

INDEPENDENT PRICING AND REGULATORY TRIBUNAL
OF NEW SOUTH WALES

REVIEW OF FARES FOR TAXIS 2002

SUBMISSIONS BY THE TWU

A. Interest of TWU in the IPART Review

1. These submissions are made by the Transport Workers' Union of New South Wales Branch [**the TWU**]. The TWU is an Association of Contract Drivers, registered as such under Part 5 of Chapter 6 of the *Industrial Relations Act, 1996*.

2. As such the TWU is the sole organisation that represents the industrial interests of bailee taxi drivers as a party to proceedings before the Industrial Relations Commission of New South Wales. Pursuant to Section 312 of the *Industrial Relations Act, 1996* the Commission may inquire into any matter arising under contracts of bailment (defined in Section 307 as a contract under which a taxi-cab is bailed to a person to enable the person to ply for hire) and to make a contract determination with respect to:
 - the remuneration of bailees;
 - attendance money for bailees;
 - annual or other holidays, sick leave and long service leave for the bailee;
 - the minimum hours which the bailor is to bail the vehicle to the bailee;
 - the maximum number of hours that a bailee may drive a public vehicle; and
 - other conditions.

3. The Industrial Relations Commission also has jurisdiction to:
 - Reinststate contracts of bailment (Section 314);
 - Approve agreements entered into between a bailor or an association of employing contractors and the TWU (Section 325); and
 - Convene a compulsory conference in relation to an Industrial Dispute relating to contracts of bailment (Section 332).

4. The Industrial Relations Commission exercised its jurisdiction in 1984 and made the *Taxi Industry (Contract Drivers) Contract Determination* [***the Determination***] which took effect on 12 March that year, following an application by the NSW Taxi Council.

5. Since it was first made the Determination has been varied by the Commission on a number of occasions, but still remains in force. The Determination applies to all contracts of bailment in the (Sydney) Metropolitan Transport District and provides for, inter alia:
 - The method by which the bailee pays the bailor for the bailment of the taxi-cab; and
 - Annual Leave, Long Service Leave and paid sick leave.

6. Specifically, the Determination provides for two methods by which the bailee can elect to make their "pay-in" to the bailor at the end of their shift, vis:

Method 1 - the bailee is entitled to receive and retain 50% (45% for 1st year drivers) of the chargeable fares collected. The balance is bailed to the bailor. The operator (bailor) pays for all fuel and car wash.

Method 2 - the bailee must pay a fixed amount to the bailor, irrespective of the value of the fares taken in the shift. Further, the bailee pays for all fuel and wash costs.

7. Notwithstanding the fact that the interest of the TWU is to represent bailee taxi drivers is primarily an industrial one, exercisable before the Industrial Relations Commission, driver earnings are largely dependent upon the price of taxi fares, which are set by Government. Therefore the interest of the TWU in this inquiry is to ensure that IPART properly takes into account the interests of bailee drivers when making recommendations to Government about the price of taxi fares. Specifically, the TWU is concerned that in any Recommendation to Government:

- Bailee costs are properly accounted for;
- Fares are adequately set to ensure that bailee drivers retain a sufficient amount from their takings to earn a reasonable wage in the industry;
- Fares are adjusted so as to provide for superannuation benefits for bailee drivers; and
- Provision is made for ongoing training in Occupational Health & Safety, Industrial Rights, Vocational and other Professional Skills.

B. The Link between Driver Remuneration, Pay-ins and Taxi Fares

8. Notwithstanding the theoretical right of bailee drivers to elect which method of payment they wish to operate under the reality is that an overwhelming majority of bailee taxi drivers operate in Sydney under Method 2 - the fixed pay-in system.

9. The remuneration of bailee taxi drivers operating under method I is half the total value of chargeable fares collected, which in turn is dependent on only 2 factors:

1. The number and composition of fares; and

2. The monetary value of each of the applicable fare components (flag fall, booking fee, waiting time, distance rate, late night tariff).
10. By contrast the remuneration of bailee taxi drivers operating under method II is determined by:
1. The number and composition of fares;
 2. The monetary value of each of the applicable fare components;
 3. The cost of fuel and wash; and
 4. The value of the fixed pay-in to be made.

Anything collected in excess fuel & wash costs and the fixed pay-ins is the drivers remuneration.

11. While the frequency and composition of fare journeys per shift is somewhat dependent upon driver skill and experience the overriding factor is the level of demand for taxi services in the marketplace. Therefore, other than market demand the remuneration for a relatively experienced taxi driver is entirely dependent upon:
- fare prices;
 - fuel and wash costs; and
 - value of the fixed pay-in.
12. The value of the fixed pay-in was established in the Determination based on an assumption to a bailee driver operating under Method II would not be disadvantaged when compared to a bailee driver operating under Method I. In otherwords, the pay-in was meant to represent an average of 50% of the total takings for that shift (Between 1984 and 1996 the operator paid for fuel and wash costs). This assumption is borne out by the fact that between the establishment of the

Determination in 1984 and 2001 the Industrial Relations Commission increased the Method II pay-ins by the same percentage as any increase in taxi fares.

13. Doubts about the validity of the assumption that the Method II pay-in was no more than 50% of the total shift takings soon emerged. The TWU consistently opposed the effective automatic link between the increase in pay-ins. The TWU did not believe that the fixed pay-ins were no more than 50% of total takings. The TWU's suspicions were born out by the finding by IPART in November 1999 that bailee driver earnings, net of fuel and wash costs ranged between \$60 and \$100 dollars. In November 1999 the average night shift pay-in was \$124. The day shift pay-in was \$97. However, in the absence of any real objective data about the level of driver earnings and operator costs the Commission continued to apply increases to the Method II pay-ins of the same percentage value as any fare increases until December 2001.
14. On 5 December 2001, Mr Justice Marks departed from the customary practice of varying the pay-ins by the same percentage as the 1 September 2001 increase in taxi fares. In so doing, Justice Marks had regard to the July 2001 Report by the Independent Pricing and Regulatory Tribunal [**IPART**] to the Minister for Transport.
15. The July 2001 IPART Report recommended that taxi fares be increased by an average of 4.1% for urban areas and 4.2% for country areas. This recommendations were adopted by the NSW Government and fares increased accordingly on 1 September 2001.
16. In developing its recommendations to the Minister IPART had regard to a number of changes in the fixed and variable costs in operating taxis between the period July 1999 and the end of June 2001. This covered the period with respect to which the last fare increase (of 5.1%) had been determined on cost increases (other than a fare

adjustment which was made solely to accommodate the GST which applied from 1 July 2000).

17. The 2001 IPART Report contained a table of fixed and variable operation costs for urban taxis. Significantly, of the 4.1 percent increase in fixed and variable costs percent was attributable to fuel cost movements since July 1999 and a further 1.4 percent was attributable to increases in bailee driver payments. Only 0.7 percent was attributable to increases in operator costs.
18. Justice Marks declined to follow the custom and practice and increase the Method II fixed pay-ins by 4.1 percent. Relying upon the conclusions contained in the July 2001 IPART Report His Honour limited the increase in the maximum pay-in amounts to 0.7% - the amount identified as attributable to increases in operator costs.

C. Submissions to the 2002 IPART Review of Taxi Fares

19. Numerous Submissions have already been received by IPART relating to this review. Of particular note to this submission are submissions by the following:
 - NSW Taxi Council, dated 28 March 2002;
 - TWU Taxi Drivers Committee, dated 14 May 2002; and
 - The Tourism Task Force, dated 29 April 2002.
20. The TWU generally supports the submissions of the TWU Taxi Drivers Committee. Specifically:
 - the TWU believes that the average earnings of bailee taxi drivers in the Sydney Metropolitan Area is less than \$10.00 per hour;
 - fare prices need to increase substantially to provide a fair wage to drivers; and
 - fares should be increased to provide for driver superannuation benefits.

21. Both the Taxi Council and the Tourism Task Force criticise the Industrial Relations Commission process of setting Method II pay-ins and taxi drivers. The criticism of the Industrial Relations Commission stems from the fact that Justice Marks only permitted a 0.7% increase to Method II pay-ins when fares had gone up 4.1%. Drivers are blamed for poor service standards.
22. With respect to the Commission Proceedings the following points need to be made:
- The proceedings before Justice Marks were the first occasion in which the Commission had regard to an independent report (the July 2002 IPART Report) that reached conclusions on the movement of both operator and driver costs; and
 - Consistent with the Taxi Council's "Two Businesses" theory, Justice Marks refused to take into account the increases in driver costs when determining the amount how much the fixed pay-in should increase. In other words, Justice Marks only permitted a 0.7% increase in pay-ins because IPART had concluded that operator costs (as opposed to driver costs) had only increased by 0.7%.
23. The Taxi Council is now complaining about a system (the Industrial Relations Commission setting maximum pay-ins) that has been to the operators' overwhelming benefit in the past. This system is one which the Council devised, made application for and has consistently defended from all review, until now. It does not suit the Taxi Council to have the Industrial Relations Commission set the maximum pay-ins, now that the Commission is armed with independent data and reports produced by IPART because the Taxi Council can no longer simply front the Commission and argue that "custom and practice" demand the same percentage increase to the pay-ins as the percentage increase that fares have risen by.

24. The submission of the Tourism Task Force that service problems in the taxi industry are commonly due to the failure of drivers rather than networks or operators is simplistic in the extreme. The submission of the Taxi Council that operators have no direct control over driver performance is downright devious. Both submissions miss the critical issue surrounding driver performance. A more accurate appraisal of the issue was contained in a driver submission to the 1999 IPART Report, vis.

"From long experience the primary complaints of customers are largely related to issues of drivers who don't know the destinations, who don't know their way, who detour the long way, who won't or cannot consult their street directories, who don't know how to avoid traffic jams, who miscalculate and are late arriving for pick up, who charge extras incorrectly, who are inarticulate, uncommunicative, who are rude, who are not prepared to do short trips, or long trips, etc. These and many others are fundamental service problems, the result of inexperienced drivers, as customers often remark.

After Taxi Training it takes some two years for a taxi driver to become experienced, to reasonably thoroughly get to know Sydney in a way that enables an informed efficient service to be usually provided to most customers under most circumstances. Even then an experienced driver will often have to rely on his/her wits to deal effectively with many unexplained problems. It is only when a pool of experienced, and therefore stable, drivers is established that the service to customers will improve and complaints reduce significantly."¹

25. Overall driver performance is determined by two fundamental issues, driver entry requirements and the pool of experienced and skilled drivers in the industry. To be accredited to drive a taxi in Sydney, Newcastle and Wollongong applicants must hold a class 1A driver's licence, have 12 months driving experience in Australia, pass an English language test, have no criminal record, and pass a taxi driving course including a multiple choice test. There are no ongoing experience requirements. There is still no provision for ongoing driver training, once they leave the training schools.

¹ Submission of David Lipski. Reprinted in IPART Review Report - Rev99-8, 24 November 1999 at page 19.

26. There are two authorised driver training schools in Sydney, which between them enrol two thousand trainee drivers each year. About 60% of trainees in Sydney graduate and qualify as drivers. However, approximately 75% do not renew their licence after the first year². That is to say 75% of new entrants leave the industry within one year. This is truly a remarkable figure given the time (approximately 10 to 16 weeks) and the personal expense (approximately \$800) that it takes each new driver to gain a licence.
27. Notwithstanding the time and cost involved new drivers the evidence suggests that new drivers leave the taxi schools with little practical knowledge of how to operate a taxi service, deliver customer service or navigate around Sydney. New drivers do not receive adequate training in Occupational Health and Safety and virtually all new drivers are not aware of their industrial rights under the *Industrial Relations Act* (see paragraphs 2 and 3 above), or their entitlements under the Determination (see paragraphs 4 to 6), or that they are eligible to join a Union (the TWU) that can represent them in the Industrial Relations Commission.
28. The two taxi training schools in Sydney teach a syllabus created and owned by the NSW Taxi Council. The schools are owned by some of the larger taxi operators and the Taxi Council has a commercial stake in the training schools. The Taxi Council has a responsibility to ensure that the syllabus is delivered. The Taxi Council is failing its members (operators) and the public by not ensuring that entry level drivers are proficiently trained. Drivers, particularly new drivers, cannot be fairly blamed for poor quality service that accompanies inadequate training. Yet both the Taxi Council and the Tourism Task Force do precisely that.
29. The high rate of driver turnover in the industry is a major problem in the industry. No other industry in Australia has turnover of 75% of new applicants per year. The pool of experienced drivers in the industry is dramatically reduced by this turn over rate. In its April 2001 Submission to the Department of Transport the Taxi Council

noted that the declining pool of drivers in the industry had resulted in between 10% and 40% of the available fleet (or up to 1,900 taxis) sitting idle for any particular shift.

30. The high turnover rate and the correspondingly declining pool of drivers is due to the low levels of remuneration, the lack of comparable benefits such as superannuation, poor working conditions and driver safety issues.
31. There is now a substantial level of anecdotal evidence to suggest that average bailee driver earnings are less than \$10 per hour. This includes:
 - the finding of IPART in 1999 that the average earnings for a bailee driver per shift, net of fuel costs and pay-in rate, are around \$60-\$100;³ and
 - the analysis of the TWU Taxi Drivers Committee Submission⁴.
32. The IPART cost model (developed in the 2002 Report) has been largely adopted by the Taxi Council in its submissions. At Table 15 of its Fare Submission the Taxi Council assumes a figure of \$62,135 per annum for driver fee retention. Assuming that the cab in question is bailed for 12 shifts per week, 50 weeks per year the net retention figure per shift is \$103.55 for a twelve hour shift. Using the conservative estimate of 11 hours work per shift (including driving time, time cleaning vehicle, filling up on LPG and 2 half hour breaks per shift), the driver is only earning an average of \$9.41 per hour. This is more than 25% below what an employee would earn for an 11 hour shift under the current Federal minimum wage and fully 38% below what a Grade 1, NSW transport employee would earn under the Transport Industry (State) Award.
33. Further, bailee taxi drivers do not receive the benefit of compulsory superannuation that workers in comparable service industries do.

² IPART Review Report - Rev99-8, 24 November 1999 at page 50.

³ IPART Review Report - Rev99-8, 24 November 1999 at page 54.

D. Recommendations

34. **Increases in Urban Taxi Fares.** Urban taxi fares should be increased by no less than 14.95%. Further, the model contained at Table 15 of the Taxi Council Submission should be modified to provide for a significant increase in the bailee fee retention, bailee superannuation benefits and by maintaining LPG cost prices at their current levels. While the Union shares the concerns expressed by the TWU Drivers Committee about the true operator cost in running a taxi, the Union is not in a position to provide any alternate data. However, the Union agrees with the Submission of the Drivers Committee that IPART should conduct an independent inquiry into Operator Costs. Notwithstanding this the Union has used the data provided by the Taxi Council with respect to Operator costs reservation for the purposes of developing the cost table at Attachment "A".
35. **Bailee Fee Retention.** This amount should be immediately increased by 15% to \$69,106 with further increases in future years until such time as a bailee taxi driver can expect to retain an amount after fuel and wash equivalent to the amount an employee transport worker Grade 1 would earn for performing similar work as an employee under the applicable award - the Transport Industry (State) Award.
36. In making this submission (which differs somewhat from the TWU Drivers Committee Submission) the TWU is mindful of the need to balance the competing interests in the taxi industry. On the one hand there is little doubt that increasing the bailee fare retention amounts will make the industry a more attractive long term career prospect, thus encouraging new and existing drivers to remain in the industry. This in turn will increase the pool of experienced drivers in the industry which benefits both operators (by increasing the utilisation of the Sydney taxi fleet) and the general public (by increasing service levels). On the other hand increasing fares too

⁴ See pages 23 to 27 and attachments.

quickly will suppress consumer demand for taxi services, which will erode driver earnings.

37. For this reason the TWU favours a phasing in of the increases needed in the long term for sustainable driver earnings. In this context a 15% increase in the bailee fee retention is a modest amount, given that it would, by itself, only increase existing taxi fares by a factor of 5.39% (See the table at Attachment "A").
38. **Superannuation.** In its 2001 Review IPART accepted the submission that there should be provision in the taxi cost model for operator superannuation. As a matter of fairness and equity similar provision should be made for bailee superannuation.
39. The payment of superannuation contributions on behalf of employees by their employers is a standard award benefit under the state wage case principals⁵.
40. The payment of superannuation contributions on behalf of bailee taxi drivers will be conducive to bailee taxi drivers building careers in the industry. The industry has long been characterised as suffering from a high turn over of drivers with the consequent problems of low productivity, low service levels and low remuneration. In recent years it has also been characterised by a shortage of drivers. It is in the public interest, as well as in the interests of bailee taxi drivers and bailors, that bailee drivers be encouraged to stay in the industry longer, since this enhances skill levels, productivity, and the provision of high standard services to the general public.
41. It is in the public interest and in the interests of bailee taxi drivers that compulsory savings for retirement be made on behalf of bailee taxi drivers. The same considerations apply to bailee drivers in this context as apply to employees generally, including the need to relieve the pressure on public finances of the costs of retirement, and the need to enhance retirement incomes.

42. The New South Wales Parliament has already legislated so that bailee taxi drivers and contract carriers can receive the same minimum benefits that employees enjoy whilst performing similar work as employees under awards (see paragraphs 1 to 4 above). Hence the Commission has power to make a contract determination with respect to superannuation for contract carriers and bailee taxi drivers.
43. Significantly the Industrial Relations Commission has awarded compulsory superannuation benefits to contract carriers the Courier Industry in 1999⁶. There is no reason that the Commission should exercise its powers in a different manner merely because the relationship in question here is one of a contract of bailment.
44. Consistent with the approach taken by the Union with Couriers in 1999 the TWU made application, inter alia, to the Industrial Relations Commission in 2001 for compulsory superannuation benefits⁷. This part of the Union's application was stood over generally once it became apparent that IPART had made provision in the taxi fares for operator superannuation but not driver superannuation. The Union stood its application over because if it pressed ahead with it and was successful, then there was a real risk that bailee drivers would have ended up paying for superannuation out of their own, merge takings. Superannuation for bailees can only become an industry practice if provision in the rate of taxi fares is made for it.
45. If and when taxi fares increase because of the introduction of bailee superannuation in the cost model the Union will press ahead with its application in the Commission for compulsory superannuation contributions to be made by bailors with respect to bailees. The TWU maintains that Superannuation should be implemented directly through contributions into a specified fund rather than indirectly through the adjustment in the maximum taxi fare alone. This will ensure that superannuation contributions are actually made into a fund.

⁵ see *State Wage Case June 1996 (1998) 79 IR 416 at 449-450*

⁶ Unreported Decision of Commissioner Connor in IRC No. 5280 of 1998, dated 4 November 1999.

46. Bailee drivers should be entitled to Superannuation benefit equivalent to 9% of their ordinary time earnings. As the standard ordinary working time is a 12 hour shift the benefit should be equal to 9% of their average shift takings. The TWU has adjusted the cost model accordingly (See the table at Attachment "A"). Provision for Bailee Superannuation would increase existing taxi fares by a factor of 3.72%.
47. **LPG Fuel Prices.** Since April 1996 fuel costs are borne by bailee drivers. Prior to this the bailor was required to pay for fuel. Clause 5 of the Determination provided that *"The bailor shall pay for all fuel, oil, maintenance, registration and licence fees in respect of the operation of the taxi cab."*⁸ This provision was altered in April 1996 to *"The bailor shall pay for all oil, maintenance, registration and licence fees in respect of the operation of the taxi cab."*⁹
48. In April 1996 the average cost of LPG was approximately 26 cents per litre. The Taxi Council sites a current cost for urban LPG at 38.1 cents. In the last 18 months the price has fluctuated from its current low levels to well in excess of 50 cents per litre. The Taxi Council sites the cost of LPG in Sydney as at June 2001 as 47 cents per litre. However a check of the historical data published by GOGAS indicates that the cost of LPG at the end of June 2001 were no more than 44 cents per litre¹⁰. Of interest is the price of LPG at the Rozelle Caltex service station, a station frequently used by taxi drivers. LPG at this station was 41.9 cents per litre on 5 June 2001 but increased to 49.9 cents on 9 November 2001. The current price of LPG at that service station is 36.9 cents¹¹. The price fluctuations at this station illustrate that:
- LPG was less than 47 cents in June 2001 (41.9 cents);
 - LPG has been subject to wild fluctuations in price over the past year; and
 - The percentage drop in the price of LPG is significantly less than the Taxi Council cost analysis.

⁷ IRC No. 3282 of 2001; filed on 15 May 2001.

⁸ 264 NSW Industrial Gazette 456 at page 460

⁹ IRC No. 2383 of 1995. Decisions by Commission Connor on 24 April 1996 (295 IG 1420)

¹⁰ "Price Movement" page on the GOGAS Website www.gogas.com.au

¹¹ Caltex "Travelmate.com.au" Internet service. Latest price as at 18 May 2002.

49. Three points need to be made about fuel prices.

1. Bailee taxi drivers have never been properly compensated for the increase in LPG prices that occurred between April 1996 (when they became obliged to pay for fuel and wash) and the 1999 IPART report. Any relief that bailee drivers gained out of the 8.1% increase in fares in late 1999 was short lived because the Industrial Relations Commission increased pay-ins by 8.1% in March 2000. This had the effect of eroding all the increased income that had flowed from the increase in fares.
2. Bailee taxi drivers have not been properly compensated for the increases in fuel costs since 1999. Between July 2000 and March 2001 LPG prices were consistently over 50 cents per litre. Since June 2001 fuel prices have fluctuated from their current low levels to over 50 cents per litre.
3. The reduction in fuel cost prices since June 2001 is significantly less than the figures used by the Taxi Council in their cost analysis.

For these reasons the cost of fuel should not be reduced in the cost model.

50. **Country Taxi Operations.** The observations of this submission have been made in the context of Urban Taxi Operations. The same observations are generally applicable with respect to country operations. Bailee drivers in the country should be entitled to superannuation. They should also be entitled to a living wage. Contrary to what the Taxi Council has submitted bailee Commission fees in the country are often as little as 35% of the total take in fares.

ATTACHMENT "A"

TWU Table of NSW Urban Taxi Operating Costs.

Expense	IPART (June 01) \$	Current \$	Weight (June 01)	Weighted Change	Weighted % Change
Fixed					
Vehicle Lease payments	7,887	8,281	4.72	4.96	0.24
Insurance	12,025	12,737	7.17	7.60	0.43
Government Charges	739	739	0.44	0.44	0
Network Fees	6,050	6,436	3.62	3.85	0.23
Plate Lease Fees	17,010	19,500	10.15	11.64	1.49
Annualised Establishment Costs	1,295	1,640	0.77	0.98	0.21
Variable Expenses					
Maintenance Labour	6,958	6,854	4.16	4.10	(0.06)
Vehicle Parts and panels	10,403	15,043	6.24	9.02	2.78
Cleaning	3,220	3,220	1.93	1.93	0
Tyres	2,543	2,800	1.52	1.67	0.15
Operator's Superannuation	969	1,002	0.58	0.60	0.02
Operator Salary Equivalent	12,108	12,525	7.22	7.47	0.25
Driver Entitlements	3,705	3,731	2.22	2.24	0.02
Uniforms	2,400	2,400	1.44	1.44	0
Other	3,361	3,484	2.08	2.16	0.08
Driver Business Expenses					
LPG Fuel	16,475	16,475	9.84	9.84	0
Driver Bailment Fees	60,092	69,106	35.90	41.29	5.39
Driver Superannuation	Nil	6,220	0	3.72	3.72
Total	167,240	192,053	100.00	114.95	14.95

Note: A simple "weighted benchmark" formula was used to develop this table, whereby the actual cost of each component in June 2001 is expressed as a percentage of the total amount to establish the "Weight (June 01)" amount. The percentage change in each component was then multiplied with the "Weight (June 01)" amount to obtain the "Weighted Change" amount. Subtracting the former from the later then gives the "Weighted % Change" for each cost component.