



24 June 2011

By email: taxiindustryinquiry@transport.vic.gov.au

Professor Allan Fels AO
Taxi Industry Inquiry
GPO Box 2797
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Dear Professor Fels

Taxi industry inquiry - complaints handling and dispute resolution

We write in response to the consultation paper, *Taxi Industry Inquiry: Setting the Scene*.

In this submission, we respond to only one of the questions in the consultation paper - that is,

do the Victorian Taxi Directorate and taxi booking networks have adequate policies and practices in place to deal with customer complaints and dissatisfaction?

We are of the view that the current system of complaints handling and dispute resolutions is inadequate and does not accord with best practice in the private sector. For the reasons outlined in this submission, we recommend that taxi licence holders, taxi operators and network service providers become members of the Public Transport Ombudsman.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

Since September 2009 we have also operated a new service, MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians with changed financial circumstances due to job loss or reduction in working hours, or experiencing mortgage or rental stress as a result of the current economic climate.

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Complaints handling and dispute resolution in the taxi industry

As detailed in the consultation paper, there has been a steady increase in formal complaints lodged with the Victorian Taxi Directorate (**VTD**), the taxi industry regulator. While the consultation paper outlines the main causes of customer complaint, neither it nor the VTD website provide any information about the outcomes of customer complaints or investigations.

We believe that the VTD's dual role of regulator and complaints handler is inappropriate and leaves consumers lacking effective access to justice in relation to taxi industry complaints. The VTD is unable to provide comprehensive dispute resolution assistance, and states the following on its website¹:

Although the VTD can advise you on the best course of action to take, it cannot resolve civil disputes or compensate customers for lost money or property, or assist if you have been involved in an accident with a taxi driver.

This limitation demonstrates that, as a regulator, the VTD is unable to provide a comprehensive and effective complaints handling and dispute resolution function.

In one complaint, a consumer contacted the VTD about a complaint with a taxi operator. The consumer was asked to provide written information about the complaint and a receipt, only to be told the VTD couldn't assist. When the consumer subsequently contacted the taxi operator, the operator provided a refund despite the VTD's position that it could not assist.

The VTD also provides no public information about the internal dispute resolution functions of taxi licence holders, taxi operators and network service providers. Without such information, it is difficult for consumers to assess the effectiveness of these operators in resolving complaints and disputes.

Industry-based external dispute resolution

Many industries have established industry-based external dispute resolution schemes to manage consumer dispute resolution in their industry. These include the Financial Ombudsman Service, the Telecommunications Industry Ombudsman and the Energy and Water Ombudsman Victoria. In the privatised public transport sector, the Public Transport Ombudsman has been in operation since 2004. In our view, these schemes are generally very successful in resolving disputes between consumers and businesses.

The success of industry-based external dispute resolution schemes is due to a number of advantages it has over other dispute resolution processes. The advantages of these schemes include:

- membership of the schemes is typically a condition of holding a relevant licence, so all businesses in an industry must participate in external dispute resolution;
- operation of the schemes is funded by industry, so industry has a financial incentive to minimise consumer disputes;

¹ Victoria, Department of Transport 'Tell us about your taxi experience' available at <<http://www.transport.vic.gov.au/DOI/Internet/vehicles.nsf/0/83422E0012281C49CA25787F000643D5?OpenDocument>>. Accessed 23 June 2011.

- the schemes typically have independent boards with 50 per cent representation from consumers so the dispute resolutions processes are fair and balanced;
- the dispute resolution processes employed by the schemes provides flexible solutions to disputes but also has ‘teeth’ because the schemes can make findings binding upon the business or trader;
- the schemes are typically required to investigate and report on systemic problems; and
- the schemes keep detailed records and make detailed reports that assists the advancement of consumers’ interests.

Importantly, industry external dispute resolution schemes are free and preserve consumers' legal rights if they are unsatisfied with the outcome. This ensures the schemes are accessible by all in the community. Further, while consumers are generally (though not always) self-represented in these forums, dispute resolution occurs at a distance and via the relevant scheme. This ensures the processes remain informal but avoids some of the pitfalls of face-to-face dispute resolution where a power imbalance exists between the parties.

There are well-recognised benchmarks for industry external dispute resolutions schemes (known as the DIST benchmarks).² These are:

1. Accessibility: The scheme makes itself readily available to customers by promoting knowledge of its existence, being easy to use and having no cost barriers.
2. Independence: The decision-making process and administration of the scheme are independent from scheme members.
3. Fairness: The scheme produces decisions which are fair and seen to be fair by observing the principles of procedural fairness, by making decisions on the information before it and by having specific criteria upon which its decisions are based.
4. Accountability: The scheme publicly accounts for its operations by publishing its determinations and information about complaints and highlighting any systemic industry problems.
5. Efficiency: The scheme operates efficiently by keeping track of complaints, ensuring complaints are dealt with by the appropriate process or forum and regularly reviewing its performance.
6. Effectiveness: The scheme is effective by having appropriate and comprehensive terms of reference and periodic independent reviews of its performance.

Industry external dispute resolution schemes also observe relevant standards on complaints handling and dispute resolution.

Public Transport Ombudsman

The Victorian Public Transport Ombudsman was established in 2004 to deals with complaints about Victorian public transport that consumers have been unable to resolve directly with the public transport operators. Its industry membership is diverse and currently includes bus, tram and train operators, ticketing and information service providers, as well as private train station operators. During 2009/10 it received over 1,700 cases and finalised over 250 investigations.

² Department of Industry, Science and Tourism (DIST), Benchmarks for Industry-Based Customer Dispute Resolution Schemes, 1997, available at <<http://www.anzoa.com.au/National%20Benchmarks.pdf>>

The Public Transport Ombudsman's jurisdiction has been expanded since its introduction. For example, from 2008 the scheme has been to deal with complaints about ticket inspectors and other authorised officers exercising Transport Act powers.

In our view, the jurisdiction of the Public Transport Ombudsman could be expanded to cover taxi industry complaints through requiring taxi licence holders, operators and network service providers to become members of the scheme. Taxi services are a form of public transport and there is good alignment between taxi services and privatised bus, tram and train services. Allowing taxi users to make complaints to the Public Transport Ombudsman where a service provider has not resolved a complaint would provide access to justice for the thousands of consumers who complain about taxis each year.

Allowing the Public Transport Ombudsman to deal with complaints and disputes relating to the taxi industry would also have the potential to drive improvements in the quality of services in the taxi industry. This is because while industry-based external dispute resolutions schemes' primary role is to resolve individual complaints, the schemes' power to resolve systemic issues also provides a low cost way of "trouble shooting" for industry, making it easier to improve its practices.³ One particular area that could be improved is the quality of complaints handling undertaken by the taxi operators and network service providers themselves.

We acknowledge that some complaints relating to taxi services, such as those arising from traffic accidents, might reasonably be outside the scope of the Public Transport Ombudsman. Issues relating to traffic accidents, including insurance issues, should however be considered as part of the inquiry. We understand that these issues are being address through a submission from the Federation of Community Legal Centres.

Please contact me on 03 9670 5088 or at gerard@consumeraction.org.au if you would like to discuss these matters further.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody
Director Policy & Campaigns

³ Joint submission by industry based external dispute resolution schemes in the financial services sector to Victorian Law Reform Committee's Alternative Dispute Resolution Discussion Paper, November 2007, p.9