

Submission
No 49

INQUIRY INTO NSW TAXI INDUSTRY

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SUBMISSION

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Introduction

For nearly two decades Sydney taxi driver activists have been calling for a Royal Commission to investigate the wealthy mafia* that controls and exploits the NSW taxi industry and its power to influence the Government, in particular the Ministry of Transport. The announcement of a bipartisan Upper House inquiry was therefore welcomed by the 'rank and file' as it offers some hope that some of "the complex web of rorts, favours, lavish political donations, monumental inefficiency, and dodgy practices" (Mike Carlton, SMH 14.11.09), which has been allowed to exist virtually unchallenged for over 30 years, will be exposed and cleaned up.

In the past any bureaucrat in the Ministry of Transport who tried to rock the boat was quickly removed, journalists who exposed any part of this grubby business were immediately accused of defamation and stakeholders in the industry challenging the mafia and who didn't respond to bribes or intimidation, were simply forced out. Hopefully this inquiry will at the very least 'rock the boat'. This submission is provided in an effort to give the committee a greater understanding of how and why the mafia is able to intimidate and exploit the taxi drivers and operators working in the industry and how it has captured the regulators.

When this inquiry was first announced in November 2009 then Taxi Council CEO (since retired) told the media that the Taxi Industry had nothing to hide and is simply misunderstood. It has plenty to hide as has the Government. As for being misunderstood he was right. The Taxi Council and Government spin and secrecy has ensured that few understand the mechanics. Journalist Linton Besser of the Sydney Morning Herald last year made a valiant effort to expose them and as one would expect, he and his paper has been sued for defamation. A never ending story.

** Taxi Industry mafia: In 2005 the NSW Supreme Court ruled that the term 'mafia' as applied to the NSW Taxi Council and its members in Cabbie magazine was not defamatory, but a fair and reasonable description. Ref: Maquarie Dictionary - mafia.*

Contents

	page
1. The Taxi Industry mafia	1
1.1 NSW Taxi Council	
1.2 NSW Taxi Industry Association	
1.3 Cabcharge Australia Limited	
1.3 (i) Government monopolies	2
1.3 (ii) More anti competitive behaviour	
1.3 (iii) Alleged scam	3
2. Regulator captured	3
2.1 Change to taxi licence regulations 1986	
2.2 The capture	4
2.3 Quotes from NCC and NSW Ombudsman	
3. The power of the networks	5
3.1 The taxi plate scam	
3.2 A wonderful investment	
3.3 Manipulating plate values	
3.4 Lease fee gouging	6
4. Demand for Public Lease Owner Registry	7
4.1 The role of the Ministry of Transport	
4.2 Rumours abound	
5. Passenger Transport Amendment (Taxi Licensing) Bill 2009	8
5.1 Preamble: Scully's folly	
5.2 Campbell's scramble	9
5.3 Mafia hijack of tender	
Appendix - About the author and OZ Cabbie	10

1. The Taxi Industry mafia

The term 'mafia' has been used on taxi ranks for years when referring to the small but powerful industry cartel that rules the industry. We could of course have staid with 'cabal' or used cartel, establishment or hierarchy. However, as it is all of the above and engages in exploitation, deception and intimidation, 'mafia' seems the most descriptive and appropriate monicker. It is not unique to NSW, but is used widely by drivers in other states.

In NSW the Taxi Council Ltd is the front for this mafia.

1.1 NSW Taxi Council Ltd

The NSW Taxi Council claims to represent the entire taxi industry, a position generally accepted by the Government, the media and the general public. However, its primary function is to protect and advance the interests of its members; the taxi networks and by default Cabcharge.

It was established only 11 years ago to act as the mafia's spin doctor. However, today it is also a registered business and employer organisation and has hijacked the role previously played by the NSW TIA, particularly in the IRC (Industrial Relations Commission), IPART and negotiations with governments, state, local and federal. Not that that mattered much as both are controlled by the same people.

Until 2003 or 04 the Council was not a legal entity. Yet it had been conducting business without a registered business name or an ABN. For example it was billing the NSW MoT hundreds of thousands of dollars for consultancy work and charging royalties to taxi schools for training material it had developed and copyrighted. Only when these 'errors' were exposed in the driver magazine Cabbie was it forced to legitimize the organization.

1.2 NSW Taxi Industry Association

The NSW TIA is an association of plate owners. Its only real function today is to protect the value of transferable taxi plates and lease fees. Perversely plate owners do not pay their own membership fees. They are paid by the lease operators as compulsory union fees added to their monthly network fees but are precluded from membership and from holding proxies on behalf of their plate owners. The board is and has been for decades controlled by the mafia, which owns enough plates and has enough proxies to dominate its election.

It is estimated that the NSW TIA rakes in around \$4 million in membership fees annually much of which is used to finance the Taxi Council. By how much is unknown.

Both the NSW TIA and the Taxi Council conveniently operate out of Cabcharge House in Riley Street, Darlinghurst.

1.3 Cabcharge Australia Limited

When holding an inquiry into the taxi industry it is impossible to exclude Cabcharge as it is the

dominant player and as such has considerable influence on the Taxi Council and its interaction and relationship with the State Government. Besides being the largest taxi network in the country, its fare payment system is an integral part of the whole industry.

Cabcharge has been a wonderful success story. Primarily because investors just love monopolies especially when they have government protection. When it listed in 1999 more than 95% of taxis in Australia were using Cabcharge. In fact, thanks to a 30 year old ACCC exemption from legislation against third line forcing, taxi networks could force taxi operators and drivers to use Cabcharge and they did. After all, most were substantial or large shareholders in the company and as its agents were earning nice commissions on each fare transactions.

Thankfully this rort was stopped in 2007 by the NSW Taxi Driver Association, which won a challenge before the Australian Competition Tribunal against the ACCC's decision to extend the exemptions. That really opened the door for competition to Cabcharge.

Regardless, since going public Cabcharge profits have continued to grow rapidly, partly due to its introduction of EFTPOS in cabs in 1999 and a subsequent explosion in the number of passengers using cards to pay fares. And through takeovers of smaller taxi networks it has become the largest most powerful taxi company in Australia with more than 5,000 affiliated cabs in three states. It is now also a 49% partner in Australia's largest private bus conglomerate ComfortDelGro Cabcharge, which makes handsome profits from generous subsidies paid by both the NSW and Victorian MoTs.

1.3 (i) Government Monopolies

Both the Victorian and Queensland governments have given Cabcharge the monopoly to process subsidy smart cards issued to people with disabilities. They can only be processed on a Cabcharge EFTPOS terminal and as all cabs in those states must by law be able accept the cards electronically they are forced to have a Cabcharge terminal whether they carry another brand or not.

In 2008 the NSW MoT began trialing a similar system with Cabcharge, but following a couple of articles in Cabbie magazine questioning the legality and propriety of governments handing out such monopolies, the introduction of the program has temporarily been put on hold.

The problem is not the subsidy card concept. It is a smart idea as it reduces fraudulently use of the TTSS (Taxi Transport Subsidy Scheme) and simplifies administration. The problem is Cabcharge, which owns the technology and refuses to let other providers of EFTPOS terminals process the cards even for a fee. This is anti-competitive, abuse of market power and refusal to deal and should be acted upon by the ACCC.

1.3 (ii) More anti-competitive behaviour

In NSW the Government is Cabcharge's largest customer. It spends many millions on taxi fares annually using Cabcharge charge cards, e-Tickets and Blue Dockets. Furthermore Cabcharge processes TTSS dockets on behalf of the MoT.

While the company's competitors can process all bank issued cards (credit, charge and debit) through their EFTPOS terminals, they cannot process Cabcharge cards or e-Tickets. This has created the ridiculous situation in Sydney and elsewhere of most taxis carrying two EFTPOS terminals, one to take Amex, Visa, Master Card etc. and one exclusively for Cabcharge products.

1.3 (iii) Alleged scam

Why bother carrying a second terminal? Partly because unlike Cabcharge the providers pay operators and drivers a commission on each transaction and partly due to allegations that Cabcharge is abusing its power by rejecting thousands of fare transactions for ridiculous and totally unjust reasons. It is further alleged that Cabcharge is using the scam of double dipping by first rejecting a stack of transactions and then negotiating payment with the card issuer or client.

2. Regulator captured

2.1 Change to taxi licence regulations 1986

Since 1986 when the regulations for taxi licences (plates) were changed to allow multiple ownership by investors from within and outside the industry and the sub-leasing of plates to taxi drivers and fleet operators, both plate values and sub-leasing fees have been largely controlled by the taxi networks, which in those days were not-for-profit cooperatives of owner-drivers.

Before then, to own a plate you had to own and drive your taxi and you could only own and operate one. However, you could bail it to bailee taxi drivers for any spare shifts. This enabled taxis to operate efficiently 24/7.

To sell your plate, e.g. due to retirement or a wish to leave the industry, you had to sell it, as well as your share in the co-op, to an accredited taxi driver. The two could not be sold separately. This system provided a simple and effective 'superannuation' for owners and career path for bailee drivers.

Another path was the seniority system which through a ballot gave bailee drivers who had driven a taxi for 15 years or more the opportunity to obtain a free perpetual plate from the Government when it deemed that more taxis were needed. It was a tremendous incentive for drivers to stay in the industry, yet it was killed off as a result of the strong lobbying by a small cabal of industry supremos (the mafia) with vested interests in opening up the plate market to 'absentee landlord' investors and to have the nexus between plate and cooperative share ownership broken.

The new regulations were crafted by the Wran Government as dictated by the mafia and were introduced after Barry Unsworth became Premier in 1986. It is worth noting here that Neville Wran has been a director and shareholder of Cabcharge for the past nine years.

2.2 The capture

By the early 90s the taxi industry and the NSW Ministry of Transport was largely controlled by the cabal headed by Reg Kermode as Chairman and CEO of everything 'taxi' - The Australian Taxi Industry Association (ATIA), the NSW Taxi Industry Association (NSW TIA), NSW Taxi Council, Taxis Combined Services (TCS) and Cabcharge. He was also a vice president of the International Taxi and Livery Association headquartered in the USA on which the ATIA is modelled.

When newly appointed Transport Ministers or Director Generals decided that the taxi industry was in need of reform, often very sensible reform, the final arbitrator would be Chairman Kermode or his cohorts which today are represented by the Taxi Council. After all, they were and are the only true 'experts'.

As a result, any reform that would negatively impact on plate values or the powers or profits of the networks was quickly revised or deleted. Very simply, the MoT as the regulator was captured by the industry mafia and still is, as evidenced by the final amendments to the recent Passenger Transport Amendment (Taxi Licensing) Bill 2009.

Concerns over the mafia's undue influence on the MoT have in the past been raised by the National Competition Council, IPART and the NSW Ombudsman.

2.3 Quotes from NCC and NSW Ombudsman reports

Quote from National Competition Policy Review 1998 of the Transport Operations (Passenger Transport) Act 1994 -

The second area of concern is that regulators can be captured by industry being regulated: This hijacking of the regulator will be most likely where the two sides have good relations and can, in extreme cases, lead to a complete lack of independence on the part of the Regulator who then allows the regulated to decide the policy.

In her 1999 report following an investigation into the conduct of the NSW Ministry of Transport (Taxi and Hire Car Section) the then Ombudsman Irene Moss made the following observation:

6.8 The IPART Issues Paper expresses concern that where there is co-regulation, the regulator may be captured by the industry [see 5.34]. The concept of "capture" is a more subtle one than corruption. The facts of this case are indicative of this 'capture' phenomenon. The seeming closeness of the relationship between the Department and the Taxi Council was such that the Department appeared to have to put the best interests of the public for more competitive public transport options and the small hire car businesses they were supposedly supporting, a poor second to the interests of existing taxi operators.

Her report also claimed that the MoT had deliberately obstructed her officers' investigation including hiding, misplacing and shredding documents they had requested, which seems to have become the modus operandi inside the MoT.

Soon after the release of her report Irene Moss was promoted to head of ICAC and the Ombudsman's Office lost interest in the MoT and the taxi industry.

3. The power of the networks

3.1 The taxi plate scam

Those who control the value of plates and lease fees control the taxi industry. It is estimated that 70% of Sydney plates are managed by CCN and Premier Cabs. Each manages hundreds on behalf of investors and retired drivers and act as brokers selling them and leasing them out. In addition they of course manage the plates they have obtained from the MoT themselves, be that Nexus or other types of plates.

This dominance of the market empowers those two networks in particular to manipulate the market and establish the benchmark for plate values and lease fees. The rest just tag along. The higher the value and lease fees, the happier the owners and the greater the networks' commission and management fees.

3.2 A wonderful investment

Some may wonder why anyone would invest \$400,000 in a taxi plate when they can buy an investment property, bricks and mortar, for the same price. The reasons are simple.

1. A taxi plate comes without any responsibility. There is no land tax, water rates, repairs or upkeep.
2. The lessee (tenant) has no rights and no long-term lease or rental guarantee.
3. If placing the plate under management with a taxi network, rental in advance is guaranteed whether the lessee pays or not.
4. Due to restricted supply ever increasing asset value and therefore increased rental return is virtually guaranteed.
5. Perpetual plates are in fact perpetual government leases. Generally perpetual means 99 or 66 years, but not with taxi plates. They are eternal and therefore won't lose value with age.
5. Unlike property, there is no public register of ownership. In fact the Government goes to extraordinary length to ensure absolute privacy and anonymity. Why?

Now, what other small investment can offer all that?

3.3 Manipulating plate values

The total value of perpetual taxi plates in NSW is over \$1.5 billion. In Sydney in 2009 plates

fetches around \$400,000. Unlike the stock market, it is not illegal to manipulate this market. Whilst there are a number of ways to do this, the most common is for the brokers to withhold supply and claim there is a huge demand. Those keen enough will pay a premium when 'suddenly' a plate comes up for sale and the longer they have to wait the keener they get.

Broker: "Strike me lucky! Just got a call from an owner who is thinking of selling, but he won't go below \$410,000. Are you interested?"

If the MoT decides to do something that may affect plate prices, the networks through the Taxi Council, will know months in advance. After all, the MoT doesn't do anything regarding taxis without consulting the Council. Some would call that insider trading.

It should be understood that the taxi plate market is very small. Generally only 100 to 200 plates are traded in any given year. That makes it very easy to manage and manipulate, especially as the 95% of trading is controlled by only five taxi networks who all belong to the same 'club', the NSW Taxi Council. The only outsider is Elizabeth Street Finance which relies on the goodwill of the mafia to stay in business.

3.4 Lease fee gouging

Lease operators are most often drivers who dream of owning their own cab. As they can't afford to buy a plate they lease one, most commonly through their taxi network. An operator must buy a suitable vehicle, have it fitted out for use as a taxi, insured and affiliated with an accredited taxi network. Average total cost \$55,000. His nice network will organize a 5 year loan covering everything. They will even tell him which suppliers to go to. In the event he decides to find his own, some networks can get quite agitated. Either way, he is now locked into a loan for an asset (the taxi), which is guaranteed to drop in value by 95% over the life of the loan, but hopefully earn him a living in the meantime. However, to ensure that he of course needs the ongoing lease of a plate.

When leasing commercial property the lease agreement is normally 3 + 3 years, but not in the taxi industry. For example at Premier Cabs leases month by month are common. They are conditional on the operator operating through that network and abide by its rules and by-laws. Short leases enables the networks to hold their operators to ransom. They can increase the lease fees at will and if the operator objects his lease is not renewed. With a 5 year loan to pay off he soon caves in anyway. Some would call that extortion.

One operator recently told this writer that when the MoT originally announced it would release unlimited one year taxi licensers at the market rate of \$550 p.w. (\$28,600 p.a.) and at the same time his lease with Premier Cabs was coming up for renewal, he was informed that his fee would be increased to \$700 p.w.. When he told the lease manager to stick it and that he would just get a lease from the MoT, he laughed saying "they won't be available for a year, what are you going to do in the meantime?". However, as the MoT a few days later did a summersault reintroducing restricted supply and tenders, the manager agreed to leave his lease fee at \$550. Why, should become obvious once the winners of the tenders are announced mid-year.

4. Demand for Public Plate Lease Owner Registry

There is a public registry of property and land title ownership going back 200 years. No such transparency exists when it comes to taxi plates and despite demands for one over the past 30 years, successive governments in every state have declined to establish one. As Greens MP Lee Rhiannon, who caused this inquiry told the media (12/11.09): "We also need to get to the bottom of why the list of taxi plate owners has been kept secret". Indeed we do.

Any normal person would wonder "why the secrecy". What is it about taxi plate ownership which seems to scare both the Labor and Opposition parties whether they are in or out of government? The logical answer is of course that they have something to hide and when the public realizes that they start to ask questions and rumours to fly, in this case about graft, corruption and gross impropriety.

4.1 The role of the Ministry of Transport

A perpetual taxi plate is in fact a government issued business licence. Technically it is the property of the state. It allows the license holder to own and operate a taxicab and ply for hire. Since 1986 the license holder has been able to transfer (e.g. sell) the license or sublease it to someone else for profit.

Any transfer must be approved by and registered with the MoT. As sales tax and other fees are payable to the MoT, the true sales price must be disclosed. Assuming that the bureaucracy has acted competently and with due diligence there would be historical records inside the MoT of every transfer, the name of the seller and of the buyer, going back decades.

There would also be records of all temporary taxi licenses ever issued by the MoT; who they were issued to and who hold them today, those that have been extended and those which have been revoked.

None of this information is available for public disclosure. The reason given by the MoT is that it would be a breach of privacy. Evidently the public has no right to know the benefactors of commercial government property. Some would say this leaves the system open to graft, corruption and dodgy deals.

4.2

5. Passenger Transport Amendment (Taxi Licensing) Bill 2009.

5.1 Preamble: Scully's folly

In 2000, then Minister for Transport, Carl Scully, in the lead-up to the Olympics, announced the Government's decision to sell 450 new Sydney taxi licences; 300 regular plates and 150 for wheelchair accessible taxis (WATs).

A tranche of 60 WAT plates (20 year transferable leases) were put out for tender in July 2000 and another tranche of 60 regular non-transferable 6 year plates were offered for outright sale @ \$90,000.

In 2000 the MoT was already leasing out WAT plates for \$1,000 p.a. in unlimited numbers (open entry). That effectively put a maximum value on a tender of \$20,000 (\$1,000 x 20 years). Only a handful of WAT operators lodged tenders, which according to the MoT at the time, ranged from \$15,000 to \$17,000.

Desperate not to get egg on its face the MoT informed the taxi networks of the low response rate and appealed to them to lodge bids. CCN and Premier obliged and snapped up the remaining plates for between \$7,000 and \$8,000 each. I have documented evidence that CCN, which bought the lion's share, is today leasing those plates out for \$7,800 p.a.. Another money spinner provided to the mafia by the MoT.

As for the 60 regular plates, nobody was prepared to pay \$90,000 for a 6 year lease when at the time perpetual leases were selling for \$200,000, so the MoT was forced to cancel the sale and instead put them out for tender also. The tender, according to the MoT at the time, was a huge success claiming it was oversubscribed three fold. Unfortunately most of the bids from the 'rank and file' were way below MoT expectation, so again, a few days before the close of the tender, it provided the networks with inside information. It is alleged CCN and Premier placed stacked bids between \$40,000 and \$50,000 and once more ended up with the lion's share.

These plates, being 6 year leases, should have been cancelled in 2006. However there is no evidence that this happened. Allegedly they are still operational today being leased out at market rate (\$28,600 p.a.) by CCN and Premier like the Nexus plates.

The balance of the 450 licences (330) the MoT had planned to release before the Olympics were cancelled due to lack of interest.

5.2 Campbell's scramble

In October 2009 Transport and Infrastructure Minister David Campbell announced his revolutionary plans for changing the regulations for issuing new taxi licences. In the future licenses would be available to anyone in uncapped numbers (open entry) on annual lease contracts at rates set by the Director General. To protect the investment of the owners of some 3,000 perpetual plates, fearing a legal class action for compensation, he decided to set the starting fee at the prevailing market rate of \$28,600 or \$550 p.w. ignoring advice from PwC. It was Scully's \$90,000 folly all over again.

The Taxi Council and the networks were not too concerned. They knew they had the situation well under control. However, the NSW Taxi Industry Association (TIA), the plate owners' club, thought otherwise. In particular they were, as were taxi drivers, horrified by open entry which would potentially flood the market. The Taxi Council, as it is financed by the TIA, had little choice but lodge an objection to Campbell's plan and lobby the Opposition for support. It worked. The whole Bill was turned on its head.

An annual cap of 100 new licences was announced with the first tranche put out for tender in December which would enable the MoT to announce a second tender before 31 March 2010. The only reform remaining from the original Bill was that no more perpetual licences would be issued by the Government. Now Scully's folly with the 60 WAT licences was being repeated as Campbell scrambled to have his Bill passed before Christmas, which it was.

5.3 Mafia to hijack tender

It is widely believe in the industry that the taxi networks and other multi-plate owners will be successful in winning most of the tenders. After all, buying 10 annual leases renewable at the price paid for 10 years for say an outlay of \$250,000 (peanuts for this mob) will protect the existing lease fees and plate values and provide long-term profits while ensuring they maintain control of the market. 10 plates bought at \$25,000 each (\$250,000) and leased out for 10 years at an average of \$30,000 will generate a total profit of \$500,000.

David Campbell's intentions may have been honourable, but he blew it when he caved into demands that the new leases be available in parcels of 10, open to investors and allowed to be sublet to operators. Had he restricted the tender to one license per tenderer open only to accredited taxi drivers with a minimum of three years experience and the ability to obtain operator's accreditation, the market would have regulated itself and given drivers reason to stay in the industry.

END

APPENDIX

About the Author and OZ Cabbie

Peer Lindholdt is the publisher and editor of OZ Cabbie, the only independent magazine in Australia published for taxi drivers. He drove a taxi for Taxis Combined (TCS) from 1996 till 1999 after 30 years in publishing and advertising. While driving he realised that taxi drivers were deliberately deprived of information, representation and a voice because every aspect of the industry and the MoT was controlled by a small powerful cabal and cartel, the taxi industry mafia.

Following a year of research and planning he launched a glossy 32 page magazine called 'Smart Cruising' in April 1999. It was a great success with Sydney drivers and advertisers, but the name was not, so in January 2000 it was changed to 'Cabbie'. That same year, after numerous requests, he agreed to also distributing it in Brisbane and Melbourne to help support and promote driver associations in those cities.

However, Reg Kermode and the NSW Taxi Council were not happy with many of the articles he published exposing the illegal exploitation and intimidation of drivers and operators, the corrupting influence they had over the regulators and widespread fraud perpetrated by the industry mafia.

In retaliation the NSW Taxi Council began warning his existing and potential advertisers against advertising in the magazine. It hurt, but didn't kill, so in 2001 the Council launched its own 'free subscription' glossy driver magazine called 'Meter' in an effort to bring Cabbie down. That didn't work either as most drivers, although they find it informative, consider it little more than a mafia propaganda rag.

Getting desperate, the Taxi Council at its annual general meeting in October 2004, decided that new tactics were called for. It was decided to sue Cabbie and its editor under the then draconian defamation laws of NSW (until 2006 truth was not a defence in NSW). Also at that meeting Legion Cabs, Cabbie's second largest distributor, was told to cease distribution and Manly Cabs to cancel its advertising in the magazine.

Defamation threats have for decades been a favourite mafia weapon against not only the media but even taxi drivers who dared speak out against it publicly.

Two months later, in December 2004, Peter Hyer, Managing Director of Premier Cabs and a director of Cabcharge and the Taxi Council, began defamation proceedings against Cabbie Pty Ltd and Mr. Lindholdt. After a four year court battle, Mr. Hyer in 2008 won damages and costs totalling \$400,000. As a consequence Cabbie Pty Ltd was placed in liquidation and its editor declared bankrupt by Mr. Hyer, effectively preventing Mr. Lindholdt from progressing his appeal in the High Court. However, it did not prevent him from publishing a new magazine 'OZ Cabbie' and maintain the editorial integrity and policy of Cabbie.

OZ Cabbie was launched in November 2008 and is now in its 14th edition. It was the only taxi industry magazine to write about this inquiry and provide information on deadlines, how to obtain the terms of reference and make a submission.