

14 April 2005

Mr James Cox  
Chief Executive Officer  
Independent Pricing & Regulatory Tribunal (IPART)  
PO Box Q290  
QVB Post Office NSW 1230  
**BY FAX: 02 9290 2061**

Dear Mr Cox

### **REVIEW OF FARES FOR TAXIS IN 2005**

Please find enclosed the Union's interim submission to the Tribunal's review of fares for taxis in 2005.

As noted on paragraphs 17 and 18 of our interim submission, the judgement of Commissioner Connor has not yet been handed down regarding matters relating to superannuation for bailee drivers, amendments to other bailee entitlements and provisions relating to E-Tags. You will recall that the Union and the Tribunal have exchanged correspondence regarding this matter last month. After conversations with the Commissioner it is anticipated that the judgement should be handed down at some time in early May 2005.

On this basis the Union is intending to supply the Tribunal with a supplementary submission upon receipt of the Commission's decision. We intend to include in this supplementary submission a complete analysis and recommendations on both the Cost Index and the Fare Structure.

Therefore, we humbly ask the Tribunal to allow the Union the opportunity to provide a supplementary submission upon receipt of the Commission's judgement. Could you let us know as soon as possible whether the Tribunal is amenable to this request.

Yours faithfully

Mr Gilbert Astorga  
*Legal Officer, Transport Workers' Union of NSW*

**INDEPENDENT PRICING REVIEW AND REGULATORY TRIBUNAL  
OF NEW SOUTH WALES**

**REVIEW OF FARES FOR TAXIS 2005**

**INTERIM SUBMISSIONS BY THE TWU**

**A. TWU INTEREST IN THE IPART REVIEW**

1. The Transport Workers Union of New South Wales ('the TWU') is a registered association of contract drivers as provided under Part 5 of Chapter 6 of the *Industrial Relations Act* 1996 ('the Act'). 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 ('the Commission').
2. Pursuant to section 312 of the Act the Commission may inquire into any matter arising under contracts of bailment and may make a contract determination with respect to:
  - (a) the remuneration of bailees;
  - (b) attendance money for bailees;
  - (c) annual or other holidays, sick leave and long service leave for bailee;
  - (d) minimum hours which the bailor is to bail the vehicle to the bailee;
  - (e) maximum hours that a bailee may drive a public vehicle; and
  - (f) other conditions.

Furthermore, the Commission also has jurisdiction in the following matters:

- (i) reinstate contracts of bailment (section 314 of the Act);
  - (ii) approve agreements entered into between a bailor or an association of employing contractors and the TWU (section 325 of the Act); and
  - (iii) convene a compulsory conference in relation to an industrial dispute relating to contracts of bailment (section 332 of the Act).
3. The industrial relationship between bailor taxi operators and bailee taxi drivers in the Sydney Metropolitan Transport District is governed by the *Taxi Industry (Contract Drivers) Contract Determination* ('the Determination') which came into effect on 12 March 1984. The Determination for over twenty years has provided, inter alia:
  - (a) the method by which the bailee pays the bailor for the bailment of the taxi cab; and
  - (b) annual leave, long service leave and paid sick leave for bailees.
4. The Determination explicitly describes the two methods upon which the bailee taxi driver can bail a taxi cab in Sydney:

- (a) Method 1 – the bailee is entitled to receive and retain 50% (45% for first year drivers) of the chargeable fares collected in any given shift. The balance is bailed to the bailor with the bailor responsible for the cost of fuel and car wash.
  - (b) Method 2 – the bailee must pay a fixed amount to the bailor, regardless of the amount of fares taken in the shift. The fuel and wash costs however are the responsibilities of the bailee.
5. An important point needing reassertion is the significant connection between bailee earnings and the determination of taxi fares. It is widely considered and acknowledged by both the TWU and the Taxi Council that the majority of taxi drivers fall under Method 2 of the Determination. This nexus consequently affects driver earnings. The TWU therefore sees this review by IPART as one that needs to consider the interests of bailee drivers in relation to their real costs as well as ensuring its fare analysis adequately considers a realistic and properly assessed amount for taxi drivers to earn a reasonable wage in the industry.

## **B. PREVIOUS REVIEWS OF IPART**

### **COLLECTION OF DATA**

6. Prior to providing submission on current data it is important to reassert the flawed nature upon which IPART considers its review. The TWU and its members in previous submissions have highlighted the flawed nature of this review and argued for a substantial overhaul in IPART's analysis prior to any recommendation to government.
7. Principally the Union submits that the compilation of accurate and realistic data of the taxi industry can only be appropriately made by an independent third party free from partisan influence. The TWU notes with concern that the analysis in previous Tribunal reports relies significantly (if not adopting fully) on the data provided by the Taxi Council who clearly have a vested interest in promoting the interests of bailors and operators.
8. It is in the interests of the community and the taxi industry generally that current and future Tribunal reviews has as its most basic foundation independent and correct information and statistics regarding taxi operating costs upon which it bases its analysis from. It is the Union's respectful submission that the role of partisan bodies such as the Taxi Council and the TWU is to provide advice and counsel on matters of their interest. Neither organisations' submissions should not be used by the Tribunal as 'the best available evidence' to solely base its recommendations from. This unfortunately has been the general practice of previous reviews.
9. A recent example of the partisan and misleading information provided by the Taxi Council to the Tribunal is reflected in the evidence presented by Mr John Bowe, the previous CEO of the Council to the Commission in a recent matter regarding the provision of superannuation for bailee taxi drivers, amendments to other bailee entitlements and provisions relating to E-Tags. While further illumination will be

provided regarding the impact in the judgment handed down in this matter, of note for the Tribunal consideration is the concession by Mr Bowe in cross examination by Counsel of the TWU in relation to driver entitlements. This is seen starting on page 24 line 19 of the 10 February 2005 transcripts:

*Hatcher: Can I just take you to paragraph 12 of your first statement, Mr Bowe, in paragraph 12, this is in the second sentence, you say, despite the association's advice operators typically enter into arrangements where the drivers get a lower pay in exchange for foregoing the benefits and entitlements?*

*Bowe: Yes*

*Hatcher: And there you're talking about people who would otherwise be entitled to the entitlements, is that right?*

*Bowe: I'm sorry, could you give that to me again?*

*Hatcher: When you're talking about those type of arrangements you're talking about drivers who---*

*Bowe: All drivers that are permanent and meet the contract determination are entitled to the benefits.*

*Hatcher: Notwithstanding that you say overwhelmingly bailors are entering into arrangements with them whereby they don't get their entitlements?*

*Bowe: Yes.*

*Hatcher: Then you give a figure of 70%, paragraph 12, is that right?*

*Bowe: Yes.*

*Hatcher: So we can take it that for, in this industry for 70% of drivers who are entitled to benefits under the determination, that is leave, sick leave and the like, they're simply not getting it, is that right?*

*Bowe: Contract determination does not work.*

*Hatcher: But is that right?*

*Bowe: Yes, I would agree with it.*

This is further highlighted in the transcripts starting on page 34, line 43 of the same day when Counsel to the TWU elicits further comments by Mr Bowe regarding the matter:

*Hatcher: In annexure A to your first statement, you have a copy of the association's submission to the tribunal which sets fares, the submissions which you made in 2004, you see that one.*

*Bowe: Yes.*

*Hatcher: Of course the intention of this submission was to present factual material to the tribunal which would influence it to adjust fares in the way desired by the association?*

*Bowe: Yes.*

*Hatcher: Presumably you would appreciate the tribunal in assessing fares depends upon parties such as the association providing with accurate information about the industry?*

*Bowe: (No audible response)*

Hatcher: *You need to give a verbal answer.*

Bowe: *Sorry, yes.*

Hatcher: *You say that the information provided in that submission was true and accurate?*

Bowe: *To the best of our knowledge at the time, yes.*

Hatcher: *You see, where do we find it in the submissions said that 70% of the industry doesn't pay entitlements to its permanent drivers?*

Bowe: *I don't think you'll find that in there.*

Hatcher: *Can I just take you to page 23, that's a summary of urban taxi costs which you presented to the tribunal which presumably you intended to be an accurate reflection of the costs which taxi operators face. Do you see that?*

Bowe: *M'mm*

Hatcher: *You've asked the tribunal to accept — this is about halfway down the table — that taxi operators across the board are facing the cost of driver entitlements of some three to \$4,000 a year. Do you see that?*

Bowe: *M'mm*

Hatcher: *That's simply false with respect to, in your figures 70% of taxi operators, isn't it?*

Bowe: *No, it's not, that is what the entitlements add up to.*

Hatcher: *But they're not actually paying them, are they?*

Bowe: *Well, it was not up to us to tell IPRT (sic) that people aren't paying them.*

Hatcher: *Isn't this meant to be an accurate reflection of what people are actually paying?*

Bowe: *Where do you get that reflection from?*

Hatcher: *So this is more wishful thinking that (sic) reality is it?*

Bowe: *No, it's not, that is what you would expect the Gordon Shaws and the operators in the industry to do.*

Hatcher: *Shouldn't you have told the tribunal at some stage to say that, well, this is what you're meant to pay but we've got to tell you that in fact 70% of this is actually not being paid at all?*

Bowe: *Well, only if you were asked, yes.*

Hatcher: *Only if you were asked?*

Bowe: *Yeah, I would think so. You've got to assume certain things—*

Hatcher: *Do you understand that the tribunal is asking the public to pay taxi fares on the assumption that operators are paying their driver entitlements of three to \$4,000 a year. Is that right?*

Bowe: *Some of them are, yes.*

Hatcher: *Your evidence is that, notwithstanding that customers are paying for those entitlements through the fare, that in 70% of cases it's not going to the driver. Is that right?*

Bowe: *That's just my personal opinion, yes.*

*Hatcher: That's just a fraud on the public, isn't it?*

*Bowe: Well, I wouldn't agree with that because you are setting that that is something that they are bound by law to pay.*

Relevant transcripts continued on line 25 page 36 of the same day:

*Hatcher: I'm putting to you that with respect to driver entitlements it's a cost which exist in 70% of the cases only as a matter of theory, not as a matter of reality?*

*Bowe: My opinion, only my opinion.*

Again the relevant transcripts continued on line 55 page 36 of the same day:

*Hatcher: Can I just put this to you that it's really misleading for the association to present submissions to the tribunal saying that operators face the cost of so many goals and expected entitlements when in fact knows that most operators, members of that association, aren't paying those entitlements?*

*Bowe: I would agree with you that all statements made to the tribunal by all parties probably err in some places and if you are saying that the association has erred or the council has erred, I would agree with you, if that's your opinion.*

10. This long quotation of the hearing transcripts shows the clear deception that the Taxi Council has provided to the Tribunal in relation to drivers entitlements and its calculation thereof. Whilst it is only one example of false evidence being provided to the Tribunal, it highlights the need for independent data and statistics to be collected without solely relying on partisan bodies such as the Taxi Council for the 'best available evidence'.
11. The Union submits that such a body charged to collect this data must in the first instance be the Tribunal itself. Appendix 1 (i) of the Terms of Reference as outlined in the 2004 Report of the Tribunal shows the Government's intent on bestowing on the Tribunal investigative power to consider the cost of providing the services concerned. This by its application must include a proper and comprehensive assessment and collection of accurate data to fulfill its investigative and reporting role. It is the TWU's position that failure to collect accurate data would subsequently mean that the Tribunal would be unable to satisfy section (i) of the Terms of Reference.

#### **INITIAL PREMISE OF TRIBUNAL REPORTS WRONG**

12. The TWU notes with concern the initial premise upon which aspects of previous Reports have based their findings on. Of particular issue with the Union is the premise upon which the Tribunal has made calculations on the concept of 'Notional Drivers Wages'. In the 2004 (s. 5.16) and 2003 (s. 4.17) reports the Tribunal noted this definition to be the 'notional price taxi drivers must be paid if they are to be induced to drive taxis rather than leave the industry'. In 2002 (s. 4.15) the Tribunal noted that the 'driver bailment fees' represented the equivalent of wages paid to taxi drivers. In 2001, the term used by the Tribunal was 'Bailee driver labour' as noted in s. 5.1 of the report.
13. The 2001 report explains in greater detail the intent of the Tribunal in the apportionment of a figure to this cost item. Section 5.1 of this Report states inter alia:

*“One of the costs of operating a taxi is that of paying bailee drivers to keep the taxi on the road.... This cost is essentially the revenue that the bailee driver retains, which would have otherwise have accrued to the operator had he/she been driving that shift...The Tribunal notes the ICRC review in the ACT. This review recognizes bailee driver payments as a legitimate cost to the taxi operator. The model used in the ICRC review indicates that the bailee driver labour represents between 40% and 50% of total operating costs. For the purposes of this review the Tribunal has assumed 40%.”*

14. Such a concession as outlined evidently shows an assumption of 40 per cent being taken by the Tribunal as given without further analysis on its origins. Furthermore if one is to follow this logic no discussion or outline has been provided by the Tribunal in its choice of 40 per cent rather than 50 per cent of total operating costs. This Union is concerned about such baseless assumptions being made absent critical analysis. It is our submission that on this cost item alone the Tribunal for that year had failed in properly investigating (ii) of its Terms of Reference notably the cost of providing services concerned. The absence of proper explanation regarding this cost item in subsequent reports has unfortunately exacerbated this assumption.
15. Another concern of note in the 2004 report is the total operator component figure of that year. This figure of \$101,053 with a percentage weighting of 53.74% is not consistent with the maximum calculations in the context of pay-ins as apportioned in the Determination. The TWU’s calculations are based on the maximum pay-in of a bailee driver for 5 days 6 nights multiplied by 47 weeks. This figure equals to \$78,217 and which is the maximum revenue obtainable by a bailor if he bails a taxi under Method 2. This amount of maximum bailor revenue cannot logically in a viable industry be approximately \$23,000 less than the total operators operating costs.
16. The TWU respectfully submits that until such time that the Tribunal is able to address the issues as highlighted above then it is failing in its direct responsibility as outlined in its Terms of Reference of properly investigating the costs of providing the services concerned. We state that whilst the TWU and the Taxi Council are logical conduits of information regarding the industry it should not be relied on solely as the best evidence available. We respectfully state that a proper review can only take place once the Tribunal has as part of its analysis independent and detailed evidence of the industry. The collection of this evidence we assert can only be made by the Tribunal and is consistent with its Terms of Reference.

### **C. TAXI COST INDEX AND FARE STRUCTURE**

17. As the Tribunal is aware the Commission is currently deliberating upon matters concerning superannuation for bailee taxi drivers as well as amendments to other bailee entitlements and provisions relating to E-Tags.<sup>1</sup> In our respectful submission no proper assessment, weighting or analysis can be made regarding the index and the taxi fare structure until these potential cost items are considered ‘in the mix’. From the date of this submission the Commission has yet to hand down judgement regarding this

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<sup>1</sup> IRC 03/4181 and IRC 04/544

matter. After discussions with the Commission the Union anticipates this judgement to be handed down by early May 2005.

18. On this basis the Union is intending to supply the Tribunal with a supplementary submission upon receipt of the Commission's decision. We intend to include in this supplementary submission a complete analysis and recommendations on both the Cost Index and the Fare Structure which will include an analysis of other aspects of bailee driver operating costs. In the interim the Union has included in this submission without apportioning recommended figures and weightings its comments regarding certain aspects of the Cost Index.

### **LPG FUEL**

19. The Tribunal noted on page 17 of its 2001 report that the LPG Fuel cost is derived from three parameters: The LPG price per litre at the pump, the average distance traveled per year and the fuel consumption rate. The TWU notes with concern the original premise upon which these LPG Fuel calculations are based and detail these concerns below.
20. In the context of fuel consumption, the Union notes that in the 2001 (page 18) and 2002 (page 21) Tribunal reported its concern on the figures as stated:

*"For the purposes of this review and given the application of a cost index, the Tribunal has decided to apply the consumption figures used by the Taxi Council. However, the Tribunal cautions against accepting these figures in the future without further analysis, particularly where the form of regulation does not involve application of a cost index."*

In 2003 the Tribunal on page 18 noted regarding fuel consumption and average distance traveled per year that Tribunal that it has left *'...the other assumptions unchanged.'* This practice has not changed in the 2004 Tribunal review as stated on page 21 of that report. The Union submits that no detailed independent analysis was provided in 2001. We also highlight the concerns raised by the Tribunal in that report and the 2002 report yet note its failure to correct those figures in the 2003 and 2004 reports.

21. The TWU notes that a proper independent analysis of fuel consumption must consider the cost of air conditioning, the added cost of traffic congestion in the Sydney Greater Metropolitan area and the impact of efficient maintenance on the vehicle for fuel efficiency. The last point is of major concern as fuel is not the responsibility of method 2 bailors and anecdotal evidence provided by members to the Union state a lax approach taken by bailors to this issue.
22. The average distance traveled component is a function of the taxi vehicle's utilization. On the 2001 Report the Tribunal on page 18 indicated its reliance on the Taxi Council's assumptions on average distance traveled. It makes no reference nor tests the Council's submission indicating that it will apply the assumptions put forward in the absence of a more detailed survey. The Union is concerned that this assumption has been relied on for the 2002, 2003 and 2004 reports without adequate explanation. The



Union submits that it is essential that such data is independently collected and tested by the Tribunal prior to it being relied on in its recommendation to government.

23. The Tribunal has taken the price per litre component in the 2001 report as seen on page 17 from Shell and service station price surveys as submitted by the Taxi Council. Likewise in 2002, 2003 and 2004, it has relied on GOGAS figures as submitted by the Taxi Council. The Union questions the accuracy of these figures in light of regular price spikes that occur in NSW and whether these figures take those issues into account.

### **CLEANING**

24. The TWU notes again with concern at the premise upon which the base figure has been extracted by the Tribunal. In the 2001 report on page 20, it states that cost figures were derived from an operator survey. The Tribunal noted:

*“The Tribunal has requested further information on the operator survey used to source the cleaning costs included in the model. The Taxi Council indicated that selected operators were asked how they complete the taxi cleaning, how often this is carried out, and the cost.”*

This premise has not been tested by the Tribunal and has accepted these figures as presented by the Taxi Council in the 2001 and 2002 (s. 4.10) reports. In the 2003 and 2004 reports, the Council has used the average rise in CPI as a measure of increasing the cost of cleaning.

25. Not unlike the premise assumed in other cost items as highlighted, the Union gravely notes the lazy assumptions accorded to cleaning costs and state that such figures must be tested independently by the Tribunal prior to its reliance in these reports. The Union is not necessarily opposed to indexed CPI rises but notes that that any such rises must be based on an independent and accurate survey showing real cleaning costs.

### **NOTIONAL DRIVER’S WAGES**

26. As stated in paragraphs 12, 13 and 14 earlier the Union notes the problems in using notional driver wages as a basis upon which the Tribunal relies in its cost index. Such figures must be based on real information independently collected rather than notional figures which have no basis in reality.

### **INTERIM RECOMMENDATIONS**

27. **IPART must in this year’s evaluation review the means upon which the Tribunal has arrived to the figures regarding the following cost items: Notional Drivers Wages, Cleaning and Fuel LPG costs.**
28. **IPART must in this and future reviews undertake to supplement the submissions of the Taxi Council and the TWU by compiling and analysing**

**independent and correct data upon which it seeks to base its recommendations from.**

- 29. IPART must provide reasons and critical analysis on each cost item to ensure a proper examination has taken place.**

TRANSPORT WORKERS UNION OF NSW  
14 APRIL 2005