

**The Hon. Brian Howe**

Chair  
Independent Inquiry into Insecure Work in Australia  
Level 6, 365 Queen Street  
Melbourne VIC 3000

3 January 2012

By email: [inquiry@securejobs.org.au](mailto:inquiry@securejobs.org.au)

**Insecure work in the Victorian taxi industry**

Dear Mr Howe

Thank you for this opportunity to contribute to the Independent Inquiry into Insecure Work in Australia.

**1 About us**

Community legal centres (CLCs) are independent community organisations. They draw on the work of volunteers to provide free legal services to the public. CLCs provide advice, information and representation to more than 100,000 Victorians each year. The Federation of Community Legal Centres (Vic) is the peak body for 49 CLCs across Victoria, including the Footscray Community Legal Centre (Footscray CLC).

From February to November 2011, Footscray CLC operated a weekly Taxi Driver Legal Clinic, advising drivers on disciplinary issues, traffic infringements, civil disputes and debts arising from motor vehicle accidents. This casework at the Clinic has given us a valuable insight into the working conditions of taxi drivers.

**2 Working conditions in the Victorian taxi industry**

Taxi driving is difficult, insecure and lowly paid work. Taxi drivers are not legally employees and have no entitlement to sick leave, holiday leave or superannuation. They have no protection against unfair dismissal and no right to regular hours. They receive only 50 per cent of the fares they collect, and often have to pay for uniforms out of their share. On quiet shifts, a taxi driver can make as little as \$8 an hour.<sup>1</sup>

The Victorian Taxi Directorate (VTD) oversees the taxi industry and has the greatest influence over taxi drivers' working conditions. In the past, unions have played a role in the industry, but today very few taxi drivers are union members. Without effective union representation, drivers' pay and conditions have steadily deteriorated over the last decade.

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<sup>1</sup> Taxi operators are legally obliged to maintain WorkCover policies for all drivers, but not all operators meet these obligations.

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At the same time, more and more immigrants have started working in the taxi industry. At the Clinic, many of our clients are young Indian men who study full time and drive taxis at nights and on the weekend. Most hold student visas and do not qualify for any Centrelink benefits. With limited employment opportunities, these clients are often very reluctant to complain about their working conditions.

Most of our clients do not own the taxis they drive. Rather, they drive taxis belonging to large fleets or operators, in accordance with a 'bailment' agreement.

### 3 Bailment

The legal relationship between taxi drivers and owners has been characterised as one of 'bailment' since at least 1941, when the High Court decided the case of *Dillon v Gange*.<sup>2</sup> Bailment is 'the delivery of goods by one person (the *bailor*) into the possession of another (the *bailee*) for some purpose, on the understanding that they will eventually be redelivered in accordance with the bailor's wishes.'<sup>3</sup> In the context of the taxi industry, a taxi owner 'bails' his or her taxi to a driver, in exchange for a proportion of fares earned, or in some cases, for a fixed fee.<sup>4</sup>

#### a Bailment vs employment

Taxi owners designate drivers as 'bailees' in order to distinguish them from employees. From a taxi owner's point of view, there are many benefits that flow from treating drivers as bailees rather than as employees. As bailors, taxi operators are not obliged to withhold Pay As You Go (PAYG) tax, or to make superannuation contributions. As bailees, drivers are not entitled to annual leave, long service leave or recreation leave.<sup>5</sup>

As bailees, drivers also endure irregular hours, lack of financial security, lack of effective workplace representation and poor occupational health and safety standards.<sup>6</sup> These aspects of the job have attracted significant media coverage in the past few months, as a result of the Victorian Government's Taxi Industry Inquiry, chaired by Professor Allan Fels.<sup>7</sup>

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<sup>2</sup> (1941) 64 CLR 253.

<sup>3</sup> *The CCH Macquarie Concise Dictionary of Modern Law* (1988) 13.

<sup>4</sup> In 2009, the VTD produced a Model Taxi Bailment Agreement, 'outlining the rights, responsibilities and obligations of drivers (the Bailee) and operators (the Bailor).' See Model Taxi Bailment Agreement, <http://www.transport.vic.gov.au/taxis/taxis-drivers/model-bailment-agreement-for-drivers-and-operators> (accessed 3 January 2012).

<sup>5</sup> Owen Ratner, 'Taxis – protecting the bailment arrangement,' paper delivered to the Australian Taxi Industry Association Conference, Darwin, on 8 June 2010, available at <http://www.pigott.com.au/news/taxis-protecting-the-bailment-arrangement/> (accessed 3 January 2012).

<sup>6</sup> In recent weeks, former Liberal Premier Jeff Kennett has argued publicly that taxi drivers deserve higher pay and better conditions. See Jeff Kennett, 'Cabbies must get an increase in their pay,' *Herald Sun*, 9 December 2011, available at <http://www.heraldsun.com.au/opinion/cabbies-must-get-an-increase-in-their-pay/story-e6frfhqf-1226217601096> (accessed 3 January 2012). Adam Cooper, 'Kennett calls for all-night public transport,' *The Age*, 12 December 2011, available at <http://www.theage.com.au/victoria/kennett-calls-for-allnight-public-transport-20111212-1oq9c.html> (accessed 3 January 2012).

<sup>7</sup> For more information, see the Taxi Industry Inquiry website, <http://taxiindustryinquiry.vic.gov.au/> (accessed 3 January 2012).

c *Bailment, motor vehicle accidents and driver debt*

As a mere bailee, a taxi driver is personally responsible for repairing any damage to the taxi, in the event of a motor vehicle accident. If the driver is at fault, he or she is also responsible for repairing damage to other vehicles involved in the accident. CLCs regularly assist taxi drivers who have accidents on the job. These drivers can find themselves defending legal claims of \$20,000 or even more. Many drivers in this situation eventually declare bankruptcy.

While bailment does not protect drivers in this situation, the Supreme Court of Victoria has found that in some circumstances, a driver is an *agent* of a taxi owner, as well as being a bailee. This means that in some cases, the driver is legally entitled to pass on the cost of an accident to the taxi's owner.<sup>8</sup>

Despite these Supreme Court decisions, the VTD's Model Bailment Agreement seeks to make drivers solely responsible for costs arising from accidents.<sup>9</sup> In this sense, the Model Bailment Agreement can be seen as favouring the commercial interests of taxi owners, while exposing drivers to significant financial risk.<sup>10</sup>

#### 4 Political factors

While taxi drivers are a transient, atomised workforce, large operators and license owners are highly organised and strategic. These large industry players engage in aggressive lobbying and media management in order to maintain the status quo.

At the 2010 Australian Taxi Industry Association conference, a legal adviser stressed the need to 'protect the bailment agreement,' in the face of increasingly 'vocal' and 'perhaps disruptive' advocacy on the part of the Transport Workers Union, the Victorian Taxi Drivers Association and other driver representatives.<sup>11</sup>

In the same year, the Queensland Workplace Rights Ombudsman investigated the Queensland taxi industry, and encountered 'palpable resentment' and obstruction from those at the 'top level' of the industry.<sup>12</sup>

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<sup>8</sup> See especially *Elfah Pty Ltd v Sabbadini* (1994) 19 MVR 81 and *Emjay Motors Pty Ltd v Armstrong*, unreported judgment of Hedigan J, Supreme Court of Victoria (24 August 1995). See also *Mauro Taxi Services Pty Ltd v Israport (Sales) Pty Ltd* (1990) 12 MVR 147.

<sup>9</sup> The Model Bailment Agreement states that if one party 'suffers a loss because of the other,' the party responsible must reimburse the other' (Clause 12). See Model Taxi Bailment Agreement, above n 4, 11.

<sup>10</sup> Many taxi drivers belong to 'taxi clubs,' which purport to offer an insurance-like product to protect drivers in this situation. In our experience, however, taxi clubs routinely fail to cover third party claims, leaving drivers exposed to these significant debts. Taxi clubs are almost entirely unregulated in Victoria. For more information, please see our submission to the Taxi Industry Inquiry, available at [http://www.taxiindustryinquiry.vic.gov.au/DOI/DOIElect.nsf/\\$UNIDS+for+Web+Display/44AE91BF0004830ECA2578C4001D209D/\\$FILE/SS105-FederationofLegalCentres\(Victoria\)Inc-Submission-PDF.PDF](http://www.taxiindustryinquiry.vic.gov.au/DOI/DOIElect.nsf/$UNIDS+for+Web+Display/44AE91BF0004830ECA2578C4001D209D/$FILE/SS105-FederationofLegalCentres(Victoria)Inc-Submission-PDF.PDF) (accessed 3 January 2012), at 4-5.

<sup>11</sup> Owen Ratner, above n 5.

<sup>12</sup> *Report on Investigation into the Taxi Industry in Queensland by the Queensland Workplace Rights Ombudsman*, 23 June 2010, available at [http://www.workplacerrights.qld.gov.au/pdf/taxi\\_report.pdf](http://www.workplacerrights.qld.gov.au/pdf/taxi_report.pdf) (accessed 3 January 2012), pp 9-10. See also the *Queensland Government Response to Report on Investigation into the Taxi Industry in Queensland by the Queensland Workplace Rights Ombudsman*, 25 November 2010, available at [http://www.tmr.qld.gov.au/~media/bb77dffe-82f2-45fa-a85f-83e929985a9d/pdf\\_response\\_to\\_taxi\\_industry\\_investigation\\_report.pdf](http://www.tmr.qld.gov.au/~media/bb77dffe-82f2-45fa-a85f-83e929985a9d/pdf_response_to_taxi_industry_investigation_report.pdf) (accessed 3 January 2012).

More recently, Professor Fels has suggested that 'industry bosses' have sought to mislead the public, in order to disguise 'the true problems in the industry.'<sup>13</sup>

#### **5 Case studies, policy documents and further information**

We would welcome the opportunity to attend a public hearing, in order to expand on the issues we have raised in this submission. We are currently drafting a detailed report on the work of the Taxi Driver Legal Clinic. The report will include a number of case studies and we would be happy to provide a copy to the Inquiry.

In the meantime, if we can be of any assistance, please do not hesitate to contact me on the number below.

Sincerely

**Lucinda O'Brien**

Policy Officer

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<sup>13</sup> See eg Ashley Gardiner, 'Fels: Taxi chiefs mislead public,' *Herald Sun*, 20 December 2011, available at <http://www.heraldsun.com.au/news/more-news/fels-taxi-chiefs-mislead-passengers/story-fn7x8me2-1226226227669> (accessed 3 January 2012).

