

Australian Taxi Drivers Association

THE TAXI BASE 33 BURROWS RD. ALEXANDRIA 2015
Mobile 0419 27 27 44 Inc 9886630 PO Box 7181 Alexandria 2015
... a fair share of a fair fare ...

First Class Taxis Notification to ACCC

The responses by First Class Taxis to issues raised by Interested Parties, and in particular to those matters raised by the ATDA, are even more contentious than the original submission, and rely on what must necessarily be a less than full awareness by the ACCC of the intricacies of the taxi industry.

Despite the legislative ambiguity in referring to a percentage of "the takings" and the reference to "gross takings" in the published model Bailment Agreements, and in the Queensland Government Information Bulletin a reference to "metered fares", the response by First Class Taxis clearly describes "a detailed report of ALL income generated". All income includes tips, tariff surcharges and tolls.

Attachments 4 and 5 only note "total takings" as derived from "Meter Readings", and there appears to be no suitable entry point for the other income sources ("off meter quote totals, Council Cab totals, schools run totals .. etc"). The TaxiCab Manager operating program appears deficient.

Elsewhere in the Taxi Industry around Australia, "takings" are better defined, and exclude items that are not, or should not be, subject of a "split". Gratuities may well be taxable income, but to require a share payment to the Operator is not usual. Tolls are an expense forming part of total takings, and are metered, but are surely not shared. Tariff Surcharges are generally intended as a purely driver benefit.

That First Class retains 55% of all income is very much at odds with industry standards. It discretionary 50/50 with selected drivers is discriminatory.

The addition in the end of shift report of "driver fund" and "debt repayment" is at odds with First Class meeting all running costs, and of the particularities of all aspects of driver insurance.

First Class continues to misinform the ACCC in relation to Set Pay-in arrangements in that *eftpos* transactions on a device registered to the Operator remain a confused relationship between not two, but several parties. At issue in all of this is the receipt issued bearing the ID and ABN of a person providing the service but not directly receiving payment.

ABN details are not always required and are not verifiable on all *eftpos* systems.

Certainly, the payment of "unders and overs" at the end of each shift resulting from *eftpos* and docket transactions being either greater or lesser than the agreed split, does provide a full and immediate settlement for the driver. The situation of deferred payment however only arises from the

acceptance obligation on the driver to accept "non-cash payments". Having less cash on hand should forestall assaults and robberies upon drivers – in the real world drivers continue to be attacked for even their reduced cash takings.

It is interesting to observe the accepted delay in transfers from Gold Coast Cabs, and (Live Payments), the other *eftpos* supplier in a world where *eftpos* is live on-line and credit cards are overnight / next day , and Amex / Diners can be within days. To turn this into meretricious attributes and still pay out in cash is amusing.

If transparency and accountability were to be the objectives, then one *eftpos* supplier capable of processing all credit, debit, *eftpos* and Transport Subsidy Scheme cards would surely be the most efficacious solution. In the more extended explanations, First Class Taxis now notes that two devices are present in their taxis – and from attachments these are Cabcharge and Live Payments. It notes that a driver could have additional devices, provided they meet the "Criteria", principal of which is that the money goes into a First Class Taxis Account.

It is open to conjecture that there must be some other reason why First Class Taxis should choose to have two devices present, when one should suffice, if it were not for some other financial advantage. Having duplication of reporting of non-cash fares and to be required to check two sets of end of shift reports for "quality control" would be unlikely to reduce the costs associated with *eftpos* processing (refer response - Quality Control).

The notion of a Public Benefit is hardly enhanced by any observable reduction in costs passed back to passengers. Whatever *eftpos* is used, a 10% plus GST is a near universal surcharge.

Speciously the response notes that Commissions and incentives offered by the *eftpos* supplier can be negotiated by the driver as to quantum and as to where they are deposited. Again, however, the fare monies go to First Class. First Class may well have never wanted to control this aspect of the overall income stream. It certainly does want to control the major portion.

First Class Taxis asserts improved accountability resultant from their plans. However the Transaction Report will only verify reported transactions and then equally clearly only with the reported details. The bailee 'end of shift' report is a 'totals' only, and will not be usable to "identify any transaction. Errors, overcharging ,fraud and other discrepancies will not , per se, be apparent.

That any particular aspect of this proposal ensures correct payment of fares by the public would be an unintended consequence. To claim this as a virtue is simply bunkum.

That which First Class fails to point out is that , currently, and as proposed, the driver can deliberately or erroneously enter an incorrect Driver ID and ABN – and , for one *eftpos* supplier, an incorrect Taxi number.

When the money flow is by default to the device's nominated Operator the only consequence is that there is confusion and obfuscation as to the true driver ID / Income, but the operator gets the money.

Where, by contrast, the driver has his own device, payments will go only to his account if his Driver ID /ABN are consistent with registration and start of shift entry. Full transparency and accountability will only occur when correct entry details are the prerequisite to payment.

The Public Benefits claimed for the Public, for Bailors and for Bailees certainly do flow from an efficient and transparent non-cash transactional reporting *eftpos* system. Certainly the ability to cross check against GPS data and MTD Data taxi trip records will enhance the mechanics of the taxi systems, and reduce both driver fraud and inappropriate claims of overcharging. But such benefits do not flow and are not dependant upon a , or upon several, eftpos systems money flows being directed exclusively to the Operator.

The final pages of First Class Taxis response are continuing instances of an absolutely specious attempt to mislead the ACCC. Item by item

- A tax invoice compliant with accurate ID entry can be produced from a properly formatted device irrespective of where the funds flow. The two nominated devices are able to be manipulated so as to conceal the driver and taxi identity.\
- Compliance and accountability is not the sole responsibility of the Operator. It is proper that the Authorised Regulator is the responsible body in the public interest.
- Atrocious grammar and spelling notwithstanding, it is incumbent on a passenger to initiate a complaint or query, and he or she already possess the available documentary evidence, as does the *eftpos* supplier. Such comparisons as would First Class now seek to abrogate to themselves are already open to the Regulator.
- The driver remains accountable for GST on fares in any event, and the sources of information are not limited to bailment payment reporting.
- The Bailor is not entitled to whatever share demanded on all income generated. Failure by a Bailee to declare correctly that which is to be split is improper behaviour be it on cash or on non-cash fare payments.
- Monies from a "non-criteria *eftpos*" deposited directly to the drivers account are as visible to the Operator as cash payments recorded on the meter.
- First Class desires to pay in cash to the driver those monies which it chooses to receive at a later date from a convoluted stream of intermediaries. That is its choice and of no particular public benefit.
- The conclusion that a driver would have to find and hold extra cash to balance out end of shift adjustment would ignore the alternative of a non-cash transactions now available as a transfer from the sinful non-criteria account.
- Regrettably the lack of cash has not resulted in a decrease on assaults upon taxi drivers. This is one benefit we would love to recognize.

- In other Australian jurisdictions, and possibly in Queensland also, a taxi fare may be the subject of a quote, but the meter must be engaged. Recording of fares is an essential to the overall integrity of the taxi industry, and the assessment of probity of fare charges cannot be so dependant on an Operators review of the *eftpos* data.
- Economic viability and social responsibility are not enhanced, not is the future of our taxi industry assured by an Operator who seeks to materially advantage himself at the expense of taxi drivers by squeezing an extra 5% of all income from drivers, and to assume the need to subjugate and control them wholly. To confuse the ACCC and their own drivers with a demand for a 55% share of all income, and still to charge out for some insurances is not an endearing aspect of their proposals.

Overall, the ATDA remains strongly opposed to what remains a claim for exemption from Third Line Forcing on Taxi Drivers. Whether we are employees or independent sub contractors we are still Bailees, and have a responsibility to pay for the Bailment of the taxi, as well as to retain a equitable if not equal share of the fare. There exists no prescriptive right for the Bailor to obtain control of monies which the passenger presumes are being paid to the service provider.

The reasons advanced by First Class Taxis do not meet an objective test of Public Interest, and the erstwhile suggestions of Accountability and Transparency are not supportive of their planned systems.

There might be a case for a single such *eftpos* system, but First Class Taxis has of its own initiative already installed two systems : one for Regulatory obligation and the other for what can only be perceived as private advantage.

We urge the ACCC to reject this Notification.

Michael Jools
President ATDA
Monday, August 06, 2012