

Implied Conditions

Effective 30 June 2014, a set of conditions under section 162L of the (*Transport Compliance and Miscellaneous*) Act 1983, will be implied into all driver agreements.

The implied conditions are intended to improve all drivers' working conditions. The conditions automatically apply to any agreement where a driver takes possession of an Operator's taxi. Failure to adhere to the implied conditions may result in compliance action.

NOTICE UNDER SECTION 162L(1) OF THE TRANSPORT (COMPLIANCE AND MISCELLANEOUS) ACT 1983 (VIC.)

Definitions

In this notice:

Act means *Transport (Compliance and Miscellaneous Act) 1983 (Vic)*.

Dispute has the meaning given to it in condition 4.1.

Driver means a person who takes possession of a Taxi-cab operated by another person for the purpose of operating the Taxi-cab under the driver agreement.

Gross Fares has the meaning given to it in condition 1.1.

Incident means any event occurring during a Shift in which:

- a) the Taxi-cab or equipment is damaged, lost or stolen;
- b) the Taxi-cab is involved in a collision resulting in damage to the Taxi-cab, another vehicle or any other property; or
- c) a person is injured by the Taxi-cab, while inside the Taxi-cab or while entering or leaving the Taxi-cab.

Operator means a person who operates a Taxi-cab, and who allows another person to take possession of the Taxi-cab for the purpose of operating the Taxi-cab under the driver agreement.

Shift means any period during which the Driver is allowed to drive the Operator's Taxi-cab.

Taxi-cab means any vehicle that the Driver is permitted to have possession of under the driver agreement.

TSC means the Taxi Services Commission.

Words used in this notice have the meanings given in the Act, unless otherwise indicated.

Notice

In accordance with section 162L(1) of the Act, I, Graeme Samuel AC, Chair of the Taxi Services Commission, specify the following conditions as conditions that will be implied into every driver agreement within the meaning of section 162J of the Act.

Section 162L(1) of the Act, and accordingly this Notice, take effect on 30 June 2014.

Conditions applicable to all driver agreements

1. Parties' earnings
 - 1.1. For the purposes of section 162L(2) of the Act, 'Gross Fares' means:

the total amount of all fares accrued on the meter, including any applicable:

 - a) booking fee;
 - b) high occupancy fee;
 - c) late night surcharge; and
 - d) public holiday surcharge,

but does not include Citylink or Eastlink tolls, any non-cash payment surcharge and any fees charged by Melbourne Airport.
 - 1.2. The Operator must maintain a record of:
 - a) all payments made between the Operator and Driver;
 - b) all Shifts worked by the Driver;
 - c) the total amount of Gross Fares earned during each Shift; and
 - d) all surcharges charged to a passenger during a Shift,

and must provide copies of these records to the Driver at the end of every calendar month.
 - 1.3. The Operator must not charge the Driver any fee or surcharge that would be subtracted from the Driver's agreed share of the Gross Fares (which must be at least 55 per cent).
2. **Maintenance costs**
 - 2.1. The Operator must pay all operating and maintenance costs of the Taxi-cab, including:
 - a) fuel;
 - b) oils;
 - c) lubricants;
 - d) repairs;
 - e) Taxi-cab livery and equipment; and
 - f) tyres and other replacement parts for the Taxi-cab.

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2.2. The Operator can nominate the places of purchase for items under this condition. If the Operator nominates the places of purchase, then the Driver must purchase the items at the nominated places, unless the purchase is an emergency (for example, the engine's oil light comes on and the nominated place of purchase is not near).

2.3. The Driver must give to the Operator the tax invoices/receipts for the purchase of any items under this condition within a reasonable time after the purchase of the items. The Operator must reimburse the Driver within seven days of receiving the tax invoices/receipts from the Driver.

3. Insurance

3.1. From 30 September 2014, the Operator must maintain one or more policies of insurance providing cover of at least \$5,000,000 for each Taxi-cab driven by the Driver against liability in respect of property damage caused by or arising out of the use of the Taxi-cab.

3.2. The policies must:

- a) be issued by a corporation authorised under the *Insurance Act 1973 (Cth)* to carry on an insurance business;
- b) be held in the Operator's own name; and
- c) not be held in any name other than the Operator's. For example, a policy held in the name of a person other than the Operator with the Operator as a beneficiary will not be sufficient to comply with condition 3.1.

3.3. The Operator is responsible for and will pay any applicable excess on the policy payable in relation to a claim involving the Operator's vehicle.

3.4. At any time during the term of the driver agreement, an authorised representative of the TSC may request evidence from the Operator which demonstrates that the Operator has in place a current insurance policy as required under condition 3.1. The Operator must provide such evidence to the reasonable satisfaction of the authorised representative.

3.5. The Operator must ensure that the insurance policy or policies are current, and must provide a copy to the Driver on request.

3.6. Subject to condition 7.4(b), the Operator must indemnify the Driver for vehicle damage (including damage to the Taxi-cab) arising out of the use of the Operator's Taxi-cab, and for costs including legal costs associated with such vehicle damage.

3.7. If the Operator holds a policy of:

- a) public liability insurance; or
- b) personal injury insurance,

for the Driver in relation to the driver agreement, the Operator must keep the following records (and must provide these records to the TSC and/or the Driver on request within a reasonable time):

- a) whether the Operator agrees to maintain the policy for the duration of the driver agreement; and
- b) the expiry date of the policy; and
- c) either of the following for the policy –
 - i) the policy information; or
 - ii) how the policy information can be obtained from the Operator.

3.8. If an Incident occurs while the Driver is in possession of the Taxi-cab, the Driver must:

- a) tell the Operator about the Incident as soon as possible (including, where possible, the details of all the people involved, witnesses, injuries suffered and damage to property); and
- b) as soon as possible, give to the Operator, or the Operator's insurer on request, copies of any statements the Driver makes to the police or any other person about the Incident.

4. Disputes

4.1. For the purpose of this condition, 'dispute' means any disagreement or dispute between the Driver and the Operator including a disagreement or dispute concerning the substance or meaning of the driver agreement.

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- 4.2. Where a dispute arises between the Driver and the Operator:
- either party may give a notice to the other party that states that there is a dispute, and
 - the parties must meet and attempt to resolve the dispute within seven days of the party giving the notice of dispute to the other party, or if the parties have agreed to a longer time, the parties must meet and attempt to resolve the dispute within that longer time.

NOTE: If, after the parties have met to attempt to resolve the dispute and the dispute is not resolved, the parties may attempt to resolve the dispute under the dispute resolution process set out in Division 5C of Part VI of the Act.

5. Driver's leave entitlements

- Where the Driver has worked regularly for the Operator for 12 months or more, the Driver must be allowed to take a period of up to four weeks of unpaid leave on a pro rata basis.
- Unpaid leave must be taken on dates agreed between the Driver and Operator. The Operator must not unreasonably withhold his/her agreement to the dates on which the Driver may take his/her unpaid leave.
- The Driver will have worked 'regularly' for the purpose of condition 5.1 if he or she has worked on average three or more Shifts per week over a twelve month period.

6. Termination

- Either party may end the driver agreement for any reason by giving two weeks written notice of their intention to end the driver agreement to the other party.
- Either party may end the driver agreement at any time, by written notice, if the other party has breached a term of the driver agreement.
- If either party ends the driver agreement under this condition, then the Driver must, on the ending of the driver agreement, return the Taxi-cab to the place nominated by the Operator.

NOTE: The Operator does not need to require a bond from the Driver under condition 7.

7. Bond

- The Operator may require the Driver to pay a bond. The total amount collected as a bond must not be more than \$1,000.
- The Operator may collect the bond in incremental amounts by requiring the Driver to pay a portion towards the bond every Shift. The parties must agree, in writing, to the amount to be paid per Shift.
- If the Driver pays the Operator a bond, the Operator must give the Driver a receipt and promptly deposit the bond into a designated bank account.
- Providing that the Operator can provide reasonable evidence of the loss, the Operator may only take money from the bond if:
 - the Driver fails to pay the Operator the Operator's share of the Gross Fares in accordance with section 162L(2) of the Act; or
 - the taxi or any item of equipment is damaged due to the Driver's conduct.
- The Operator must not take money from the bond if the damage is caused by a criminal act of another person.
- The Operator must not take an amount from the bond greater than the amount required to make good the Operator's loss. If the Operator later recovers some or all of that loss from another person, the Operator must pay the amount recovered back to the Driver.
- If the Operator wishes to claim money from the bond, the Operator must notify the Driver in writing. The notice must:
 - state the amount the Operator intends to take;
 - describe the loss; and
 - include evidence of the Operator's loss.
- If the Driver objects to the Operator making a claim on the bond, the Driver must notify the Operator in writing within 14 days of receiving the Operator's notice. If the parties cannot then reach an agreement about the Operator's claim on the bond, the parties must try to resolve the dispute in accordance with condition 4.

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- 7.9. Once agreement has been reached about the Operator's claim on the bond, the Operator must pay for the relevant loss using the money in the designated bank account. The Driver must then give the Operator the money to return the bond to the required level by mutual arrangement.
- 7.10. On termination of the driver agreement, the Operator must refund to the Driver within 14 days the balance remaining in the designated bank account together with any interest earned on the Driver's bond.