

**Submission
No 1**

INQUIRY INTO NSW TAXI INDUSTRY

Name: Mr Adam Johnston

Date received: 17/11/2009

Partially Confidential

The Director
Select Committee on the NSW Taxi Industry
Parliament House
Macquarie St
Sydney NSW 2000
Fax: 02 9230 2981

Attention: Rachel Simpson

Dear Ms Simpson,

**Re: Inquiry into the Taxi Industry
(Supplementary Submission)**

I write on this second occasion to draw your attention to the *Sydney Morning Herald* article "Taxi scheme documents destroyed"¹ This article represents the most recent addition to a long term investigation being conducted by the *Sydney Morning Herald*.² The concern all of this should raise is the competence of the NSW Department of Transport (under whatever Minister and with whatever administrative structure) to manage licensing and regulation, not only of wheelchair accessible taxis (WATs) but taxis and hire cars in general. Some documents I have found on-line would appear to suggest that the department has historically struggled to organise itself sufficiently, even to meet its statutory obligations.

For example, in a 1999 report (which curiously appears on the department's own website³) the then NSW Ombudsman Irene Moss AO is critical of the level of fees and charges the department levied to licensees trying to enter the hire care market. Legislatively, the fees were supposed to be determined by the Director-General "with reference to the market value of such a licence were it to be traded."⁴ Ms Moss ultimately found that the department failed to follow the requirements of the *Passenger Transport Act 1990* in either setting licence fees, or in dealing with related questions such as varying fees, or providing licence holders with clear avenues for appealing such decisions. This conduct was either against the law in some instances, or saw the

¹ See <http://www.smh.com.au/national/taxi-scheme-documents-destroyed-20091122-isw1.html> and find the article included as Appendix 1 to this submission.

² For further information go to "The Taxi Tzar" at <http://www.smh.com.au/interactive/2009/taxis/index.html>

³ See <http://www.transport.nsw.gov.au/publications/ombud.pdf> and Appendix 2 which is a copy of the document

⁴ Ibid, p.8

department act in ways which the Ombudsman found “was unreasonable and otherwise wrong within the terms of Section 26 (1) (b), (d) and (g) of the Ombudsman Act 1974.”⁵

Another interesting element to this history is the *Hire Car Hardship Report* of February 2003,⁶ an inquiry initiated in response to both the Ombudsman’s Report, a determination by the Independent Pricing and Regulatory Tribunal (IPART) and:

“...concerns expressed by relevant industry associations and many perpetual hire car licence holders about (licensing) reforms, the Hire Car Hardship Assessment Panel (being) established with specific terms of reference...to ‘consider written claims of hardship from hire car operators who are the holders of a perpetual hire car licence...’”⁷

For current purposes, it is notably that the Hardship Panel drew heavily on the Ombudsman’s report, quoting a large section which included commentary regarding inadequate record keeping, consultation and, of most concern, capture of the regulator by an interested party. In this instance, while criticised by the Ombudsman over its lack of transparency regarding appeal procedures, the department was at the same time giving the appearance of being *very* receptive to a particular complainant. Thus, it was found that the department was:

“...(increasing) the short term hire car licence fee without reference to the requirements of the (Passenger Transport) Act but as a result of ‘strong representations’ from the Taxi Council and country taxi operators. Available documentation shows that representations were apparently limited to a complaint from a specific area about a specific (and new) hire car operator who was also a former employee of the complainant taxi operator. The Department (claimed) that there were ‘numerous complaints from several taxi operators, not just one operator.’ However the files do not reflect this. The stated intentions of the complainant was that the Department more closely regulate hire vehicle operators..”⁸

Ultimately, the department itself conceded to the Ombudsman and, this is repeated in the *Hardship Report*, that:

“...In implementing its policy change in June 1992 the Department admits that it was not based on legislation but rather from ‘*representations, including concerns expressed by the Taxi Council, about competition from hire cars experienced by country taxi operators, particularly in areas where a short-term licence fee had not been established by previous trade in hire car plates.*’...”

Look to Appendix 1 again and ask: “How much has changed?”

I would say: “Not much”.

⁵ Ibid, p.81

⁶ See <http://www.transport.nsw.gov.au/publications/hire-car-hardship.pdf> and Appendix 3 which is a copy of the document

⁷ Ibid, p.i (Executive Summary)

⁸ Ibid, p.41

Another Ombudsman, Bruce Barbour, is looking at the same Department of Transport and finding its procedures and record keeping wanting again. This time, the query directly concerns the Nexus plate scheme, which provides WATs for people with disabilities, but in many respects I suggest that prior concerns over the taxi and hire care industries, are indicative of how the Department of Transport operates. It is to be wondered whether it continues to be in the public interest for government agencies to be able to assert Crown copyright, privilege or confidentiality? I have suggested elsewhere that all government documents should be held “in common” and be publicly available.⁹ And given the difficulty both Ms Moss¹⁰ and Mr. Barbour¹¹ had in obtaining all the information they sought from the department in the course of their inquiries, such reform is well and truly due.

Summary of Recommendations

I recommend:

1. That it is open to the Committee to consider that the provision of Nexus plates “for free” has been an error of policy. While existing “free” plates will have to be ‘grandfathered,’ a more market-based approach should be considered for future releases (see Recommendation 4)
2. That there be some compulsion on plate holders to ensure that all plates are attached to a taxi
3. That the presumption that disabled passengers are inherently more difficult/time consuming to load into a taxi are regarded as a fallacy, unless a reputable scientist or engineer can devise a suitable experiment to test the hypothesis. I would assert that my taxi drivers obtain a lot of regular work from me, as I do not hold a driver’s licence and taxis are my principal form of transport. Therefore, any time lost in loading or unloading could potentially be recouped in terms of booking volume
4. That the Committee notes the attached Ombudsman’s report and the report of the *Hardship Panel* highlight other ways that the Department of Transport could have released hire care licences onto the market (and presumably, WAT plates as well), most notably by a public auction.
5. That some consideration be given to all Government documents becoming “common property” and being made readily available, as a matter of course. This would potentially foster a level of openness and procedural fairness in all Government departments, which even current and past public, media or inquisitorial investigators do not seem to have been able to engender. But, if you couldn’t even “hide it” in a Cabinet brief, it would become clear to

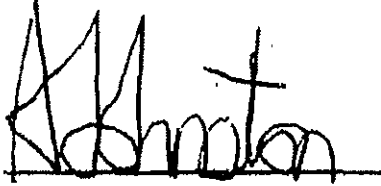
⁹ “Less law protects freedoms” Dispatch Box, *About The House*, June 2008, p.4 available at <http://www.aph.gov.au/house/news/magazine/ATH33.pdf>

¹⁰ See Appendix 2, pp.5 – 16, which outlines various points of law as to the Ombudsman’s jurisdiction and, in particular, what constituted ‘administration’. These were raised by the department, and while it was legally entitled to do so (and further, was able to legitimately decline some of the Ombudsman’s requests), it is to be wondered whether a government agency in a representative democracy should conduct itself in that fashion.

¹¹ See generally, Appendix 1

administrators and Ministers alike that there really was “nowhere to hide”
from any of their decisions.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Adam Johnston". The signature is written in a cursive style with a horizontal line underneath the name.

Adam Johnston