

Response to the Regulatory Impact Statement for the Transport (Compliance and Miscellaneous) Act 1983 Implied Conditions – Taxi Driver Agreements

This response is provided by the Federation of Community Legal Centres Victoria and the Footscray Community Legal Centre Inc. The Footscray Community Legal Centre has operated the Taxi Driver Legal Service for four years and in conjunction with the Federation of Community Legal Centres (Vic) has made submissions to the Taxi Industry Inquiry, the State Government and the Taxi Services Commission on legal and policy issues affecting taxi drivers and owner drivers.

This submission is largely limited to issues relating to insurance requirements due to time pressures. We have attached to our submission a commentary on the insurance issues raised in the Regulatory Impact Statement, prepared on our behalf by Mr Alan Mason, former executive director of the Insurance Council of Australia. We note that that Mr Mason has based some calculations on claims statistics provided on a confidential basis by two major national insurers. Mr Mason has indicated he is available for follow up contact if he may be of further assistance.

We support the proposal for compulsory third party property insurance and acknowledge that the proposal is intended to fulfil one of the major recommendations of the Taxi Industry Inquiry. Our support for the proposal is subject to the requirement that each owner should have an individual policy and that status as a beneficiary to a group policy would not be sufficient to meet the regulatory requirement. We also support the requirement that the owner must make a copy of the policy available to a driver of the taxi.

In response to specific stakeholder questions we comment as follows:

1. Excess Exemption: Should operators be entitled to seek a \$1000 contribution from the driver?

We are disappointed by this proposal and note the Taxi Industry Inquiry determined on the basis of both equity and efficiency that drivers should not be required to contribute towards the excess. We refer to our previous arguments in relation to this issue:

- The taxi and the insurance belong to the owner/operator;
- It is normal practice for the owner of an insured vehicle to pay for the excess;
- Demands for excesses from drivers have been the subject of serious abuse; and
- An excess of \$1000 is equivalent of two weeks earnings and unreasonable.

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However we also point to the submission by our consultant Mr Mason in relation to the standard operations of the insurance industry and highlight further reasons why it is inappropriate to require contributions from drivers:

- The excess on an insurance policy is in fact a pricing mechanism imposed on owners to control costs of claims. To allow operators/owners to transfer the responsibility for the excess to the driver will distort a fundamental pricing mechanism imposed by the insurance industry.

In our submission the lack of access to appropriate insurance in recent times has arisen in no small part as a result of the abuses and distortions by taxi owners which created a lack of trust in the taxi industry. In order to re-establish trust between the insurers and the taxi operators we would urge the Taxi Services Commission to require operators to meet all of the normal requirements of the insurance industry.

The responsibility for payment of the excess is a fundamental market pricing mechanism and the Taxi Services Commission should not interfere with that mechanism without very good reason.

- Mr Mason noted that if operators only purchase third party property insurance it is likely that some form of “first party” party mutual insurance will continue to be provided by taxi clubs. This is likely to lead to a requirement for two excesses for the same accident. The imposition of two excesses on a driver would be grossly inequitable and cost far more than the proposed \$1000.

The Taxi Services Commission would have to be confident that if it allowed the operator to seek a contribution from the driver for the regulated insurance policy it could prevent a request for a second excess for the unregulated policy. The Commission should also consider the possibility that a refusal to provide a second excess might lead to the driver being refused access to the taxi.

- Mr Mason noted that it is inappropriate for a driver to acknowledge liability prior to the lodgement of a policy as such action may be regarded as a breach of the policy. We also note that the effect of this proposal is to distinguish between cases where the driver is or is not responsible for the accident. This fails to recognise that in many accidents both parties are partly to blame or that it may be difficult to determine fault – insurers frequently settles cases based on each party bearing their own costs. In view of the financial impact of the payment of excess on a driver this proposal is likely to encourage drivers to deny or dispute liability and complicate the resolution of the responsibility for the accident.

Mr Mason further noted that not all offences are an indicator of liability, referring to leaving the scene of an accident. An accident

between an alcohol affected or speeding driver and a taxi could lead to ancillary charges against a taxi driver without being an indicator of fault by the taxi driver. We also note that the proposed wording draws a distinction between committing an offence, being charged with an offence and being found guilty of an offence. We submit that the proposed reference to being guilty of an offence is entirely misconceived.

We submit that these additional arguments provide the Taxi Services Commission with strong grounds to support the recommendation of the Taxi Inquiry that it was inappropriate to require a driver to contribute to the excess.

2. Amount of Insurance Excess

We refer to the extensive comments by Mr Mason in relation to the impact of a high excess on the effectiveness of insurance policies. We wish to record our concern that the proposed indemnity by the operator and the requirement for third party property insurance will be rendered ineffective if the insurance policy has an excess in excess of \$1500.

We note it has been our experience that we have represented operators who could not afford premiums and allowed the taxis to operate uninsured. We have also represented drivers where we suspect the operator could not afford to pay the excess.

We note the comments that most accidents lead to claims under \$10,000 and query whether many operators will pay the damages if the claim is less than the excess. The driver may have an indemnity but that is not a defence to a third party but rather provides a right of action against the operator. One solution may be to advise operators that failure to indemnify the driver will be grounds for loss of accreditation as an operator.

We accept that specifying a low excess may drive up premiums in the short term. Our argument is that the State Government and the Taxi Services Commission have an absolute duty to protect taxi drivers from liability (and financial ruin) arising out of third party motor vehicle claims.

We submit that if the requirement for third party insurance together with the indemnity from the operator fails to achieve this objective, the only solution will be for the driver to be indemnified by the State Government or the Taxi Services Commission or to have access to a statutory fund that will pay third party claims on their behalf. The alternative is to pull taxi drivers off the road, or disallow use of drivers, on the basis that it would be unconscionable to allow such drivers to be knowingly and willingly exposed financial ruin.

3. The use of bonds

We note that the specific circumstances in which an operator could access a bond would include losses relating to negligence. We are concerned that if a requirement for a driver to contribute to an excess for a motor vehicle accident is disallowed the bond will allow such a recovery if it is based on negligence. We are equally concerned that if a requirement for a driver to contribute to an excess for a motor vehicle accident is allowed there is nothing to prevent an operator also seeking deduct monies from the bond for the same accident. In particular if the operator recovered an excess for the third party insurance claim

but was prohibited from recovery for the first party policy for repairs to the taxi, the bond would allow such recovery. We submit that the Taxi Services Commission should explicitly prohibit double or triple recovery if it allows operators to require driver contribution to excesses for motor vehicle accidents. In our submission the bond should under no circumstances cover losses arising out of motor vehicle accidents.

We submit that a bond should be a modest sum, no more than a week's earnings (\$500), to allow an operator to recover bailment fees, minor repairs or cleaning costs.



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