave responsibility to the Federal Government.

In 1997, the AIRC made Federal minimum wage orders for Victorian employees, the Taxi Industry Council of Australia, Taxi Employees League and the Taxi Drivers Association of Victoria Inc. have been recognised by the Commission.

In 2002 the Taxi Drivers Association of Victoria Inc. made application to the State Registrar of Trade Unions for union status. This was granted in 2003, on being granted union status the de-registered it's Incorporation as this was no longer required.

In NSW and other states the state-based awards have been in force until December 31, 2009, when the Australian Industrial Relations Commission (AIRC) established the Passenger Vehicle Award 2010, to commence from January 1, 2010.

The Taxi Drivers Association of Victoria made submissions both orally and written to the Award Modernisation being conducted in 2009 by the AIRC.

We made approaches to other state bodies for their input to this historic Federal Award, where drivers of vehicles carrying 8 passengers or less for hire or reward are classified as Grade 2 employees. In NSW the Australian Taxi Drivers Association, the NSW Taxi Drivers Association and others include individual taxi drivers.

The NSW Taxi Council and other state based associations have used taxi driver award wages and conditions to prop up their claims for a fare rise to state governments.

In NSW, until recent times these submissions were made to the Department of Transport and more so in recent times to the Independent Pricing and Regulatory Tribunal (IPART)

New South Wales

In New South Wales taxi drivers, are employees by way of classification in Awards made by the NSW Industrial Relations Commission, dating back to the early 1900's.

The current award that covers the occupation of taxicab drivers is

All owners / operators engaging drivers other than themselves, are operating their taxicabs illegally, even those in NSW who contract out Federal or State Awards including the NSW Taxi Drivers (Contract Determination) of 1984 as amended.

The NSW Taxi Drivers (Contract Determination) of 1984 as amended, is an Award that allows these employees to contract out of the Award conditions under specific provisions made under Division VI of the relevant industrial relations legislation.

Taxi Drivers who are engaged under the NSW Taxi Drivers (Contract Determination) of 1984 as amended, receive entitlements afforded to employees under other industrial awards

Taxicab drivers must take legal action to recover entitlements explicitly outlined in that industrial instrument, these conditions such as annual leave, long service leave or the right to choose which method of payment the taxicab driver requests.

Any owner who/ operator breaches the terms of the Contract Determination by not making prompt payment of entitlements to their drivers makes that contract invalid.

This is what is going on within the Taxi Industry every day whereby owners breach their responsibilities under law, including insuring the vehicle, the drivers against liability or loss.

Victoria

In 2002 the Taxi Drivers Association of Victoria Inc. made application to the State Registrar of Trade Unions for union status. This was granted in 2003, on being granted union status the de-registered it's Incorporation as this was no longer required.

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The Minister for Industrial Relations, in Victoria confirmed in writing that, "The Victorian Government has been working closely with the Commonwealth Government, to introduce the new federal workplace laws, which will balance and fairness to Victorian Employees.

Notwithstanding, the aforesaid the Transport Act 1983 (Victoria) states at

144 Conditions

(1) Subject to subsection (1AA), the following shall be implied conditions of every commercial passenger vehicle licence—

(a) that the vehicle is maintained in a fit and serviceable condition;

(b) that in relation to the vehicle, the provisions of any Act or regulation thereunder with respect to—

(i) **the manner in which and the persons by whom the vehicle may be driven;**

(ii) the number of passengers that may be carried in the vehicle;

(iii) the construction equipment and condition of the vehicle; and

(iv) limitation of hours of driving—

(c) that the vehicle is not, without the consent in writing of the licensing authority, operated by any person other than the owner or a person employed by the owner; and

Taxi Drivers in Victoria and in NSW had state based awards until 1974 in Victoria and 1979 in NSW when the respective state governments allowed taxi owners to contract out of their respective Awards for 50/50 arrangements

Similar arrangements are in place in each of the other states around Australia.

Bailment of Taxi-cabs

International Students

The taxi industry thrives on the exploitation of International Students, these students are advised that they are 'not employees', but 'bailees', or 'lessees', however the Department of Immigration and Multicultural Affairs, has ruled that these employment or contractual arrangements are in breach of the International Students visa.

All international students, engaged in the taxi industry under such sham arrangements are at threat of deportation.

The solution to this will be to perhaps prosecute these international students and deport some students for breaching the terms and conditions of their student visas, this on the surface may see to harsh and may further inflame racial hatred between Australia and these students homelands. We as an association do not wish this to take place, however there are a number of solutions, which would allow these students to work within the restrictions of their visa.

- 1/ The Owner / Operator of the taxicab employees the Taxicab Driver on wages as determined by Fairwork Australia, under the Federal Passenger Vehicle Award 2010.
- 2/ Set maximum hours to be worked to no greater than 10 hours per day maximum of 5 days continuous.
- 3/ That the maximum hours allowable in any 4 week period be set at 168 hrs or 42 hours per week.

The current situation is that taxi drivers work a 12 hour shift with some owners requiring their drivers to work 5 – 6 days or 60 -72 hours per week.

Below is the Department of Immigration and Multicultural Affairs official outline of the changes to employment of Student Visa holders taken directly from and may be viewed on the department's website www.immi.gov.au/students

Migration Amendment (Employer Sanctions) Act 2007 **19 August 2007 - Legislation change**

Client summary

The Migration Amendment (Employer Sanctions) Act 2007 (the Amending Act) received royal assent on 19 February 2007. The Amending Act will commence on 19 August 2007 to create new criminal offences for knowingly or recklessly:

- allowing an illegal worker to work; or
- Referring an illegal worker for work with another business.

Illegal Worker

The penalties are higher where an illegal worker is being exploited through Individuals who are convicted of these offences face fines of up to \$13 200 and two years' imprisonment while companies face fines of up to \$66 000 per slavery, forced labour or sexual servitude.

Additional information: These offences apply to employers, labour hire companies, employment agencies and other people who allow illegal workers to work or refer illegal

workers for work. **This includes taxi owners who bail or lease their taxicabs to drivers** and brothel owners who rent or lease rooms to sex workers. The offences also apply to businesses that operate informal labour referral services such as backpacker hostels that organise harvest work for backpackers.

Application of the new provisions: The new offences are prospective - they only apply to employers and labour suppliers who engage or refer illegal workers on or after 19 August 2007. Employers will not have to check the work entitlements of existing workers unless their contracts are renewed or extended on or after 19 August 2007.

Scenarios of illegal employment under the Migration Amendment (Employer Sanctions) Act 2007

The two scenarios listed below may be found at the link below

<http://www.immi.gov.au/managing-australias-borders/compliance/employer-obligations/scenarios.htm>

Scenario

Carl owns a taxi, which he leases to other drivers when he is not driving: Student visa holders in the taxi industry Carl it. Recently the one driver has regularly been driving his taxi, generally leasing the taxi for 6 nights per week. This arrangement works well for both Carl and the driver, Carl prefers to drive during the day, and the driver is a student so driving at night allows him to attend classes during the day. The driver has provided Carl with his Australian Business Number (ABN) and his state issued driver authority. Would Carl commit an offence if the driver turns out to be a student working in breach of their student visa conditions?

Answer

Yes. It is Carl's responsibility to ensure all drivers, including ABN holders, who lease his taxi are entitled to work in Australia, and that he is not allowing them to work in breach of their visa conditions. Carl works in a high-risk industry, where the department continues to locate a high number of student visa holders working in breach of their visa conditions.

It is important to note neither an ABN or driver authority is evidence of work entitlements. In future Carl should ask all drivers to provide evidence of their entitlement to work in Australia and conduct VEVO checks on any visa holders. In the case of student visa holders Carl should keep records of the number of hours worked to ensure they are not breaching their visa conditions.

Scenario: Bailment arrangements in the Taxi Industry

Mark is a taxi owner who regularly leases his taxi to other drivers. A driver who wishes to lease the taxi for a seven-day, period approaches Mark. The driver mentions he is an international student, and presents his driver authority and Tax File Number (TFN) as proof of entitlement to work, stating that he is allowed to work full time. On this basis Mark leases the taxi to this driver for seven days. The driver is later found to be working in breach of the 20-hour work limitation on his visa, could Mark be found to have committed an offence?

Answer

Yes, Mark could be found to have committed an offence because there is a possibility the driver would be working in breach of their visa conditions. Although Mark is leasing the taxi to the driver, rather than directly employing him, he is still responsible for ensuring all drivers he allows to drive his taxi have the entitlement to work in Australia. Unfortunately the evidence provided to Mark is insufficient to ensure the driver was entitled to work in Australia. Neither a driver authority nor TFN are evidence of work entitlements. Taking a person at their word is not a reliable method of checking work entitlement

International Student Visa holders are required to obtain an ABN to work as a taxi driver when it is in breach of their visa conditions to operate or own a business.

Training of Taxi Drivers

As Education Officer, of the Taxi Drivers Association of Victoria, I served on the Victorian Taxi Directorates Taxi Drivers Training Consultative Committee.

I was the descending member who advised the Consultative Committee, of the National Standards for Taxi Drivers that were set in 1994, and of training packages that were available for taxi driver's. These courses were designed by the, Transport and Distribution Industry Training Board.

The requirement of courses to meet Australian Qualifications Framework, as deemed by the Ministerial Council of Employment, Education, Training and Youth Affairs (MEETYA) in 1996. Prior to February 2009 there were 18 state based courses, in February 2009 there were 2 state based courses, both registered in Victoria, these courses do not meet the National Standards for Taxi Drivers set in 1994 or those set by the Federal Transport Minister in November 2009.

Currently, in NSW taxi driver training comes from the Transport and Logistics Training Package other states except Victoria are conducting similar training for their drivers.

The training in NSW is conducted in two parts Bronze and Silver with Bronze being the level required to meet Transport Department requirements to obtain a Driver Authority or Accreditation, both Bronze and Silver combined allows the driver to awarded a Certificate II in Transport and Logistics.

This standard is the equivalent to a High School Certificate or Victorian Certificate of Education, the Standard should be at a level of Certificate III or IV.

An apprentice hairdresser / or call-centre operator qualifications are benchmarked at Certificate III level as the entry level for their respective occupations.

The cost of the Bronze component for taxi drivers in NSW is \$900 - \$1100 and the Silver component is in the range of \$400 - \$700.

Candidates for such training may benefit from government funding from various funding sources such as Job Network Providers, who provide long term unemployed, or retrenched workers.

Judgements:

Taxi Driver Employment Test

ELLSON v PB TAXI CO. PTY LTD (No 2)

[2008] SAEOT 9

Judgment of Her Honour Judge Cole, Member Ms A Bachmann and Member Mr H Yapp

23 July 2008

DISCRIMINATION LAW

Finding that taxi driver was an employee for the purposes of the Equal Opportunity Act - taxi driver was in breach of the Equal Opportunity Act and respondent vicariously liable for his actions - compensation granted to complainant.

*Equal Opportunity Act 1984; Passenger Transport Act 1994, referred to.
Hollis v Vabu Pty Ltd (2001) 207 CLR 21; Launchbury v Morgans [1973] AC 127;
Dawson v Aronis [2005] SADC 165, considered.*

Control test used as in Hollis V Vabu Pty Ltd

There was sufficient control over the taxi driver to hold by the taxi owner vicariously liable for the actions of his driver.

The Taxi Industry Council of Australia looks forward to providing supporting documents and further expanding on its submission at the Taxi Committee hearings commencing 02/01/2010.

Thank you, once again for making this inquiry a priority for the NSW travelling public and the Taxi Drivers, representatives to express their concerns where it not for these hearings would go untold or acted upon.

Graeme Cameron
National Secretary
Taxi Industry Council of Australia