



TRANSPORT WORKERS UNION OF AUSTRALIA
VICTORIAN/TASMANIAN BRANCH

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1 July 2008

Essential Services Commission
Level 2, 35 Spring Street
Melbourne Vic 3000

Fax No: 9651 3688

Dear Sir

Essential Services Commission: Draft Report: Taxi Fare Review 2007-08: June 2008

Please find attached a submission by the Transport Workers Union in response to the Draft Report, Taxi Fare Review 2007-08.

If you need any further information please contact Jenny Baker or John Parker on 1300 727 614.

Yours sincerely


WAYNE MADER
Assistant Branch Secretary



Transport Workers' Union (Victorian/Tasmanian Branch)

**Essential Services Commission:
Draft Report: Taxi Fare Review 2007-08
Submission**



27 June 2008

1. Introduction

The Transport Workers' Union (Victorian/Tasmanian Branch) (the TWU) welcomes the opportunity to provide a written submission in response to the Essential Services Commission (ESC), Draft Taxi Fare Review 2007-08 Report June 2008 (the ESC Draft Report).

On 19 September 2007, the Minister for Public Transport asked the ESC to undertake an independent review of taxi-cab fares including "the distribution of taxi fare revenue and measures that may be considered by Government to improve taxi driver remuneration". The TWU notes that the ESC will be providing a Final Report to the Minister by 19 August 2008.

2. The Victorian Taxi Industry

The Victorian taxi industry is regulated under the *Transport Act 1983* and is regulated by the Victorian Taxi Directorate (VTD). Taxi drivers are engaged by taxi operators through bailment agreements. A bailment agreement is a commercial agreement between the taxi operator (bailor) and the taxi driver (bailee) under which the revenue collected by the driver is shared with the operator. Bailee taxi drivers working under bailment agreements are considered to be subcontractors operating their own small businesses. The taxi drivers rent the taxi cab in order to conduct their small business.

Only a small proportion of taxi drivers operate under a signed bailment agreement. The majority of taxi drivers work under an informal bailment arrangement. A bailment agreement was drafted by the Victorian Taxi Association (VTA) and offered across the industry on a take-it-or-leave-it basis. This bailment agreement seeks to formalise the relationship between a taxi driver and the taxi depot or taxi driver and taxi operator. Taxi drivers have had no involvement in the development or negotiation of the bailment agreement put out by the VTA and this agreement is heavily and unfairly

weighted towards taxi operators. There is currently no regulation of bailment agreements in Victoria.

The TWU considers that these bailment agreements should be regulated and they should at a minimum include minimum entitlements for taxi drivers, an equitable split in takings and a structured settlement of disputes procedure. This would provide greater incentive for skilled drivers to remain in the industry. The reality is that taxi drivers are forced to work long hours without adequate compensation. In addition, they experience significant down-time waiting for fares and their capacity to work can be severely affected by decisions made by taxi operators, taxi depots and the VTD.

Under the *Transport Act 1983* taxi drivers must be licensed and the Minister for Public Transport sets taxi fares. A recent survey by Pricewaterhouse Coopers (PwC) indicates that the average taxi driver income is \$13.20 per hour.

3. ESC Draft Report

The ESC identifies standardised bailment agreements and an imbalance in bargaining power as the main causes of low driver remuneration. The ESC notes that one of the main issues with bailment agreements is the lack of choice given to taxi drivers in relation to these agreements. According to a PwC survey 90% of drivers indicated they had to enter into the standard bailment agreement. The ESC comments that this lack of choice "produces an imbalance in bargaining power and results in lower incomes for drivers than a more open and competitive market would be likely to achieve".

The ESC discusses a range of options to improve taxi driver remuneration. The ESC notes that "options that impose additional regulation over bailment agreements without addressing the market power levied by licence owners do not provide a satisfactory resolution."

One of the options favoured by the ESC is for greater transparency of bailment agreements including possible registration of all agreements with the Victorian Civil and Administrative Tribunal (VCAT):

In the Commission's view greater transparency for bailment agreements may be of merit, with possible measures including registration of all agreements with the Victorian Civil and Administrative Tribunal, the VTD or a separate government agency, or by providing for collective bargaining by drivers to increase their power in negotiations."

In relation to this issue the ESC concludes:

... greater reliance at the present time on pro-competition options, and on complementary options such as greater transparency in relation to bailment arrangements and improved driver training.

The ESC makes various recommendations and one of its preferred options to improve taxi driver remuneration is "increased transparency in the development, negotiation and conduct of bailment agreements".

The ESC also indicates that it is crucial for the tax industry to be competitive and efficient and for taxi driver remuneration to be "fair and reasonable".

4. Key Problems Faced by Taxi Drivers

The ESC states that the key issues confronting taxi drivers are as follows:

- Use of standardised bailment agreements, imposed by the VTA;
- Little or no choice in relation to the terms contained in bailment agreements;
- Inability of taxi drivers to collectively bargain and if they do they face penalties under the Trade Practices Act 1974;
- Misuse of market power by owners;

- No mechanism to register agreements;
- No forum to resolve disputes.

The TWU considers that many of the issues faced by Victorian taxi drivers are similar to issues faced by other small business such as owner drivers in their relationship with hirers and small business retail tenants in their relationship with landlords. The TWU notes that to resolve the issues faced by the owner driver industry and small business retail tenants the Victorian Government enacted legislation dealing with many of these issues. In relation to owner drivers the Victorian Government enacted the *Owner Drivers and Forestry Contractors Act 2005* and in relation to small business retail tenants, it enacted the *Retail Tenancy Act 2003*.

5. Issues in the Owner Driver Industry Prior to Legislation

Many of the issues faced by Victorian taxi drivers were experienced by small business operators in the transport and forestry industries.

The Minister for Industrial Relations outlined the problems faced by the transport and forestry industries in the Second Reading Speech for the *Owner Drivers and Forestry Contractors Bill 2005*:

The purpose of this bill is to provide some basic protections and a framework for effective resolution of disputes to improve the position of vulnerable small businesses, namely, owner-drivers in the transport industry and harvesting and haulage contractors in the forestry industry...

There is significant evidence to show very low levels of earnings for owner-drivers and forestry contractors lead to high rates of business failure and working conditions and hours of work that do not meet a fair community standard...

Owner-drivers are working longer hours for less money. There is evidence (from both Australia and internationally) linking low rates with very long hours of work and increased levels of fatigue, and increased propensity to speed, overload vehicles and breach other road safety rules. Long hours also lead to poor health outcomes and levels of wellbeing; and higher rates of chronic injuries...

Many owner-drivers have working arrangements very similar to employees. They work for the one hirer, are subject to direction and control and cannot accept work from other clients. While electing to be a small business operator rather than employees, whether through choice or circumstance, owner-drivers are for the most part not receiving an adequate return on investment or running successful businesses. They are small business people, but they are highly vulnerable small business people. Owner-drivers have the fourth highest business related insolvency rate of any occupational group...

The other major issue that the bill seeks to address is the lack of a fast and low-cost dispute resolution process. All major industry stakeholders have made strong calls for an alternative dispute resolution jurisdiction.

The Minister concludes:

In conclusion, the Owner Drivers and Forestry Contractors Bill 2005 will ensure these small businesses are better informed, better skilled small business operators, and have better protections from harsh practices and unconscionable conduct by hirers. Measures in the bill are carefully targeted at ensuring fairness, while providing for competitive and efficient markets. Support for collective negotiations and a fast, low-cost dispute resolution process will provide a fairer balance in the market power of these small businesses and their hirers.

6. Owner Drivers and Forestry Contractors Act 2005

Most provisions of the *Owner Drivers and Forestry Contractors Act 2005* (ODFCA) commenced operation on 1 December 2006.

The ODFCA provides for the establishment of the Transport Industry Council (TIC). The TIC is made up of representatives from key industry associations and unions and has an independent Chairperson. Since the commencement of the ODFCA, the TIC has played a constructive role for the Victorian transport industry. The TWU considers that a similar industry council may be relevant and useful to the Victorian taxi industry.

The ODFCA provides owner drivers with various rights and protections. The TWU considers that a number of these protections may also be relevant to Victorian taxi drivers, particularly in light of the ESC Draft Report.

The most significant protections given to owner drivers as a result of the ODFCA can be summarised as follows:

(a) **Information Booklet**

Hirers must provide owner drivers with a copy of the Owner Driver Information Booklet at least 3 business days before they are engaged. Hirers were also required to provide all existing owner drivers with a copy of the Information Booklet.

(b) **Rates and Costs Schedules**

One key difference between taxi drivers and owner drivers is that owner drivers do not receive a prescribed rate of pay. Rates and Costs Schedules have been created for various vehicle types and these provide information for owner drivers on the typical operating costs applying to their business. The Rates and Cost Schedules do not set minimum rates. They are designed to inform owner drivers so

that they can negotiate better and more appropriate rates on their own behalf.

(c) **Written Contracts**

The ODFCA requires all on-going arrangements (engagements of 30 days or more) between owner drivers and their hirers to be in writing. These written contracts must specify the minimum level of income or number of hours of work, the rates to be paid and the notice requirements.

(d) **Model Contract**

A model contract has been developed and endorsed by the TIC to assist owner drivers and their hirers when negotiating the terms of written contracts. The model contract is not compulsory however it provides a useful starting point for owner drivers and hirers when entering into negotiations. Many owner driver industry participants have used the model contract and modified it to suit their particular needs. The TWU considers that the use of a model contract developed and supported by industry participants may be relevant and useful to the Victorian taxi industry.

(e) The ODFCA allows owner drivers and hirers to appoint a negotiating agent to act on their behalf in relation to the engagement of owner drivers and the making, variation or termination of written contracts. The ODFCA places a requirement on the parties to recognise and deal with an appropriately appointed agent. An agent may be, for example, a union, an industry association, a lawyer, an accountant. The TWU considers that those working in the taxi industry may find it very useful to be able to appoint a negotiating agent to act on their behalf.

(f) The ODFCA authorises joint negotiations by owner drivers with their common hirer for purposes of the Trade Practices Act 1974. This

authorisation means that the parties can jointly negotiate in a convenient and simple way, without breaching federal trade practices legislation. The TWU considers that such an authorisation may be relevant and useful to the Victorian taxi industry.

- (g) The ODFCA provides for the making of Codes of Practice. The Owner Drivers and Forestry Contractors Code of Practice (Code of Practice) was made on the advice of the Transport Industry and Forestry Industry Councils. The Code of Practice was enacted in the form of regulations, the Owner Drivers and Forestry Contractors Regulations 2006 and commenced operation on 1 December 2006. The Code of Practice contains some mandatory requirements and also sets out guidance on industry best practice. The Code of Practice may be taken into account by the Victorian Small Business Commissioner's office (VSBC) during mediations and by and the Victorian Civil and Administrative Tribunal (VCAT) in relation to conduct that is likely to be unconscionable and contract terms that are likely to be unjust. The TWU considers that a Code of Practice enacted as regulations would be very useful in the taxi industry.

(h) Unconscionable Conduct and Unjust Contract Terms

The ODFCA sets out conduct by hirers and by contractors which may be regarded as unconscionable, that is conduct which is unscrupulous and unreasonably excessive and goes well beyond commercially tough. The ODFCA also sets out various factors which may be considered to constitute unjust contract terms. In relation to unconscionable conduct and unjust contract terms, all the factors listed may be taken into account at mediation before the VSBC and at VCAT. The TWU considers that the provisions in relation to unconscionable conduct and unjust contract terms may also be useful and relevant to the taxi industry, particularly in relation to the misuse of market power as identified by the ESC Draft Report.

The ODFCA provides that disputes between owner drivers and their hirers may be mediated at the VSBC. This is a fast, low cost, informal dispute resolution process. The VSBC also mediates small business retail tenancy disputes. The VSBC is strongly supported by Victorian small businesses. The TWU considers that the mediation process is an effective and cost efficient means of resolving disputes. The TWU considers that similar dispute resolution provisions may be useful and relevant to the Victorian taxi industry, particularly in relation to disputes between taxi drivers and owners concerning bailment agreements.

The TWU notes that the ESC Draft Report raises the possibility of parties registering their bailment agreements with a body such as VCAT. Another option may be for legislation to be enacted giving Victorian taxi drivers access to similar rights and protections to owner drivers. Legislation could, for example, provide for model bailment agreements to be developed and endorsed by industry participants similar to the model contract developed for owner drivers and prepared and endorsed by the TIC. The legislation could also provide for disputes to be referred to mediation and for the other protections as outlined above.

7. Conclusion

The ESC Draft Report makes a number of findings and recommendations concerning options for improving taxi driver remuneration.

The TWU considers that there are various similarities between taxi drivers and owners drivers. While the taxi industry and the transport industry are, currently, regulated in different ways, both groups of small businesses (taxi drivers and owner drivers) face similar problems in their commercial relationships with their owners and hirers respectively.

The TWU considers that the ODFCA provides a useful model in terms of seeking to improve taxi driver remuneration.

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