



Federation of
Community Legal Centres
VICTORIA

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Footscray
Community Legal Centre Inc

IN THE DRIVER'S SEAT

Achieving justice for
taxi drivers in Victoria

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About this report

This report documents the work of the Taxi Driver Legal Clinic, a joint project conducted by the Federation of Community Legal Centres (Victoria) and Footscray Community Legal Centre in 2011.

Case studies

The case studies in this report are closely based on the real experiences of clients at the Taxi Driver Legal Clinic. In the interests of confidentiality, however, clients' names and some identifying details have been changed.

Acknowledgements

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I would like to thank the many volunteer lawyers and law students who gave their time to the Taxi Driver Legal Clinic, particularly Farris Derrij and Vanessa Mellios.

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Lucie O'Brien

Policy Officer, Federation of Community Legal Centres

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Legal Services **BOARD**

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Abbreviations

ACCC	Australian Competition & Consumer Commission
ASIC	Australian Securities & Investments Commission
CLC	Community Legal Centre
IDR	Internal Dispute Resolution
LSB	Legal Services Board
PAYG	Pay As You Go
TSC	Taxi Services Commission
VCAT	Victorian Civil and Administrative Tribunal
VOCAT	Victims of Crime Assistance Tribunal
VTD	Victorian Taxi Directorate

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1 Executive summary

In Victoria, taxi drivers have few legal rights, earn little money and have almost no bargaining power in the workplace. Most drivers are either international students or recent immigrants. Some have come to Australia as refugees. These drivers generally have limited employment prospects. They rely heavily on taxi driving to support themselves and their families. For this reason, they are often reluctant to complain about unfair treatment by taxi owners.

We established the Taxi Driver Legal Clinic (the **Clinic**) to address taxi drivers' unique legal problems. Community Legal Centres (**CLCs**) have helped drivers on an *ad hoc* basis for many years, but the work is sometimes difficult, due to the complex and unusual nature of taxi drivers' problems. By setting up a dedicated legal service for taxi drivers, we hoped to develop a better understanding of the taxi industry and the underlying causes of drivers' legal problems. In this way we aimed to offer more specialised, more effective legal advice.

From February to November 2011, the Clinic assisted 169 clients. 96 per cent of these clients were born outside Australia and 80 per cent spoke a language other than English at home. Most of our clients did not own the taxis they drove; rather, they drove taxis belonging to large operators or fleets. Our casework consisted of three main categories: fines, disciplinary matters and motor vehicle accidents. We also advised on credit and debt, consumer, employment, discrimination and criminal law. We initially planned to target 'bailee' (ie non-owner) drivers, but we quickly realised that many 'owners' also suffer from severe financial hardship. Many of these 'owners' are heavily indebted, having borrowed large sums to buy taxis and lease taxi licenses. We decided to assist disadvantaged, low income taxi 'owners' on a case-by-case basis.

As a result of our work at the Clinic, we believe that the Victorian taxi industry needs urgent, radical reform. This process must start with a review of drivers' anomalous status as 'bailees'. As 'bailees,' non-owner drivers are deemed to be independent business operators. In practice, however, the relationship between drivers and taxi owners has many features of an employment relationship: non-negotiable hours, uniform requirements and a high degree of control on the part of fleets, depots and radio networks. Yet, as 'bailees,' taxi drivers enjoy none of the benefits that most employees take for granted, such as minimum wages, sick leave, annual leave, superannuation, occupational health and safety training and protection against unfair dismissal. As a result, many drivers struggle to meet their day to day living expenses, despite working 12 hours a day, five or six days a week. In our view, these drivers represent a new and disturbing category of the 'working poor' in Australia.

The Victorian Government should take legislative action to address exploitation in the taxi industry and to ensure drivers enjoy the basic entitlements of employees. It should ask WorkSafe to conduct an audit of

the industry, to ensure that taxi operators comply with their current obligation to maintain workers' compensation policies for all drivers. This would greatly reduce the number of legal problems experienced by taxi drivers. It would also improve standards in the industry by making taxi driving a more attractive long-term career option.

The Government must also acknowledge that the Melbourne taxi industry relies heavily on recently arrived migrants. It must provide targeted support and training for taxi drivers whose first language is not English. It should reform the disciplinary system to make it simpler and more accessible, especially for recent migrants.

The Government must also act to address the chronic underinsurance of the Victorian taxi industry. Underinsurance is a major cause of legal problems for low income taxi drivers. Most taxi drivers belong to so-called 'taxi clubs.' These clubs purport to offer a limited form of 'insurance' to taxi drivers, but are subject to very little regulatory oversight. In many cases, they provide few if any benefits to bailee drivers. In the event of a car accident, drivers can pay up to \$1,500 'excess' to a taxi club, believing that the club will cover all the costs relating to the accident. Yet taxi clubs often fail to pay third party claims, that is, the cost of damage to other cars involved in the accident. This leaves bailee drivers exposed to legal claims from third party drivers and their insurers. Months or even years after an accident, these drivers can find themselves in court, facing claims as high as \$20,000. Many taxi drivers in this situation end up declaring bankruptcy.

To address this problem, the Victorian Government must follow the lead of New South Wales by introducing compulsory comprehensive insurance in the taxi industry. It must require taxi owners to take out policies with reputable insurers, governed by federal legislation. This would protect drivers from accident-related legal problems, debt and associated stress and ill health. The Government should also ask Consumer Affairs Victoria to investigate the current practices of Victorian taxi clubs, with a view to addressing misleading and deceptive practices in the industry.

If the Government acts on these recommendations, taxi driving will become a much more secure, profitable and attractive occupation. This in turn will raise standards in the industry and address the current widespread dissatisfaction with Victoria's taxi services. More importantly, it will ensure fair treatment for some of Victoria's most vulnerable and socially marginalised workers.

1.1 Summary of recommendations

Recommendation 1

The Victorian Government should prohibit the use of bailment agreements in the taxi industry. It should take action to ensure that all drivers enjoy the entitlements of employees, including minimum hourly rates, annual and sick leave, occupational health and safety training and rights against unfair dismissal.

Recommendation 2

The Victorian Government should conduct an audit of Victoria's taxi operators to ensure they are complying with their obligation to maintain appropriate WorkSafe insurance policies in accordance with the *Accident Compensation Act 1985* (Vic).

Recommendation 3

The Victorian Government should introduce regulations mirroring the *Passenger Transport Regulation 2007* (NSW), requiring all taxi operators to take out comprehensive property damage insurance with reputable insurance companies. These regulations should entitle a non-owner driver to claim on the owner's insurance policy, if the owner refuses to make a claim.

Recommendation 4

Consumer Affairs Victoria should audit all Victorian taxi clubs and take action to wind up those clubs whose activities are not in the public interest.

Recommendation 5

The proposed Taxi Services Commission should provide targeted support and training for recently arrived migrant taxi drivers. The TSC should assist these drivers by providing translated materials explaining Victorian traffic laws, the infringements system and occupational health and safety laws. It should also provide these drivers with the contact details of free interpreting services and sources of legal advice.

Recommendation 6

The Department of Transport should revise the standard letters sent to taxi drivers who face disciplinary action. These letters should be redrafted in plain English and in a simpler format. The letters should include the contact details of free interpreting services and CLCs.

Recommendation 7

The Victorian Government should fund a Victorian CLC to provide legal assistance and advocacy to taxi drivers facing disciplinary action. This funding might be targeted to taxi drivers whose first language is not English, or drivers who came to Australia as refugees.

1.2 Case study: Ravi's story

Our client, Ravi, is a 30 year old Indian man. He arrived in Australia in 2007. He is married with children.

Ravi hit Alonzo's car while driving a taxi in May 2008. He paid an 'excess' of \$1,500 to his taxi club. The taxi club told him that it would take care of everything, but in June 2008, Ravi received a letter from Alonzo's insurer, demanding \$9,000 for the damage to Alonzo's car. Ravi went back to the taxi club and asked what was going on. The taxi club told him not to worry about it. In November 2008, the taxi club wrote to Alonzo's insurance company accepting liability and agreeing to pay the \$9,000. The taxi club enclosed a cheque as part payment and sent a copy of both the letter and the cheque to Ravi. Upon receiving these documents, Ravi believed the matter had been resolved. However the cheque was unsigned and undated and therefore invalid.

In October 2009, the insurance company took legal action against Ravi. The court ordered Ravi to pay the insurer \$9,000, plus \$1,000 for its legal costs. Afterwards Ravi went back to the taxi club to find out what had happened. At Ravi's insistence, the taxi club wrote another letter to the insurance company. The letter enclosed another cheque, also unsigned.

Throughout 2010, the taxi club continued to write to Alonzo's insurance company, promising payment and enclosing invalid cheques. In the meantime, Ravi remained subject to the debt of \$10,000, meaning he could not obtain any loans or credit.

In March 2011, Ravi came to the Clinic. We wrote to the insurance company. We explained that Ravi had paid his \$1,500 'excess' and that, prior to the accident, he had regularly paid his taxi club dues. We argued that the taxi club should be responsible for the \$10,000 debt.

In April 2011, Alonzo's insurer agreed that it would stop pursuing Ravi for the debt. It agreed that the taxi club should have paid for the damage to Alonzo's car.

2 The Taxi Driver Legal Clinic

2.1 Taxi drivers: Victoria's working poor

When we decided to set up a legal clinic for taxi drivers, people asked us why we wanted to target this specific group. The vast majority of CLC clients receive unemployment benefits or an old age, disability or carer's pension. Few CLC clients are employed and even fewer work full time. At the Clinic, our client profile was very different. Our clients were almost all full time workers driving taxis up to six days per week in 12 hour shifts. Despite this, our clients were often very poor.

In Victoria, taxi drivers enjoy few legal rights and safeguards and most earn very little money. They keep only 50 per cent of the fares they collect – sometimes even less. They usually have to pay for their own uniforms and contribute to other expenses such as membership of taxi clubs. After these deductions, a taxi driver can end up earning less than \$10 per hour before tax.¹ These drivers are not entitled to sick leave, annual leave, long service leave or superannuation. Taxi owners are required to maintain Worksafe insurance policies for all their drivers² but in practice many do not.

Most of the drivers we saw at the Clinic did not own taxis or taxi licences. Some drove taxis belonging to individual operators, while others drove for large depots or fleets. Due to the large number of potential drivers, and fierce competition for the most lucrative Friday and Saturday night shifts, many drivers were reluctant to complain to taxi operators or depots about their pay or working conditions.

In Victoria, recent immigrants now make up the majority of workers in the taxi industry. At the Clinic, we saw many drivers from African backgrounds, some of whom had come to Australia as refugees. Many of these drivers were married with young children. Most had very limited employment prospects and were heavily reliant on taxi driving to meet their families' day-to-day needs.

A large proportion of our clients were young Indian men aged between 20 and 30. Many of these Indian drivers were studying full time, driving taxis at nights and on the weekends to support themselves. Few had permanent residency, meaning they did not qualify for Centrelink benefits. Many of these student drivers were paying thousands of dollars in fees to universities and private colleges.

¹ Anonymous submission to the Victorian Taxi Industry Inquiry, 16 May 2011, available at: http://www.taxiindustryinquiry.vic.gov.au/data/assets/pdf_file/0004/57820/SS10-Anonymous-Submission.pdf (Accessed 23 April 2012).

² *Accident Compensation Act 1985* (Vic) s 7. Taxi drivers are 'deemed' to be workers for the purposes of this Act.

We find it hard to understand how someone earning less than \$10 per hour, before tax, could afford adequate meals, housing and utilities, let alone tuition fees. In our view, these drivers represent a new and disturbing category of the ‘working poor’ in Australia.³

2.2 The need for a specialist service

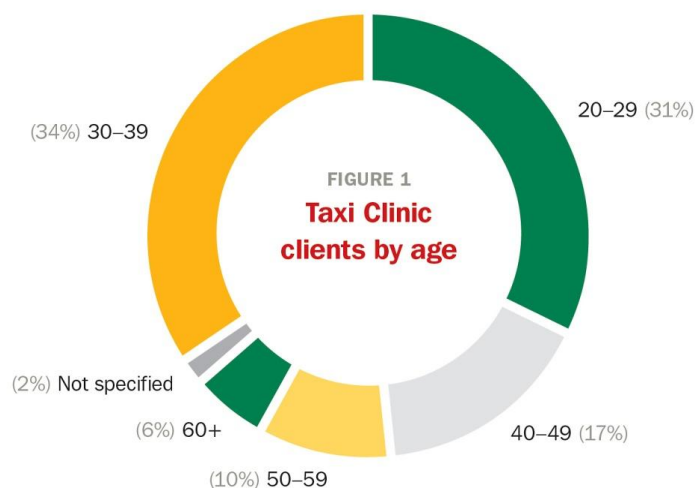
We decided to set up a specialist service to assist taxi drivers because we recognised that taxi drivers face a range of unique and often complex legal problems. We knew that many CLCs were already providing assistance to taxi drivers. Yet because taxi drivers’ legal issues are so unusual, many CLCs find these matters difficult and labour-intensive. We decided that by setting up a dedicated clinic, we could assist drivers in a more efficient and cost-effective way. We also hoped that a specialist clinic would give us a better understanding of the causes of taxi drivers’ legal problems.

By advertising our services widely, we tried to reach drivers in the early stages of their legal problems, when legal advice can be most effective. We advertised the Clinic at the large taxi rank at Melbourne Airport, with the help of student volunteers. This strategy proved to be very effective, causing a rapid increase in our caseload.

The Clinic operated a weekly night service from February to November 2011, with the assistance of volunteer lawyers and law students.

2.3 Client profile

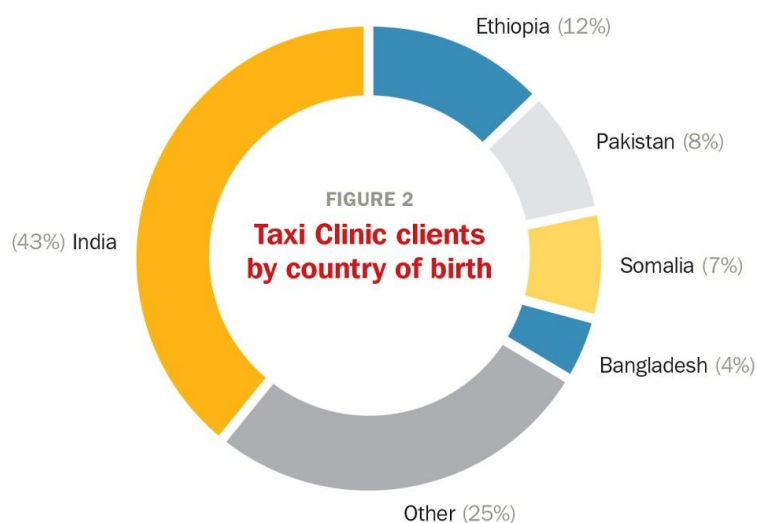
From February to November 2011, the Clinic saw 169 clients. Some of these clients had several legal problems, meaning that we recorded 184 legal matters in total.



³ For a definition of this term see Alicia Payne's 'Working poor in Australia: an analysis of poverty among households in which a member is employed,' (2009) 81 *Family Matters* 15-24, 18.

Our clients were all male. Roughly one third (31 per cent) were in their 20s, one third (34 per cent) were in their 30s and one third (33 per cent) were aged 40 or over (see **Figure 1**⁴).

Only four per cent of our clients were born in Australia, with 96 per cent coming from overseas. Exactly half our clients arrived in Australia within the last six years. A large proportion of clients were born in India, with significant numbers born in Ethiopia, Pakistan and Somalia. Others were born in Lebanon, Iraq, China, Eritrea, Turkey, Sudan, Sri Lanka, Afghanistan, Bosnia and Herzegovina, Egypt, the Former Yugoslav Republic of Macedonia, Germany, Jordan, Morocco, the Philippines, Samoa, Tanzania, the United Arab Emirates and Vietnam (see **Figure 2**).



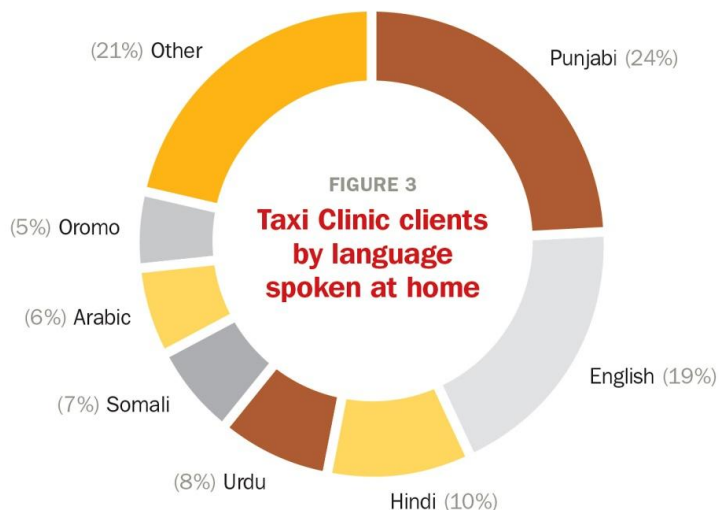
A majority of our clients spoke a language other than English at home. 19 per cent spoke English at home, while 24 per cent spoke Punjabi. Other common languages included Hindi, Urdu, Somali, Arabic and Oromo. Less common languages included Amharic, Assyrian, Cantonese, Croatian, Dinka, Pashto, Persian, Swahili, Tamil, Telugu, Tigrinya, Turkish and Vietnamese (see **Figure 3**).

When setting up the Clinic, we initially planned to restrict our services to non-owner drivers. Non-owner drivers are, in general, the most vulnerable and lowly-paid drivers in the industry. Over time, however, we encountered several drivers who described themselves as taxi 'owners'. These 'owners' sometimes operated several taxis and engaged other people to drive them. They leased their taxi licenses from

⁴ In all figures, percentages have been rounded to the nearest whole number.

investors, often at a very high price. Several of these 'owners' were heavily indebted, having borrowed significant sums in order to purchase their taxis and lease their licences.

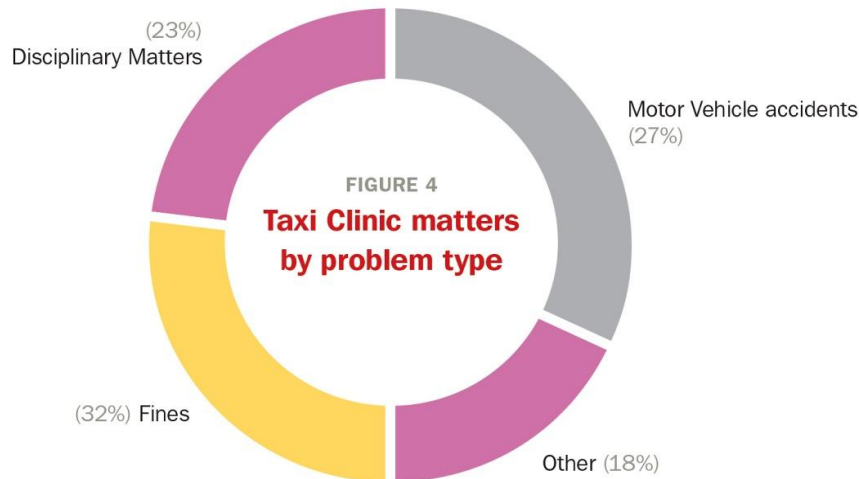
In these circumstances, we felt that the term 'owner' was something of a misnomer as the individuals in question did not own any significant assets. As a result, we decided to assist disadvantaged, low income 'owners' as well as non-owner drivers.



2.4 Our casework

Our casework consisted of three main categories: fines, disciplinary matters and motor vehicle accident matters. Matters relating to motor vehicle accidents generally involved a dispute over repairs to a taxi, a third party vehicle or both. Most of these matters involved negotiations with a taxi club over its liability for the damage.

Fines matters related to parking, speeding and dangerous driving offences and fines for driving on Citylink without an e-TAG. Disciplinary matters involved the Department of Transport. Most of these matters concerned disciplinary proceedings (or the threat of disciplinary proceedings) as a result of a driver committing traffic or other offences. Some matters involved helping a driver to apply for re-accreditation after the suspension or loss of his driver's licence.



Other matters involved credit and debt, consumer issues, employment, discrimination, criminal law and miscellaneous road, traffic and regulatory matters (see **Figure 4**).

2.5 Current funding arrangements and ongoing legal need

In late 2010, the Legal Services Board (**LSB**) provided a project grant of \$50,000 to fund the Clinic for a period of 12 months from December 2010 to December 2011. The LSB provided these funds so the Clinic could develop a better understanding of taxi drivers' legal problems, gather evidence of legal need and identify priorities for law reform. At the time, the Brumby Government was planning to introduce a new Taxi and Hire Car Bill in 2011. We intended to take a very active role in the Government's consultation relating to this draft Bill, drawing on the Clinic's casework to illustrate the need for law reform.

After the 2010 election, the incoming Baillieu Government initiated a broad-ranging inquiry into the Victorian taxi industry, headed by Professor Allan Fels AO. Professor Fels will release a final report by the end of 2012. While the inquiry promises to address many entrenched problems in the industry, it is likely that the Government will take some time to respond to its recommendations. Given that the legal environment is unlikely to change significantly until 2013, we believe it is vital to continue the work of the Clinic in assisting taxi drivers with serious legal problems.

Since February 2012, the Clinic has operated fortnightly on Tuesdays under the auspices of Footscray CLC's regular night service. Like the original Clinic, Footscray's night service relies on the work of volunteer lawyers and law students.

3 The legal context

3.1 Regulation of the Victorian taxi industry

The Victorian taxi industry is currently regulated by the Victorian Taxi Directorate (**VTD**). The VTD is part of the Victorian Department of Transport. The VTD's main responsibilities include issuing taxi licences; accrediting drivers, licence holders and operators; monitoring the industry; receiving complaints from members of the public; and leading policy development. The VTD also administers the Multi Purpose Tax Programme, which subsidises taxi travel for people with disabilities.⁵

3.2 Taxi clubs

Many taxi owners belong to 'taxi clubs,' which purport to offer a form of insurance for property damage. In the event of an accident, a driver often pays 'excess' of up to \$1,500 to the owner of the taxi or to the taxi club.⁶ The driver is told that, if he or she pays this 'excess', the taxi club will repair the taxi and meet any other costs resulting from the accident. Despite these assurances, taxi clubs often fail to settle third party claims (ie claims brought by other drivers involved in the accident). Months or even years later, the insurer of one of these third parties may issue legal proceedings against the taxi driver, for a sum as high as \$20,000. Taxi clubs often refuse to assist drivers in these circumstances.⁷

While some taxi clubs appear to operate well,⁸ our casework at the Clinic suggests that many smaller clubs do not provide adequate levels of cover for taxi drivers. This means drivers are exposed to significant financial risk, despite making regular payments for what they think is insurance. We believe that some clubs intentionally mislead drivers, telling them that third party claims will be covered, in order to induce them to hand over large 'excess' payments. Taxi clubs often fail to issue receipts for these 'excess' payments, or else issue receipts that bear no business name, contact details or legible signature.

We are aware of one Melbourne taxi club that regularly writes to third parties' lawyers and insurers admitting liability and attaching cheques, apparently in payment of the third party claim. These cheques are unsigned, undated and therefore invalid. In each case, the club sends a copy of its letter and unsigned

⁵ Victorian Taxi Directorate website:

<http://www.transport.vic.gov.au/taxis/about/about-the-victorian-taxi-directorate#mainfunctions> (accessed 23 April 2012).

⁶ This practice is not limited to Victoria: see Transport Workers' Union of New South Wales, Submission to the Select Committee on the New South Wales Taxi Industry, 22 January 2010, available at:

[http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/cb3ee83049c34e2eca2576b9001e092c/\\$FILE/Submissio%20No%2041.pdf](http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/cb3ee83049c34e2eca2576b9001e092c/$FILE/Submissio%20No%2041.pdf) (accessed 23 April 2012), 2.

⁷ Clay Lucas, 'Cabbies driven to bankruptcy', *The Age*, 7 April 2010, available at:

<http://www.theage.com.au/victoria/cabbies-driven-to-bankruptcy-20100406-rpet.html> (accessed 23 April 2012).

⁸ Eg Taxicare, a New South Wales-based club that holds an Australian Financial Services licence and is a member of the Financial Ombudsman Service: see: <http://www.taxicare.com.au> (accessed 23 April 2012).

cheque to the driver. We suspect that the club sends these documents to drivers in order to create the impression that the third party claims have been paid, so that the drivers will not seek independent legal advice. In many cases, by the time these drivers contact the Clinic, court proceedings are well underway and they are facing judgment debts of many thousands of dollars.

Many taxi drivers are vulnerable to misleading and deceptive conduct of this nature. Drivers born overseas often have little knowledge of Australian insurance law and industry practice. This means they are not aware of their rights and entitlements or their options for seeking independent advice. Some are reluctant to challenge unfair treatment by taxi operators and taxi clubs, as this would put their livelihoods at risk.

3.3 Regulation of taxi clubs

Although many taxi clubs purport to offer 'insurance' to taxi drivers, they are not governed by the *Insurance Act 1973* (Cth).

The Australian Competition & Consumer Commission (**ACCC**) has advised us that taxi clubs are outside its jurisdiction, as they are providers of financial services and therefore subject to the oversight of the Australian Securities & Investments Commission (**ASIC**). ASIC advises us, however, that as incorporated associations many taxi clubs are also exempt from the operation of the *Corporations Act 2001* (Cth) and the *Australian Securities and Investments Act 2001* (Cth). They therefore fall outside the jurisdiction of ASIC.

Incorporated taxi clubs are subject to the *Associations Incorporation Act 1981* (Vic) and all clubs are subject to the *Fair Trading Act 1999* (Vic). Both Acts are administered by Consumer Affairs Victoria.

3.4 Other Australian jurisdictions

New South Wales

Like most states, New South Wales has referred its industrial relations powers to the Commonwealth, however taxi drivers are still governed by a state-based industrial relations instrument, the *Taxi Drivers (Contract Drivers) Contract Determination 1984*.⁹ This instrument provides that 'permanent' bailee drivers are entitled to annual leave, sick leave and long service leave. These entitlements are difficult to enforce and compliance rates are low.¹⁰

⁹ See: http://www.industrialrelations.nsw.gov.au/Industries/Taxi_industry.html (accessed 23 April 2012).

¹⁰ Michael Jools, Submission of the Australian Taxi Drivers Association to the New South Wales Legislative Council Select Committee Inquiry into the NSW Taxi Industry ('the NSW Inquiry'), 21 January 2010, available at: [http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/1ac47810426988d8ca2576b9001d9c25/\\$FILE/Submissio%20No%2032.pdf](http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/1ac47810426988d8ca2576b9001d9c25/$FILE/Submissio%20No%2032.pdf) (accessed 23 April 2012), 16.

In New South Wales, taxi insurance is regulated by the *Passenger Transport Regulation 2007* (NSW). This regulation provides that all taxi operators must take out comprehensive property damage insurance for at least \$5 million for each taxi in their fleet. They must cover the cost of repairing any damage to the taxi as well as any third party claims. They must also pay any excess arising from a claim on the policy. While the Transport Workers Union reports some non-compliance (mainly cases of operators charging drivers excess payments), it seems that as a result of these regulations, comprehensive insurance is far more common in the New South Wales taxi industry than in other jurisdictions.¹¹

In November 2009, the New South Wales Legislative Council appointed a Select Committee to conduct an inquiry into the New South Wales taxi industry. The committee considered drivers' working conditions, anti-competitive practices in the industry, transparency and accountability, services for people with disabilities and other issues. In its final report, the committee recommended measures to improve the working conditions of drivers, including better education about drivers' legal rights. The committee recommended that driver training should include a briefing on drivers' rights relating to insurance, that NSW Transport and Infrastructure should remind all operators of their obligations with respect to insurance and that it should prepare fact sheets for distribution to drivers, setting out their rights and responsibilities in plain English.¹²

The Keneally Government accepted these recommendations¹³ and the current O'Farrell Government continues to implement them.¹⁴

Queensland

In late 2009 the Queensland Workplace Rights Ombudsman commenced an independent investigation into 'Work Related Matters' in the Queensland taxi industry. The Ombudsman launched this investigation

¹¹ *Passenger Transport Regulation 2007* (NSW), rr 22, 131. Garth Mulholland, Submission of the Transport Workers' Union of NSW to the NSW Inquiry, 22 January 2010, available at:

[http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/cb3ee83049c34e2eca2576b9001e092c/\\$FILE/Submission%20No%2041.pdf](http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/cb3ee83049c34e2eca2576b9001e092c/$FILE/Submission%20No%2041.pdf) (accessed 23 April 2012), 2.

¹² Select Committee on the NSW Taxi Industry, *Inquiry into the NSW Taxi Industry*, 1 June 2010, available at:

[http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/EA4E5B85CBE5CF0CCA257735001a4b5c/\\$FILE/101201%20Govt%20response%20-%20Taxi%20industry%20report.pdf](http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/EA4E5B85CBE5CF0CCA257735001a4b5c/$FILE/101201%20Govt%20response%20-%20Taxi%20industry%20report.pdf) (accessed 23 April 2012), 219.

¹³ *New South Wales Government Response: Select Committee Inquiry into the NSW Taxi Industry*, available at:

[http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/1d2003f0722bef88ca257735001a4b5c/\\$FILE/101201%20Govt%20response%20-%20Taxi%20industry%20report.pdf](http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/1d2003f0722bef88ca257735001a4b5c/$FILE/101201%20Govt%20response%20-%20Taxi%20industry%20report.pdf) (accessed 23 April 2012).

¹⁴ Author's telephone conversation with a representative of New South Wales Transport Roads and Maritime Services on 13 February 2012.

in response to ongoing, frequent complaints from taxi drivers concerning 'disputed payments, disciplinary harshness' and 'absence of benefits' such as sick leave and annual leave.¹⁵

In his report to the Queensland Parliament, tabled in June 2010, the Ombudsman said that powerful industry stakeholders demonstrated 'palpable resentment', 'intimidatory' tactics and blatant 'opposition' to reform.¹⁶

The Ombudsman made several recommendations aimed at improving drivers' working conditions and raising drivers' awareness of their rights. He reported that many drivers 'were unaware whether or not they had the protection of work related accident and injury insurance and of those that were both aware and contributing through their operator for insurance cover, most were very much ignorant of the details of their insurance coverage.'¹⁷ He said that bailment contracts should specify 'the amount and frequency of contributions a driver must make as a contingency against an insurance excess charge resulting from an at-fault accident', and that unused driver contributions should be refunded to the driver upon termination of a bailment contract.¹⁸

The Queensland Government agreed to produce a Model Taxi Bailment Agreement, setting out 'what personal accident and injury insurance the bailor has in place for the bailee and how this will be evidenced'. It did not support the Ombudsman's recommendation for minimum bailment terms to be prescribed in legislation, saying that it 'w[ould] not intervene in private business agreements' between owners and drivers.¹⁹

3.5 The Victorian Taxi Industry Inquiry

The Baillieu Government has appointed Professor Allan Fels AO to conduct a comprehensive inquiry into Victoria's taxi industry. The inquiry will lead to the abolition of the VTD and the creation of a new Taxi Services Commission (**TSC**). Announcing the inquiry in March 2011, Premier Ted Baillieu acknowledged

¹⁵ Queensland Workplace Rights Ombudsman, *Report on Investigation into the Taxi Industry in Queensland*, 23 June 2010, available at: http://www.workplacerrights.qld.gov.au/pdf/taxi_report.pdf (accessed 23 April 2012), 4.

¹⁶ *Ibid* 8, 11.

¹⁷ *Ibid* 14.

¹⁸ *Ibid* 79.

¹⁹ *Queensland Government Response to Report on Investigation into the Taxi Industry 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 (accessed 23 April 2012).

that the Victorian taxi industry 'needs significant reform' due to an 'entrenched lack of accountability for on-the-ground taxi services by the major industry participants.'²⁰

Professor Fels identified the working conditions of drivers as a major focus of his review.²¹ Working within very broad terms of reference,²² he has consulted extensively with the travelling public, bailee drivers, license holders and specific groups such as users of wheelchair-accessible taxis.²³

The Fels Inquiry represents a unique opportunity to reform the Victorian taxi industry.

²⁰ Ted Baillieu, 'Taxi services reform to commence with industry inquiry,' Media release, 28 March 2011, available at: <http://premier.vic.gov.au/media-centre/media-releases/477-taxi-services-reform-to-commence-with-industry-inquiry.html> (accessed 23 April 2012).

²¹ Alison Savage, 'Fels promises thorough review of taxi service,' ABC Online available at: <http://www.abc.net.au/news/stories/2011/03/28/3175720.htm?site=melbourne> (accessed 23 April 2012).

²² See 'Terms of Reference,' available at: <http://www.taxiindustryinquiry.vic.gov.au/about/terms-of-reference> (accessed 23 April 2012).

²³ Like the Queensland Workplace Rights Ombudsman, Professor Fels has criticised taxi license holders for failing to engage with the Inquiry: see Greg Thom, 'Allan Fels blasts license holders over lack of interest in taxi probe,' *Herald Sun*, 21 January 2012, available at: <http://www.heraldsun.com.au/news/more-news/cab-chiefs-just-dont-care/story-fn7x8me2-1226249810779> (accessed 23 April 2012). Professor Fels has suggested that 'industry bosses' have sought to mislead the public, in order to disguise 'the true problems in the industry'. 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 23 April 2012).

4 Fines

Fines, or 'infringements,' are a pervasive problem among taxi drivers, many of whom drive taxis for 12 hours each day, five or six days a week. Fines constituted the single largest problem type we encountered at the Clinic. Some of these fines were for speeding, while others were for parking or waiting in a no-stopping zone. Some clients told us that they entered no-stopping zones in order to pick up or drop off a client. Some received fines for waiting in no-stopping zones adjacent to a taxi rank when the taxi rank was full.

In more serious cases, drivers came to the Clinic with significant fines resulting from non-payment of Citylink tolls. Citylink is a system of freeways operated by a private company, Transurban. Tolls can only be paid via a Day Pass or an electronic device called an 'e-TAG' which must be attached to the windscreen of a vehicle. This indirect payment system can create significant problems for taxi drivers, who may use Citylink many times in a single day.

Most drivers buy their own e-TAGs and several drivers presented at the Clinic with fines relating to their personal Citylink accounts. These drivers usually admitted they had failed to top up their accounts before driving on Citylink. When this occurs, Citylink does not send a notice to the account holder but instead notifies the owner of the vehicle. Taxi owners often fail to forward these notices to drivers. Frequently they wait until the matter has been referred to Victoria Police. By this stage, the \$10 administration fee has been superseded by a fine for more than \$100.²⁴ If the owner waits longer, even more fines can accrue. In this way a number of minor non-payment offences can quickly escalate to hundreds or even thousands of dollars in fines. In these cases, we are sometimes able to help drivers by applying for revocation of the fines.

More complex problems arise for drivers who share an e-TAG with other drivers or use an e-TAG registered in the name of the taxi owner. Several drivers told us they had paid a taxi owner for use of an e-TAG. They believed that the taxi owner had failed to deposit the money into the appropriate e-TAG account, resulting in fines when the driver used Citylink. The taxi owner then nominated the driver for the fines. Drivers in this situation were often unable to prove that they had paid the taxi owner for use of the e-TAG.

Several drivers claimed they had been incorrectly nominated for fines. Some were able to prove they were either overseas or driving a different taxi at the time the fines were incurred. In these cases, we assisted drivers with applications for revocation.

²⁴ Katie Fraser, Footscray Community Legal Centre, *Out of Africa and into court: the legal problems of African refugees*, Footscray Community Legal Centre, 2009, available at: http://www.footscrayclc.org.au/images/stories/docs/Out_of_Africa_and_Into_Court.pdf (accessed 23 April 2012), 30-31.

Infringements matters can be extremely complex and time-consuming, particularly when clients have numerous fines incurred over a long period. Fortunately, we were able to refer several complex matters to the Refugee Legal Service at Footscray CLC. This service relies on the pro bono assistance of lawyers from several private firms.

Taxi drivers' problems with infringements are discussed in greater detail in Footscray CLC's 2009 report, *Out of Africa and into court: the legal problems of African refugees*.²⁵

²⁵ Ibid, 28-33.

5 Disciplinary matters

Though we did not set out to assist drivers with disciplinary matters, they became an important part of our casework. Clients sought our advice on a wide variety of disciplinary issues. The most common type of matter involved possible suspension or cancellation of a driver's accreditation. Drivers faced disciplinary action for many reasons. Some were disciplined for accumulating large numbers of relatively minor traffic infringements; others for a single, serious offence such as culpable driving or fraud.

We also helped several drivers who had been refused accreditation, or re-accreditation, on the basis of previous disciplinary matters. Some were seeking to become taxi operators, others to regain their driver accreditation after a period of suspension. To gain accreditation, these drivers had to write to the Department of Transport, asking for special consideration.

Much of this work entailed reading and explaining the correspondence that drivers received from the Department of Transport. Drivers in this situation typically receive a long standard letter from the Department, containing a great deal of legal jargon. A typical letter begins with a very long but non-specific heading, such as 'NOTICE PURSUANT TO SECTION 169G OF TRANSPORT (COMPLIANCE AND MISCELLANEOUS) ACT 1983 (VIC) OF POSSIBLE DISCIPLINARY ACTION'. The letter states the grounds for taking disciplinary action using the terminology of the Act, for example 'Category 2 offences'.

The structure and format of these letters make them even harder to understand. They often contain several levels of subheadings, as well as lists in dot-point form. The first few pages contain material of minor importance, such as the writer's authority as a delegate of the Director of Public Transport. Significant details, such as the possible consequences of disciplinary action, are buried on the fourth or fifth page of the document. The driver's right to respond is not mentioned until the third or fourth page, where it appears under the ambiguous heading, 'Submission'.

Many drivers came to the Clinic with letters of this nature. Some were well equipped to write their own submissions to the Department, once they understood the precise allegations against them and the matters they should raise in response. Other drivers, especially those with limited English, required greater assistance. Our student volunteers helped these drivers write their submissions.

Although we did not prioritise disciplinary matters, we quickly realised the importance of this work. In many instances, we felt that the Department's disciplinary action was justified. At the same time, we realised that the loss or suspension of a driver's accreditation could have devastating consequences for the driver and his dependents. We therefore felt that it was important for drivers to have a reasonable opportunity to respond, to outline any extenuating circumstances and, if appropriate, to express remorse for previous misconduct.

We believe there is significant, ongoing demand for legal assistance of this nature and that such assistance is vital to a fair and transparent disciplinary system.

5.1 Case study: Abit's story

Abit came to Australia as a refugee from Sudan. He speaks limited English and has almost no English literacy. His first job in Australia was in a warehouse. The work was extremely hard and required him to stand up for 12 hours at a time while carrying heavy loads.

After six months, Abit had to resign because he had developed severe pain in his right leg. The right leg had been injured when he was a child in Sudan. After leaving the warehouse, Abit drove a taxi for three years and during that time his leg gave him no trouble.

In May 2011, he was caught driving more than 20 km over the limit and his driver's license was suspended for a month. The speed limit on the road was usually 80 km per hour. Abit did not realise that it had been temporarily reduced to 60 km per hour due to road works. Abit automatically lost his taxi driver accreditation when his license was suspended.

When he regained his license, he reapplied for accreditation but received a long letter from the Department of Transport stating that he faced disciplinary action as a result of the speeding offence. Abit went to his general practitioner for help. The doctor wrote a letter to the Department of Transport. The doctor explained that due to his leg injury, Abit could not perform strenuous manual labour and relied heavily on his job as a taxi driver. The Department wrote back to Abit, saying that due to his leg injury he was not physically fit to hold a taxi accreditation.

Abit came to the Clinic for help. We wrote to the Department again. We explained that Abit's leg injury did not prevent him from driving a taxi; it only prevented him from prolonged periods of standing and carrying heavy loads. We explained the circumstances of Abit's offence, and pointed out that since regaining his licence he had committed no further offences. We told the Department that Abit had no other employment opportunities and that he had a three year old child to support.

Abit's accreditation was reinstated.

6 Motor vehicle accidents

6.1 Bailment, motor vehicle accidents and driver debt

The legal relationship between taxi drivers and owners has been described as ‘bailment’ since at least 1941, when the High Court decided the case of *Dillon v Gange*.²⁶ In broad terms, 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’.²⁷ 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 sometimes for a fixed fee.²⁸

Taxi drivers are classified as ‘bailees,’ rather than employees, because bailment carries very few obligations for taxi operators. As ‘bailors’, taxi operators are not obliged to withhold Pay As You Go (**PAYG**) tax from drivers’ earnings or to make superannuation contributions for drivers. As ‘bailees’, drivers are not entitled to annual leave, sick leave or long service leave.²⁹ They must work non-standard hours with no right against unfair dismissal, no effective workplace representation and poor occupational health and safety standards.³⁰

In the event of an accident, bailee drivers can be held liable for damage to their taxis, as well as damage caused to other vehicles. CLCs regularly assist taxi drivers who have accidents while they are working. These drivers can find themselves defending legal claims of \$20,000 or even more. Sometimes, they are legally entitled to pass on these costs to the taxi’s owner. The Supreme Court of Victoria has found that, in some situations, a bailee driver is also an agent of the taxi owner. In these circumstances, the owner is vicariously liable for damage caused by the bailee driver,³¹ but this must be argued in court on a case-by-case basis. It provides little security for low income migrant drivers, who often have scant knowledge of

²⁶ (1941) 64 CLR 253.

²⁷ *The CCH Macquarie Concise Dictionary of Modern Law* (1988) 13.

²⁸ 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 23 April 2012).

²⁹ 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 23 April 2012).

³⁰ Former 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 23 April 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 23 April 2012).

³¹ 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.

the Australian legal system and sources of free legal advice. Many drivers in this situation face a real risk of bankruptcy.

6.2 The Victorian Government's Model Taxi Bailment Agreement

In December 2009 the VTD released a Model Taxi Bailment Agreement (**Model Agreement**). The Model Agreement seeks to cast owners and drivers as independent business people with equal negotiating power. It invites parties to record the terms to which they have 'agreed'; yet it takes effect when the driver receives a copy and drives the taxi, even if the driver does not sign it.³² In this sense, the Model Agreement indirectly acknowledges the 'take it or leave it' nature of working conditions in the industry.

While the Model Agreement is framed as a private agreement, it also invokes the authority of the Victorian Government. The VTD website states that the Model Agreement 'is not regulated by the Victorian Government'. Yet the Victorian Government logo appears in the footer of every page of the document, along with the phrase, 'Authorised by the Victorian Government.' This creates the strong impression that the Model Agreement is an official government document. The VTD website reinforces this impression, stating that the Model Agreement aims 'to establish and promote a consistent legal framework for the bailment of taxi-cabs' and 'benchmark standards of equity in relations between bailees and bailers'.³³

Despite these assurances, the VTD's Model Agreement consistently favours the interests of owners at the expense of bailee drivers. In relation to motor vehicle accidents, it states that the owner will cover the cost 'through insurance or some other means.' Yet it also provides that if a driver is 'negligent,' he or she must 'reimburse' the owner for any consequent financial loss.³⁴ In effect, this means that a driver must cover the cost of an accident, if he or she is at fault.

This is unfair because owners can insure their taxis, whereas bailee drivers have no capacity to protect themselves in this way. In the event of an accident, an owner with comprehensive insurance would need to pay an excess. By contrast, an uninsured bailee driver would be liable for the full cost of an accident, including damage to any other cars involved. As noted above, this can mean debts of over \$20,000. In this sense, the Model Agreement exposes bailee drivers to enormous financial risk, in order to protect the interests of taxi owners who do not wish to insure their taxis properly. It also contradicts the common law rule that drivers can pass on the cost of an accident to taxi owners, if they can prove the existence of an agency relationship.

³² Clause 4, Model Taxi Bailment Agreement, available at: <http://www.transport.vic.gov.au/taxis/taxis-drivers/model-bailment-agreement-for-drivers-and-operators> (accessed 23 April 2012), 9.

³³ Victorian Taxi Directorate website: <http://www.transport.vic.gov.au/taxis/taxis-drivers/model-bailment-agreement-for-drivers-and-operators> (accessed 23 April 2012).

³⁴ Sub-clause 7.1(d) and clause 12.1, Model Taxi Bailment Agreement, available at: <http://www.transport.vic.gov.au/taxis/taxis-drivers/model-bailment-agreement-for-drivers-and-operators> (accessed 23 April 2012), 6-7.

At best, the Model Agreement creates uncertainty as to the Government's role in regulating drivers' working conditions. At worst, it misleads drivers and encourages them to sign away important common law rights. We believe the Victorian Government must accept its responsibility to provide taxi drivers with a safe and fair working environment. To this end, it must replace the Model Agreement with a clear statement of the rights and entitlements of all taxi drivers, including their right to reliable, comprehensive insurance cover.

6.3 Case study: Sandeep's story

Sandeep is an Indian man in his early thirties. He arrived in Australia in 2006. In September 2007, Sandeep was working as a taxi driver when he had a car accident, hitting Susan's car from behind. At the time, he was driving a taxi belonging to Frank. The day after the accident, Sandeep and Frank went to Frank's taxi club and each paid \$750 'excess'. The taxi club gave Frank a receipt for \$1,500, but Sandeep did not get a receipt or any other paperwork. The taxi club said it would fix the taxi and Sandeep thought the matter had been resolved, but in October 2008, Susan's insurer sued Sandeep for the cost of repairing Susan's car. The taxi club told Sandeep that it would pay for lawyers to fight the case on his behalf.

In November 2009, Sandeep attended a hearing in the Magistrates' Court accompanied by the taxi club's lawyers. Shortly afterwards, he received a letter saying that he had to pay Susan's insurer \$25,000. Sandeep was shocked and went back to the lawyers for an explanation. They told him the insurer had been asking for \$35,000 but that they had negotiated a settlement of \$25,000. They claimed to have reached this settlement with Sandeep's consent.

In mid-2010, the insurer took Sandeep to court to enforce the settlement. By this time, Sandeep had a permanent job in a bank and he and his wife were buying a house. The court ordered regular deductions from Sandeep's earnings, until the debt was fully paid. The taxi club promised that it would compensate Sandeep for the deductions but it never did. Sandeep contacted another lawyer, who advised him to sue the taxi club. Sandeep got a court order against the taxi club, but couldn't enforce it, because the Sheriff could not locate the club at its listed address.

In June 2011, Sandeep came to the Clinic. By this time, in addition to his \$750 'excess' payment, he had paid around \$8,000 to his lawyer and more than \$3,000 to Susan's insurer through regular deductions from his pay. We contacted Susan's insurer, a major national company, to explain Sandeep's circumstances. The insurer agreed it was unfair that Sandeep should be solely responsible for repaying the debt. By November 2011, there were no more deductions coming out of Sandeep's pay.

6.4 Case study: Anil's story

Anil is a 28 year old Indian man. He arrived in Australia in 2008, leaving his wife in India. He is on a temporary visa. He drives a taxi as it is hard to find other work without a permanent visa. Anil drove a taxi for Mohammad, who ran a taxi depot. Anil paid Mohammed an allowance for 'insurance' every time he drove the taxi.

In July 2010, Anil was involved in a collision with a four wheel drive belonging to a corporate fleet. He admitted that he was at fault and paid a \$950 'excess' to the depot. In October, he received a letter from the company that owned the four wheel drive. He told them he had paid his insurance excess, and asked them to contact the taxi depot. The following May, the company filed a complaint against Anil in the Magistrates' Court seeking \$5,000 for damage to the four wheel drive.

In June, Anil came to the Clinic and we wrote to the company on his behalf, explaining that Anil had paid an excess and should have been covered by the taxi's owner or his 'insurer'. The insurer agreed to pursue the taxi owner and the taxi club, instead of Anil.

6.5 Case study: Beniam's story

Beniam is a 37 year old Ethiopian man who arrived in Australia in 1998. He has a wife and two children. Since undergoing heart surgery in 2009 he has been unable to work. Beniam receives a disability pension but also operates a taxi in an attempt to generate an income. He owes the bank \$11,000 for his taxi, which has travelled 600,000 km and has a market value of around \$2,500. He pays \$550 per month to lease a taxi license. Beniam also belongs to taxi club and pays dues of \$100 per month.

In 2010, Beniam found a young Indian man, Inderjeet, to drive his taxi. Inderjeet had an accident while driving the taxi. The taxi was not damaged and Beniam did not find out about the accident until several months later, when he received a letter from an insurer demanding \$5,000.

Beniam went to his taxi club and they said they would get in touch with Inderjeet. Beniam then went home to Ethiopia for six months. When he came back, he found that the insurer had taken legal action against him. Beniam contacted the taxi club and was told that it was 'too late' for them to do anything about it. He tried to contact Inderjeet, but discovered that he had returned to India. Beniam attended a hearing at the Magistrates' Court and the Magistrate ordered him to pay the \$5,000. Staff at the Magistrates' Court referred Beniam to the Taxi Clinic.

We wrote to the insurer pointing out that Beniam would probably never be able to pay the \$5,000. The insurer agreed, but refused to waive the debt. We lodged an application for Internal Dispute Resolution (**IDR**). The IDR officer directed the insurer to waive the debt and the insurer eventually agreed.

7 Consumer law problems

Our clients also experienced consumer law problems, especially in relation to the leasing and purchase of taxis and taxi licenses.

7.1 Case study: Hasan's story

Hasan is in his mid 40s. He has a wife and three young children. In July 2011, he saw an ad in *Taxi Talk* magazine, which said he could buy a Kia, modified for use as a taxi, for \$60,000. In early September, he went to the taxi dealership, Top Taxis. Without test-driving the taxi, Hasan paid a deposit of \$5,000 on his credit card. Top Taxis referred him to a credit provider, White Knight Cabs, to obtain finance for the purchase. Hasan contacted White Knight Cabs and agreed to borrow \$60,000 to purchase the taxi.

On 15 September, he went back to Top Taxis to sign the purchase agreement. At this point, Top Taxis informed him that he would have to pay an additional \$30,000 to lease a taxi licence. Hasan agreed because he did not want to lose the opportunity to buy the taxi. He paid Top Taxis a further \$25,000 with a combination of credit cards.

On 17 September, Hasan collected the Kia from Top Taxis. He noticed straight away that the engine warning light was on. He mentioned this to the Top Taxis dealer, but the dealer assured him that it was only a minor problem. The dealer suggested that Hasan drive the taxi for a few days and come back if the problem persisted.

The following day, Hasan paid to register the taxi and drove it for a few hours, but the engine warning light stayed on so he took it back to Top Taxis. The dealer worked on the taxi for a few hours, but when Hasan drove it again the light went on after a few minutes.

On 19 September, Hasan took the taxi back to Top Taxis a second time. The dealer spent a whole day working on the taxi, but could not fix the problem. He told Hasan he should contact Kia. The following day, Hasan went to his local Kia dealership. The Kia repair crew examined the taxi and said the problem was caused by Top Taxis' modifications, in particular the fitting of an LPG tank to the taxi.

Over the next week, Hasan went back and forth between Top Taxis and Kia trying to get them to fix the problem. He earned no income during that time, but was paying for the taxi's licence as well as repayments and interest on his credit cards and the \$60,000 finance arrangement with White Knight Taxis. On 26 September, Hasan asked Top Taxis to replace the taxi or refund his money. They refused.

On 27 September, the taxi stopped completely and Hasan had it towed back to Top Taxis. The Top Taxis dealer refused to speak to Hasan and demanded that he remove the taxi from the premises. Eventually he agreed to look at it again and spent a few hours working on it. Once again, the taxi initially seemed to be operating properly, but broke down shortly after Hasan left the dealership.

Hasan came to the Clinic in early October. With the assistance of the Victorian Bar Pro Bono Scheme, we made a claim against Top Taxis and White Knight Cabs in the Victorian Civil and Administrative Tribunal (**VCAT**). We asked VCAT to rescind Hasan's contract with Top Taxis, on the basis that the taxi was not fit for the purpose for which it was sold. We also asked VCAT to rescind Hasan's finance agreement with White Knight Cabs and his agreement to lease the taxi licence from Top Taxis.

On the day of the VCAT hearing, Hasan was assisted by a barrister acting pro bono. The barrister negotiated a settlement. Hasan agreed to return the taxi and transfer the taxi licence back to Top Taxis. Top Taxis and White Knight Cabs agreed to cancel Hasan's \$60,000 loan and refund the \$30,000 he had already paid.

8 Workers' compensation and victims of crime compensation

The Clinic did not assist any drivers with workers' compensation or victims of crime compensation matters. We believe many drivers are unaware of their rights under these compensation schemes.

The VTD's website contains very little information about drivers' rights to compensation. Its list of 'Driver Rights and Responsibilities' does not mention workers' compensation or victims of crime compensation.³⁵ Another less prominent page contains links to the websites of WorkSafe Victoria and the Department of Justice, as well as a document entitled *Taxi Driver Safety: Your Guide to a Safer Workplace*.³⁶ The page invites drivers to contact the VTD for more information about workplace safety. Yet when contacted, the VTD states that it takes no responsibility for 'drivers' welfare,' and that it has no involvement in occupational health and safety as 'all drivers are self-employed.'³⁷

To our knowledge, there are no publicly available statistics regarding taxi drivers' workplace injuries,³⁸ however anecdotally we know that taxi drivers sustain injuries, both in car accidents and as the result of assaults by members of the public.³⁹ We suspect such injuries are rarely compensated. The following case study is based on the recent experience of one CLC client in the Western suburbs of Melbourne.

8.1 Case study: Qasim's story

Qasim is a young Pakistani man. He is in Australia on a student visa and works part time as a taxi driver. Recently a passenger refused to pay his fare and assaulted Qasim. The police attended and Qasim went to hospital in an ambulance.

Qasim was left with a \$900 ambulance bill. The taxi's owner told Qasim that he is not eligible for WorkCover because he is not technically an employee.

Qasim went to a CLC. The CLC advised Qasim that he is entitled to WorkCover and that he can make a claim directly to WorkSafe. This would require Qasim to report the taxi owner for breaking the law. Qasim does not want to report the taxi owner as he relies heavily on his income from taxi driving.

³⁵ Victorian Taxi Directorate website: <http://www.transport.vic.gov.au/taxis/taxis-drivers/taxi-driver-rights-and-responsibilities> (accessed 23 April 2012).

³⁶ Victorian Taxi Directorate website: <http://www.transport.vic.gov.au/taxis/taxis-drivers/victorian-taxi-safety-strategy#5> (accessed 23 April 2012). This document sets out drivers' right to WorkCover compensation at page 15

³⁷ Author's telephone conversations with VTD representatives on 6 March and 23 April 2012.

³⁸ The VTD has advised us it does not gather statistics on injuries sustained or compensation claims made by taxi drivers. Victoria Police records violent crimes involving taxis, but does not distinguish between those incidents in which drivers are perpetrators and those in which they are victims of violence.

³⁹ Peter Rolfe, 'Passenger attacks on cabbies surge,' *Sunday Herald Sun*, 27 May 2012, available at <http://www.heraldsun.com.au/news/more-news/passenger-attacks-on-cabbies-surge/story-fn7x8me2-1226367868604> (accessed 29 May 2012).

As an international student, Qasim has a compulsory health insurance policy, but his insurer will only pay the ambulance bill if Qasim can show that he is not entitled to workers' compensation. He is also potentially eligible for victims of crime compensation, but the Victims of Crime Assistance Tribunal (**VOCAT**) is unlikely to pay for ambulance costs as these should be reimbursed by WorkCover.

Qasim elected not to proceed with either application and the CLC closed its file.

9 Analysis and recommendations

9.1 Ending the use of bailment agreements in the taxi industry

Many of taxi drivers' legal problems arise from their anomalous status as 'bailees'. The industry's use of bailment agreements rests on a legal fiction that bailee drivers are independent business people. Yet in reality, most drivers have very little freedom to determine how, when or where they work. In practical terms, 'bailee' drivers have many of the obligations of an employee, without any of the compensatory rights or entitlements. They must work shifts of fixed duration on the days and at the times specified in their bailment agreements. They must also comply with the *Transport (Taxi-Cabs) Regulations 2005* (Vic) which prescribe uniforms,⁴⁰ assisting passengers with luggage⁴¹ and even the manner of operating the taxi's air-conditioner and radio.⁴² The same regulations provide that a driver may not refuse a fare, unless the passenger is 'violent, noisy, misbehaving, filthy or offensive' or unable to pay.⁴³ It is difficult to reconcile these stringent regulations with the notion that taxi drivers are independent business people.

The use of bailment in the industry leads to widespread uncertainty as to taxi drivers' rights and entitlements. As illustrated in Chapter 8, some taxi operators take advantage of this uncertainty in order to deprive drivers of their legislated right to WorkCover insurance.⁴⁴ The lack of job security afforded by bailment agreements means that, even when drivers understand their entitlements, they are unlikely to pursue them for fear that operators will give 'their' shifts to other drivers.

To devise an alternative legal framework for governing taxi drivers' work is beyond the scope of this report. This raises complex legal issues as it concerns both State and federal jurisdictions.

Nevertheless, we believe the Victorian Government has a responsibility to intervene in the taxi industry, to protect drivers from what is, in many cases, highly exploitative and dangerous work. The Government must identify practical ways to accord taxi drivers the rights of employees, including leave, superannuation and minimum wages.

According taxi drivers the rights and benefits of an employee would make taxi driving a much more secure, profitable and attractive occupation. This in turn would raise standards in the industry and address the current, widespread dissatisfaction with Victoria's taxi services.

⁴⁰ *Transport (Taxi-Cabs) Regulations 2005* (Vic) rr 31-32.

⁴¹ *Transport (Taxi-Cabs) Regulations 2005* (Vic) r 37.

⁴² *Transport (Taxi-Cabs) Regulations 2005* (Vic) r 34.

⁴³ *Transport (Taxi-Cabs) Regulations 2005* (Vic) rr 29, 36(1) and 41(7).

⁴⁴ *Accident Compensation Act 1985* (Vic) s 7.

Recommendation 1

The Victorian Government should prohibit the use of bailment agreements in the taxi industry. It should take action to ensure that all drivers enjoy the entitlements of employees, including minimum hourly rates, annual and sick leave, occupational health and safety training and rights against unfair dismissal.

Recommendation 2

The Victorian Government should conduct an audit of Victoria's taxi operators to ensure that they are complying with their obligation to maintain appropriate WorkSafe insurance policies in accordance with the *Accident Compensation Act 1985* (Vic).

9.2 Implementing compulsory comprehensive insurance

The Victorian Government must introduce compulsory comprehensive insurance in the taxi industry in order to protect drivers from catastrophic debt. Taxi drivers expose themselves to ongoing financial risk by driving taxis without effective insurance. The taxi clubs that currently purport to insure Victorian taxis are inefficient and, in many cases, unscrupulous in their dealings with non-owner drivers. In many cases, we believe that taxi drivers obtain no benefit whatsoever from membership of these clubs.

We believe that legislative change is the only way to address this problem satisfactorily. As discussed in Chapter 6, the Clinic has been able to assist many individual drivers by liaising with major insurance companies on their behalf. Still, we are acutely aware that many drivers will never contact our service. Many of these drivers are at real risk of bankruptcy if insurance companies take legal action against them. Some may accept legal assistance from taxi clubs, but we believe that in many cases taxi clubs litigate with a view to protecting their own interests, rather than the interests of their members.

As noted in Chapter 3, the *New South Wales Passenger Transport Regulation 2007* provides that a taxi operator must take out comprehensive property damage insurance for at least \$5 million for each taxi he or she operates. The operator must indemnify the driver in relation to any damage arising from the use of the taxi, including any third party claims. Operators cannot recover 'excess' payments from drivers under any circumstances.⁴⁵ Recently, the New South Wales Government has reached an agreement with the industry's major insurer, to allow a bailee driver to lodge a claim personally, in the event that the taxi owner refuses to make a claim.

⁴⁵ *Passenger Transport Regulation 2007* (NSW), rr 22, 131. According to the Transport Workers Union of NSW, some operators still demand excess payments from drivers. Garth Mulholland, Submission of the Transport Workers' Union of NSW to the NSW Inquiry, 22 January 2010, available at: [http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/cb3ee83049c34e2eca2576b9001e092c/\\$FILE/Submissio n%20No%2041.pdf](http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/cb3ee83049c34e2eca2576b9001e092c/$FILE/Submissio n%20No%2041.pdf) (accessed 23 April 2012), 2.

The Victorian Government must implement similar regulations and actively enforce them.

Recommendation 3

The Victorian Government should introduce regulations mirroring the *Passenger Transport Regulation 2007* (NSW), requiring all taxi operators to take out comprehensive property damage insurance with reputable insurance companies. These regulations should entitle a non-owner driver to claim on the owner's insurance policy, if the owner refuses to make a claim.

9.3 Regulating taxi clubs fairly and effectively

Our casework suggests that many taxi clubs are poorly managed, repeatedly failing to meet their financial obligations to their members and other motorists. This is quite inconsistent with the policy objectives of the *Associations Incorporation Act 1981* (Vic).⁴⁶ It exposes individual club members to significant hardship and anxiety and, in some cases, leads to their bankruptcy. It is also contrary to the public interest, because when insurers cannot recover money owed to them by taxi clubs, they pass these costs on to other motorists in the form of increased premiums.

We believe that Consumer Affairs Victoria must act to ensure that taxi clubs are not using their status as incorporated associations to evade their financial responsibilities to members and the general public. Sections 33 and 34 of the Act set out a range of circumstances in which an incorporated association may be wound up, such as when the association cannot pay its debts, when it fails to meet its reporting obligations, when 'it is just and equitable that the incorporated association should be wound up' and when 'circumstances exist which, in the public interest, justify the winding up of the incorporated association'.⁴⁷ We believe this action may be warranted in the case of several taxi clubs currently operating in Melbourne.

Recommendation 4

Consumer Affairs Victoria should audit all Victorian taxi clubs and take action to wind up those clubs whose activities are not in the public interest.

⁴⁶ Victorian Government, *Victorian Government Action Plan: Strengthening Community and Not-for-Profit Organisations* (2008), available at: http://www.dpcd.vic.gov.au/_data/assets/pdf_file/0016/52144/SCOActionPlanweb.pdf (accessed 23 April 2012).

⁴⁷ *Associations Incorporation Act 1981* (Vic) sub-ss 33(c) and (g), 34(e) and (j).

9.4 Understanding the workforce and meeting its needs

Many legal problems could be avoided if the Victorian Government did more to help recent migrants understand their rights and obligations. As the Taxi Industry Inquiry has observed:

Melbourne's taxi drivers are increasingly a transient population, with many having recently migrated to Australia or living here on a temporary basis ...Poor remuneration makes taxi driving a 'job of last resort'⁴⁸

Many newly arrived migrants find it hard to obtain basic legal information.⁴⁹ This can be due to lack of fluency in spoken English, lack of English literacy, the absence of translated materials, low awareness of relevant support services and 'over-reliance on others in the community for information'.⁵⁰ Melbourne taxi drivers often enter into bailment and leasing arrangements with other members of their own migrant community. Some drivers invest undue faith in their business associates, relying on them for legal information and financial advice.

These disadvantages are compounded by the excessively complex legal environment in which taxi drivers work. As noted in Footscray CLC's *Out of Africa* report, the Victorian infringements system has a disproportionate impact on recent migrants. Many recent migrants do not understand Australian traffic laws, which are often very different from the traffic laws in their country of origin. VicRoads provides translated versions of the Victorian learner driver handbook in Arabic, Chinese (Mandarin), Turkish and Vietnamese, but not in Hindi, Urdu, Somali or Oromo, some of the languages most commonly spoken by clients at the Clinic.⁵¹

When these drivers receive infringements, many do not know how to deal with them, because the process for seeking review or revocation is highly complex. Very often, they cannot afford to pay the infringements they receive, which in turn leads to additional fines and enforcement fees.⁵²

The privately operated Citylink tollway system is equally challenging for many recent migrants, particularly those who do not have credit cards or internet access. As discussed in Chapter 4, Citylink is a cashless tollway. Users must pay electronically using an e-TAG. Many low income taxi drivers add money to their e-

⁴⁸ Taxi Industry Inquiry, *Setting the scene: submissions and responses* (2011), available at:

http://www.taxiindustryinquiry.vic.gov.au/_data/assets/pdf_file/0009/57690/Setting-the-Scene-SubmissionsAndResponses.pdf (accessed 23 April 2012), 25.

⁴⁹ Katie Fraser, Footscray Community Legal Centre, *Out of Africa and into court: the legal problems of African refugees* (2009), available at: http://www.footscrayclc.org.au/images/stories/docs/Out_of_Africa_and_Into_Court.pdf (accessed 23 April 2012).

⁵⁰ Ibid 15-17.

⁵¹ See the VicRoads website, <http://www.vicroads.vic.gov.au/Home/Licences/Handbooks/LandPDrivers/LearnerKit.htm> (accessed 23 April 2012).

⁵² Ibid 28.

TAGs in small increments, increasing the risk that they will drive on the road without sufficient credit. Others set up direct debit arrangements but may lack sufficient funds in their nominated bank accounts. This complex indirect payment system puts low income drivers at risk of fines for non-payment of tolls, a risk that would be minimised if it were possible to pay in cash at a toll gate.⁵³

Recently arrived migrants also suffer from lack of access to occupational health and safety information. The VTD publishes a guide to occupational health and safety on its website, entitled *Your guide to a safer workplace*. The guide includes a telephone number for interpreting services and invites drivers to contact the VTD, through an interpreter, if they cannot read the guide in English. When contacted, however, the VTD advises that translated materials are not available and are not necessary, as all taxi drivers must pass an English language test in order to gain accreditation.⁵⁴

Taxi drivers who have only recently arrived in Melbourne need help to navigate the complex legal environment in which they work. The proposed Taxi Services Commission could do a great deal to help drivers understand their legal rights and obligations. This is particularly important for drivers with limited English literacy.

Recommendation 5

The proposed Taxi Services Commission should provide targeted support and training for recently arrived migrant taxi drivers. The TSC should assist these drivers by providing translated materials explaining Victorian traffic laws, the infringements system and occupational health and safety laws. It should also provide these drivers with the contact details of free interpreting services and sources of legal advice.

9.5 Creating a fairer disciplinary system

The taxi industry's disciplinary mechanisms raise a number of unique legal problems for drivers. As discussed in Chapter 5, drivers receive written warnings when they face disciplinary action. In most cases, they are given an opportunity to respond, to set out extenuating circumstances, to correct any factual errors and, where appropriate, to express remorse. While this is an important and useful process, its usefulness is greatly undermined by the complex, legalistic nature of the correspondence that taxi drivers receive from the Department of Transport. Many drivers who attended the Clinic could not understand the

⁵³ Ibid 28, 30.

⁵⁴ VicRoads, *Your guide to a safer workplace: Victorian taxi driver safety*, available at http://www.transport.vic.gov.au/_data/assets/pdf_file/0005/31496/VTD-F39-Guide-to-a-safer-workplace-booklet.pdf (accessed 23 April 2012); author's telephone conversation with a VTD representative on 6 March 2012.

correspondence they received from the Department and did not feel confident that they could write an effective response.

For the disciplinary system to work fairly and efficiently, taxi drivers must understand the reasons they are facing disciplinary action and must have a genuine opportunity to respond, irrespective of their cultural background or their command of written English. CLCs are well placed to provide assistance to drivers who face disciplinary action, but they require resources to do so. Dedicated funding for CLCs, to provide legal assistance and advocacy for taxi drivers, would greatly improve the substantive fairness of the disciplinary system.

Recommendation 6

The Department of Transport should revise the standard letters sent to taxi drivers who face disciplinary action. These letters should be redrafted in plain English and in a simpler format. The letters should include the contact details of free interpreting services and CLCs.

Recommendation 7

The Victorian Government should fund a Victorian CLC to provide legal assistance and advocacy to taxi drivers facing disciplinary action. This funding might be targeted to taxi drivers whose first language is not English, or drivers who came to Australia as refugees.

10 Conclusion

Victorian taxi drivers face complex and unique legal problems, some with serious consequences for their livelihoods. At the Clinic, we have been able to assist many drivers with legal issues arising from fines, disciplinary action, motor vehicle accidents and other aspects of their work. This has given us a valuable insight into the systemic flaws that create legal problems for drivers.

The Victorian Government could do much to address these systemic problems. It could follow the New South Wales Government's lead by making comprehensive insurance compulsory, to protect drivers from catastrophic debt resulting from accidents. It could provide far more support for drivers, recognising that many are recent migrants and some have limited English literacy. It could also take practical steps to ensure that drivers enjoy the rights and entitlements of employees. This would greatly reduce the number of legal problems experienced by taxi drivers, while also meeting basic community standards of fairness in the workplace. This in turn would make taxi driving an attractive, secure form of work, rather than the 'job of last resort' for Melbourne's most vulnerable workers.⁵⁵

⁵⁵ Taxi Industry Inquiry, *Setting the scene: submissions and responses* (2011), available at: http://www.taxiindustryinquiry.vic.gov.au/_data/assets/pdf_file/0009/57690/Setting-the-Scene-SubmissionsAndResponses.pdf (accessed 23 April 2012), 25.

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