

**HIRE CAR
HARDSHIP ASSESSMENT PANEL**

FINAL REPORT

February 2003

EXECUTIVE SUMMARY

On 24 November 1999 the Independent Pricing and Regulatory Tribunal of New South Wales (IPART) published the “Final Report” styled – Review of the Taxi Cab and Hire Car Industries.

The IPART Review contained a number of recommendations regarding the hire car industry in NSW and as a consequence of those recommendations, the hire car industry reform package was announced on 13 September 2001, which included a reduction in the annual hire car licence fees in Sydney from \$16,100 per annum to \$8,235 per annum.

Following concerns expressed by relevant industry associations and many perpetual hire car licence holders about the reforms, the Hire Car Hardship Assessment Panel was established with specific terms of reference, which specified that the role was to “consider written claims of hardship from hire car operators who are the holders of a perpetual hire car licence.”

These terms of reference do not provide for any review of the recommendations contained in the IPART Report, nor has the Panel considered any proposal to modify the alterations that have flowed from the IPART Report.

The Panel does not possess any kind of judicial power or authority. No decision of the Panel is binding on any person or body; nor is any such decision binding on Transport NSW or the Director General. In other words the powers and duties of the Panel are strictly confined to those specified in its terms of reference.

In the event that the Panel’s recommendations are adopted the effect will be relief for certain persons against the effects of transitional arrangements which appear to have caused hardship.

The terms of reference set out conditions which identify those who are eligible to make a claim to the Panel, the requirements to satisfy hardship under those terms, the considerations to be taken into account when assessing the claims, the duty of the Panel is to make recommendations to the Director General, Transport NSW and the composition of the Panel; the Hon J Riordan AO and the Hon Milton Morris AO.

On releasing the terms of reference, a general invitation was issued to holders of perpetual hire car licences to submit claims of hardship to the Panel. The closing date for claims was specified to be 1 September 2002. It should be noted that many of the claims were delayed and were received very close to the last date on which such claims could be received for consideration.

The Hire Car Hardship Assessment Panel began its deliberations in December 2001 and the Panel in its role has considered advice from Transport NSW officers in relation to the hire car industry generally. It also reviewed the background in relation to the issuing of perpetual and short term hire car licences and the basis for the fees charged for those licences.

The matters raised with the Panel by interested persons and organisations were many and varied, most of which bristle with difficulty.

While there are 318 perpetual licences in New South Wales, 131 licence holders made submissions and/or attended a meeting of the Panel. Certain of those who made submissions are not however within the scope of the terms of reference.

Almost all of those who made submissions argued for one form or another of financial compensation. The most common proposal was that the New South Wales Government or Transport NSW should “buy back” the licences.

The difficulties associated with making a recommendation for the payment of financial compensation by the NSW Government or Transport NSW are numerous.

The Panel had ongoing communications with industry associations.

The views expressed by some of the associations were inconsistent with the views expressed by the vast majority of those who appeared before the Panel, with some associations arguing that no compensation should be payable. The views of those associations were considered by the Panel and weighed against the submissions made and the material supplied by others who appeared or who were represented before the Panel by the Motor Traders Association, which strongly supported claims by licence holders for financial compensation.

Consideration of what is the proper meaning of “hardship” for the purposes of this inquiry has caused some difficulty. No definition of the term was included in the terms of reference.

The Panel researched available records for a proper definition by judicial authority and invited submissions from relevant parties. In this latter regard the Panel was assisted by the submissions made by Mr P Capelin QC, who appeared before them on behalf of the Motor Traders Association of New South Wales (MTA) and certain of its members who had made submissions in relation to the matters under review.

In accordance with the terms of reference, the Panel was required to consider certain claims made by a specified class of operators. In addition, any claims were required to be lodged by a date, specified to be “before 1 September 2002”.

The Panel was proscribed from considering “any claim for hardship arising after 1 September 2002.

A number of licences were sold by the Department of Transport via public auctions during September and October 1998. The documentation regarding the auction indicated that it was being conducted to determine the market price for the licences at the time.

The documentation in respect of that auction also contained, what have been described as, warnings that prospective bidders should be aware that the purchase of a perpetual hire car licence as an investment must be regarded as a speculative proposition.

The auctions of hire car licences conducted on behalf of Transport NSW in 1998 were referred to in many of the submissions to the Panel. Explanations about there being a policy to encourage competition at a national level with implementation being required at a State level was not accepted as helpful by current licence holders.

On the basis of the submissions and interviews with licence holders, four broad categories of licence holders emerged. These categories are:

1. Licence holders who operate their own hire car;
2. Licence holders who wholly or substantially own a perpetual licence and lease the licence to a hire car operator;
3. Licence holders who have incurred borrowings, some significant, to fund the purchase of their licence and who lease their licence to a hire car operator;
4. Holders of multiple licences, some with significant borrowings to purchase those licences, and who are left with substantial debts some guaranteed by mortgages on their homes and otherwise.

Licence holders who operate their own hire cars were not directly impacted, from a revenue perspective, by the reform package. There is, however, a strong argument that these licence holders have suffered an unrealised capital loss in the market value of their licences.

In contrast, those who most recently purchased a licence with the intention of leasing it to an operator and using significant levels of borrowed funds for the purpose, appear to be affected adversely in varying degrees from a financial perspective.

There is also some degree of uniqueness to many of the claims; these emanate from the purchase price paid for a licence by a claimant, the options taken to fund the purchase, the current financial position of licence holders, their age and even their situation in regard to usage of the licence, make an equitable solution to this situation most difficult, particularly the consideration of some form of financial compensation suggested by many.

For the purposes of the Panel and based on judicial authority as well as the ordinary meaning given in dictionary definitions, “hardship” was considered to relate to substantial loss, realised or unrealised, which has been experienced as a direct result of the decision taken to reduce the hire car licence fees charged by TNSW from \$16,100 per annum to \$8,235 per annum.

In the context of the terms of reference, the Panel has established a ranking criteria for applicants considered to have suffered hardship, with consideration given to the nature of the loss, whether it is realised or unrealised, the financial position of the applicant, their ages, whether they took financial advice on the purchase of their plates and the extent of their knowledge of the Government’s auction of hire car licences. A schedule ranking the Panel’s view of the priority has been established. This schedule is to be kept confidential in the interest of preserving the privacy of those concerned.

There is clear evidence that whilst some persons have endured substantial loss, others have made gains as a consequence of the reduction of short term licence fees for hire car operators. Those who have gained advantage are lessees of licences from perpetual licence holders.

A further issue arose in respect of the final provision of the terms of reference which requires that a claimant, apart from having sustained certain losses, should have a poor financial position.

The submission made on behalf of MTA is that this latter restriction should be regarded as “a financial position which is assessed purely from the operation of the licence which it is alleged has been devalued”. This aspect of the MTA argument has caused us some concern.

The direction in the terms of reference is that a claimant must show either a reduced income or reduction in capital value as a consequence of the reduced licence fee, or both, and further have reached “a poor financial position”. In other words the severity of the reduction is a factor.

The Panel decided to recommend that the Director General should introduce the proposed form of compensation in a careful and phased manner. In this regard, as referred to earlier we have attempted to assist the achievement of just and equitable treatment by recommending a priority ranking for the Director General’s consideration, so that those claimants with the greatest need will receive priority.

Certain of the claimants sought and obtained financial advice from their accountants, others accepted advice, prior to their purchase of hire car licences, from family members and friends to the effect that the purchase of a hire car licence was, on past experience, a good investment. It appears to have been considered by advisers and industry associations that the inquiry by IPART would not result in any significant change in that regard; this advice was flawed.

The Panel during its deliberations and following a search as to the reasons why the Department of Transport was auctioning the licences in September 1998 considered whether compensation should be provided to the hire car licence holders via a general arrangement or on a case by case basis.

In this regard, the ranking of the applicants facilitated the provision of compensation under both scenarios, with those most urgently in need possibly offered compensation prior to others in a less difficult financial position.

It is however difficult to accept that professional advisers to hire car licence investors were taken by surprise by the contents of the IPART Report in respect of the proposed changes to the regulatory scheme, particularly the recommendations for a reduction in the level of fees charged for short term licence holders.

It should be made clear that the Panel sees no merit in the inference or imputation that the Department has some legal liability to assume responsibility for the payment of compensation for those who suffered a loss as a consequence of the changes that have occurred.

All of those who made claims to the Panel asserted their inability to dispose of their licence plates. Most licence holders claimed that the value of their asset had disappeared and that no potential licence holder would pay an exaggerated price for a perpetual licence at the previous value when a short term licence was available at a relatively cheap rate.

In 1999 there was an inquiry into the hire car industry in New South Wales undertaken by the Ombudsman NSW. The outcome of the Ombudsman's Report is of substantial significance in the resolution of issues facing the Panel.

Careful consideration was given to the various reports which are referred to in this report. Their respective findings and recommendations are undoubtedly based on the material available to each of the tribunals or persons concerned. They have been included in order to illustrate the pressure to achieve an alteration to the then current regulation.

The history of hire car regulation discloses a large degree of dissatisfaction by several persons who have been, or who would have liked to have been, involved in the operation of hire cars.

It is to be emphasised that the Ombudsman's report followed an inquiry based on complaints that the licence fee was excessive. There can be little room for conjecture about the basis for the level of a licence fee which was based on a rate of interest payable on the long term Commonwealth bond rate of 14 per centum per annum which became quite unrealistic at the time of the report as interest rates receded.

The Ombudsman's Report was referred to in the Inquiry undertaken by the IPART. In view of the significance of the report of the Ombudsman, reproduced extensively in this report are the conclusions and findings of the Ombudsman.

The whole of the Ombudsman report is indicative of the very severe pressure the Department faced in respect of its efforts to prevent the situation in which hire car perpetual licence holders now find themselves.

There is a further report into the hire car industry to which we should refer. This report is known as the Cotton Report, which is referred to in this report.

The IPART Report was published on 24 November 1999 and contained several recommendations "to improve the regulation of taxis and hire cars in New South Wales". The Report included a recommendation for a "phased approach to increasing the number of taxi licences in Sydney over the next five years".

As a consequence of the alterations made following the IPART Report, there has been the emergence of short term licence holders, and the emergence of hire car operators who engage in "touting" for passengers at Sydney Airport. This latter development was obviously not expected and Transport NSW has recently implemented a number of initiatives with the support of industry to address the issue and these initiatives appear to be having the desired effect. Although there were many complaints about the effect of "touting" timely action by the relevant authorities appears to have corrected the unsavoury practice.

After a careful consideration of all of the circumstances, including personal and financial of those whose circumstances fall within the scope of the terms of reference which govern the role of the Panel, we have reached the conclusion that it would be impossible to recommend a single form of financial compensation that would be fair, just and equitable in every case.

The scheme of compensation that we have decided to recommend avoids the complications of “buy back” arrangements. The Panel’s proposal is consistent with the recommendations of IPART and other relevant reviews, but creates a further opportunity for all concerned to continue their desire to work in private hire public transport, which will allow the hire car and taxi market to operate efficiently and should provide a fair, as well as satisfactory, solution to the dilemma of those who have invested in the industry in good faith.

The Panel received several claims by persons and trusts for compensation on account of perceived losses in respect of hire car operations undertaken outside of the Sydney metropolitan area.

In respect of this aspect, it was stated that it had been the intention of certain licence holders to transfer their licences to the Sydney metropolitan area with the benefit of selling them at a higher capital value. The loss of value of perpetual licence plates in the Sydney area had, therefore, impacted on those owners; at least, that was the argument. We have been assured by officers of Transport NSW that no such right of transfer exists and that licence plates issued outside the metropolitan area are for the provision of services in the specified local area.

We gave serious consideration to all of the material placed before us in respect of this claim. Alteration to licence fees in certain areas of the State occurred some time ago, and well before 13 September 2001.

On careful reflection we are satisfied that those claimants who assert hardship as a consequence of decisions which were made prior to 13 September 2001 have no standing before the Panel and we are not entitled to hear or consider the merit of their claims. Simply put, the circumstances of such persons are not within the province of the Hire Car Hardship Assessment Panel.

We wish to emphasise that we are unable to consider any claims which are beyond the matters which are included in the terms of reference which by their specific provisions restrict the functions of the Panel in a mandatory manner.

The Panel has considered a number of options to provide compensation to claimants who have demonstrated a loss due to the decision of 13 September 2001 to reform the hire car industry. In this regard, consideration was given to the terms of reference which referred to recommendations for ex gratia payments and other forms of compensation.

Other forms of compensation which received consideration were:

- The issuing of an additional hire car licence to each licence owner; and
- Offering a taxi plate to each hire car licence holder in exchange for the hire car licence at a cost equal to the difference between the value of a hire car plate at 13 September 2001 and the current cost of a taxi licence plate.

Whilst we accept the advice that neither Transport NSW nor the Government of NSW has any binding legal liability to provide compensation to persons who have suffered losses as a result of the alteration to licensing policy, we recommend to the Director General that the following offers should be made to those whose financial integrity have been adversely affected:

1. Every person who made application to the Hire Car Hardship Assessment Panel prior to 1 September 2002 and who at present holds a current perpetual hire car licence for the Sydney Metropolitan transport district, and who held such a licence prior to 13 September 2001, should in exchange for that perpetual hire car licence be allocated an unrestricted taxi licence, providing such person makes a financial contribution which has due and proper regard to the difference existing at 31 December 2002, between the market value of a hire car licence applicable immediately prior to 13 September 2001, and the market value of a taxi licence on the same date.

Every person who made application to the Hire Car Hardship Assessment Panel prior to 1 September 2002 and who held a perpetual hire car licence for the Sydney Metropolitan transport district prior to 13 September 2001, but sold that licence prior to 31 December 2002, should be allocated an unrestricted taxi licence, providing such person makes a financial contribution which has due and proper regard to the amount that person received on the sale of the perpetual hire car licence in addition to the difference existing at 31 December 2002, between the market value of a hire car licence applicable immediately prior to 13 September 2001, and the market value of a taxi licence on the same date.

2. Those persons who through pressure of mortgage arrangements sold their homes and also sold their hire car licences during the relevant period should receive a benefit of the same kind as set out in paragraph 1 hereof on the payment of an amount of equal combined value, unless such person has received the benefit recommended in paragraph 1 hereof.
3. As there is an obvious need for great care in the allocation of taxi licences and the further need to have regard to the IPART Report in respect of additional taxi licences, the allocation should be made in accordance with a priority list which has been adopted by the Panel, based on need and financial circumstance.
4. Where a person holds more than one licence the allocation should be made on the basis that each person on the priority list having the right to receive one converted licence prior to the further allocation of converted licences to those holding more than one perpetual hire car licence.

5. Care should be taken not to flood the taxi licence market with additional licences. To this end, the transfer of hire car to taxi licences should be phased in over a period of at least two years and in accordance with the recommendation of the IPART Report, which recommended the number of taxi licences being increased by 5 per cent per annum between 2000 and 2005.
6. Should the beneficiaries wish to sell their hire car perpetual licence with the right to acquire the taxi licence at a time subsequent to 1 April 2003, they should be allowed to do so, provided it can be shown that the investment in the hire car licence was part of a bona fide superannuation plan.

Background

On 24 November 1999 the Independent Pricing and Regulatory Tribunal of New South Wales (IPART) published the “Final Report” styled – Review of the Taxi Cab and Hire Car Industries.

In the forward of the report the following observation appears in the first paragraph:

“Government regulation of taxis and hire cars has a long and complex history. Whilst the regulation of many industries has decreased during the past decade, the regulation of taxis is still strongly supported in many countries. Where full deregulation of taxis and hire cars has taken place, it has been characterised by some successes, but some notable failures.”

The foregoing observation is important in order that there is a clear understanding of what has occurred and there appears to have been a deal of incorrect reporting of the nature and extent of the changes made. Not only has there not been a full deregulation of the hire car industry, it is clear that such an action has not been proposed by IPART, at least not in the relevant report. It is necessary to make this observation because many of those who made submissions referred to the “de-regulation” of the hire car licence system, which clearly has not occurred.

The forward to the IPART Report makes its finding very clear in this regard by the following observation:

“The Tribunal is satisfied that regulating the quality of taxi and hire car services benefits passengers and the industries. However, restricting the number of taxi and hire car licences does not appear to generate any significant benefits for passengers, drivers, or anyone working in the industries, other than the licence holders.

Increasing the number of taxis in Sydney would help improve the industry by augmenting the supply at peak times. However, to completely remove the current restriction on the number of taxis would involve making significant changes to the industry and its regulation. The Tribunal is also aware of some unsuccessful attempts at deregulation in other jurisdictions ...

The Tribunal can see no benefit from restricting entry to the hire car industry. The Tribunal has recommended that the number of hire car licences issued in Sydney, Newcastle and Wollongong be unrestricted and subject to the regulation of driver and vehicle standards.”

It will be argued by some, of course, that if the number of hire car licences issued is unrestricted, and the fees payable for such licences are drastically reduced, the same or similar effects of de-regulation are achieved.

It is important to observe at this early stage, that as a result of the serious concerns expressed by certain associations and many of the perpetual hire car licence holders about the economic impact on them as a consequence of changes made, this Hardship Assessment Panel was created with specific terms of reference which are set out later herein. It will be seen that the purpose of the Panel was specified to be to “consider written claims of hardship from hire car operators who are the holders of a perpetual hire car licence.”

It is trite to observe that this hardship assessment panel is restricted in respect of the recommendations it is authorised to make to deal only with those matters which are specified in the relevant terms of reference.

The terms of reference, for example, do not provide for any review of the recommendations contained in the IPART Report. That report has been made by a constituted tribunal and is not the subject of review by an ad hoc panel set up to consider a much narrower and very restricted question of the effect of alleged “hardship” flowing from the implementation of certain recommendations.

This Panel has made certain recommendations but these do not, and are not intended to, modify the alterations which have flowed to the Director General of Transport NSW from the decision to implement the relevant reforms which are contained in the IPART Report.

In the event that our recommendations are adopted, either in whole or in part, the only effect will be the relief for certain persons against the effects of transitional arrangements which appear to have caused hardship for many.

The reforms contained in the IPART Report were introduced to the hire car industry in New South Wales in September 2001. As a result of those reforms, and some community concerns in that regard, the Government established the Hire Car Hardship Assessment Panel. What follows is our report.

The Department of Transport, now Transport NSW (TNSW), administers the regulation of the hire car industry in New South Wales. The operator of a hire car must be accredited as an operator by TNSW. The operator must also be accredited in order to own a hire car licence, even if the operator does not actually operate a hire car, but leases the licence to another person to operate the vehicle as a hire car.

The Passenger Transport Act 1990 (the Act) contains a definition of “private hire vehicle” as “a motor vehicle (other than a bus or taxi-cab) which is used to provide a public passenger service (other than a regular passenger service, a long-distance service, a charter service or a tourist service)”.

(See Section 3 – Definitions contained in the Act.)

In order to operate a private hire vehicle, a relevant person must also hold a vehicle licence, which may be obtained in one of the following ways:

- Buy it from another licence holder;
- Lease it from a licence holder on the open market; or
- Lease it from TNSW.

These arrangements date back to 1970 when perpetual hire car licences and the accompanying plates were made available for purchase by the public.

The terms of reference of this Panel were specified in the following terms:

“The Hire Car Hardship Assessment Panel will consider written claims of hardship from hire car operators who are the holders of a perpetual hire car licence.

The claim can only be made by operators

- who are the holders of a perpetual hire car licence; and
- who have purchased such licence prior to 13 September 2001; or
- who have leased the licensed vehicle as at 13 September 2001; and
- as a consequence of financial hardship incurred by perpetual licence holders due solely to the decision made on 13 September 2001 to implement the hire car reform package as it relates to the decrease in short term licence fees.

In this context “purchased” includes the transfer or assignment of a licence for which the operator has paid money and has not been reimbursed for that payment by the Department of Transport.

Any claim must be lodged with the Hire Car Hardship Assessment Panel Secretariat on or before 1 September 2002. The Hire Car Hardship Assessment Panel will not consider any claim for hardship arising after 1 September 2002.

Determining Hardship

The Hire Car Hardship Assessment Panel may determine its own procedures for handling any claim made to it, including interviewing claimants, receiving documentation and determining the sufficiency of the documentation relating to a claim.

The Hire Car Hardship Assessment Panel will determine that a claimant has suffered hardship if the Hire Car Hardship Assessment Panel is satisfied that:

- the claimant has demonstrated :that the claimant has suffered a loss of:
 - income from the lease of the licensed vehicle as a direct consequence of the decision; or
 - capital value of a licence where it is established that the loss occurred in relation to the transfer or assignment of the licence to a bona fide purchaser for value between 14 September 2001 and the date of the claim, and
 - due to the claimant’s poor financial position, the claimant should be compensated for suffering this loss.

Considerations

In assessing claims for hardship, the Hire Car Hardship Assessment Panel will be entitled to take into consideration:

- warnings and caveats issued by the Department of Transport that partial deregulation of the industry in the future was possible
- whether the claimant sought or received independent financial advice at the time of purchase
- how the former and current licence fees compare to returns from other investments and ventures
- where a claim relates to the capital value following assignment or transfer of the licence, proof of a bona fide transaction for value having occurred.

General

The Hire Car Hardship Assessment Panel may require the Director General to produce any document or information in the possession of the Director General that may assist the Hire Car Hardship Assessment Panel in consideration of a claim.

Determining Quantifiable Loss

Where the Hire Car Hardship Assessment Panel has determined that a claimant has suffered hardship, the Hire Car Hardship Assessment Panel may make a recommendation to the Director General for the making of an ex gratia payment or the provision of some other form of assistance.

In making this recommendation, the Hire Car Hardship Assessment Panel must be satisfied that such amount is justified having regard to the loss evidenced by the claim, including evidence by way of tax return, and on no other factors.

The Hire Car Hardship Assessment Panel cannot include in any recommendations, any amount that would otherwise be considered as an amount for:

- Damages;
- Legal costs; or
- Accountant's costs.

Composition of Panel

The Panel will consist of the Hon J Riordan and the Hon M Morris.

Mr Riordan is a former Minister of the Commonwealth Government in 1974/75 and is also a former Deputy President of the Australian Industrial Relations Commission. He is currently Chairman of Workcover NSW.

Mr Morris was Minister for Transport in three NSW Governments in the 1960s and 1970s. He is NSW's longest serving Minister for Transport.

The Panel will make recommendations to the Director General of the Department of Transport.”

The matters raised by interested persons and organisations were many and varied, most of which bristle with difficulty.

At the outset, it must be observed that there are 318 perpetual hire car licences in New South Wales, and 131 licence owners made submissions and/or attended a meeting of the Panel. Certain of those who made submissions are not within the scope of the terms of reference and we have explained this situation later in the report.

Almost all of those who made submissions argued for one form or another of financial compensation.

It was argued with great force by many of those who made submissions that they felt great disappointment and a sense of betrayal by the actions of the Government in altering the system of regulation, the consequence of which was at least a substantial reduction of, or the destruction of, the value of their respective licences.

There were many suggestions in respect of the form and quantum of compensation that should be available. The most common proposal was that the New South Wales Government or TNSW should “buy back” the licences by paying to the respective licence holders an amount equal to the market value of such licences last established immediately prior to the announcement of the proposed alterations on 13 September 2001. Such beneficiaries, so the argument goes, should be free to purchase a short term licence under the new arrangements.

The difficulties associated with making a recommendation for the payment of financial compensation by the New South Wales Government or TNSW are numerous. It is to be remembered that those who made suggestions for this form of compensation relied heavily on what they believed to be the form of compensation paid to others in de-regulated industries, such as dairy, fishing and egg production.

Compensation paid to dairy farmers has been funded through a tax raised as a result of Commonwealth legislation by which milk consumers are required to pay 11 cents per litre of milk purchased. Other forms of compensation in other industries have been similarly funded by way of consumer levy.

We were not informed how such a scheme could be funded to provide compensation for hire car perpetual licence holders without creating a situation which would be in conflict with the relevant reports in connection with the hire car industry.

There are two issues of fundamental importance in respect of which we are obliged to comment. These are matters which relate to duties imposed on us by the terms of reference which govern our existence as a Panel and the proper and correct meaning of them.

Of course, it is recognised that the Panel does not possess, and we certainly do not intend to seek to exercise any kind of judicial power or authority. No decision of this Panel is binding on any person or body; nor is any such decision binding on TNSW or its head, the Director General. The role of the Panel is to make appropriate inquiries, hear persons or bodies who may have been adversely affected, or who believe they have been so affected, by decisions of government and to make recommendations which may seem appropriate in the circumstances and which are within the authority of the Panel as prescribed by the terms of reference.

The approach we have taken is to make relevant inquiries with informality, consistent with the essential need to ensure procedural fairness. We have provided all who wished to be heard an opportunity to express their feelings about what had occurred in their business. All reasonable steps were taken to protect and preserve the confidentiality of their relevant business affairs, particularly their individual financial circumstances.

Two questions arose which relate to the provisions in the terms of reference relating to, firstly, the meaning to be given, and the definition to be applied to the term “hardship” and, secondly, whether a relevant licence holder was required to have suffered an actual loss in the capital value of such licence which had “occurred in relation to the transfer or assignment of the licence to a bona fide purchaser for value between 14 September 2001 and the date of the claim ...”. That is say, in respect of loss of value of a licence, whether the loss had been valued rather than being an unrealised capital loss.

In respect of the proper definition of the term “hardship”, we searched for guidance in two ways. We researched available records for a definition by an appropriate judicial authority and, secondly, we invited submissions from relevant parties. In this latter regard we were assisted by the submissions made by Mr P Capelin QC, who appeared before us on behalf of the Motor Traders Association of New South Wales (MTA) and certain of its members who had made submissions in relation to the matters under review.

Consideration of what is the proper meaning of “hardship” for the purposes of this inquiry caused us some difficulty, particularly in the light of all of the alleged facts and circumstances that were encountered as a result of the many and varied submissions received.

It is very clear to us that the only circumstances of hardship that we are entitled to consider are those which have occurred in accordance with the terms of reference which govern and regulate our inquiry and any recommendations which may be appropriate. Claims relating to “hardship” which may have occurred as a result of normal commercial activity are not within the scope of the terms of reference.

The right to make a claim for hardship is strictly confined to the matters and circumstances which are specified in the terms of reference, as follows:

“The Hire Car Hardship Assessment Panel will consider written claims of hardship from hire car operators who are the holders of a perpetual hire car licence.

The claim can only be made by operators

- who are the holders of a perpetual hire car licence; and
 - who have purchased such licence prior to 13 September 2001; or
 - who have leased the licensed vehicle as at 13 September 2001; and
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- as a consequence of financial hardship incurred by perpetual licence holders due solely to the decision made on 13 September 2001 to implement the hire car reform package as it relates to the decrease in short term licence fees.

In this context ‘purchased’ includes the transfer or assignment of a licence for which the operator has paid money and has not been reimbursed for that payment by the Department of Transport.

Any claim must be lodged with the Hire Car Hardship Assessment Panel Secretariat on or before 1 September 2002. The Hire Car Hardship Assessment Panel will not consider any claim for hardship arising after 1 September 2002.”

There are several features of the above provision which should be noted.

The first is the mandatory provision which requires this Panel to consider certain claims, which may be made by a specified class of operators. In addition, any claims were required to be lodged by a date, specified to be “before 1 September 2002”, before they may be considered.

The Panel is proscribed from considering “any claim for hardship arising after 1 September 2002”. Presumably “claim for hardship” is intended to mean a claim for compensation on account of a claim of hardship as a result or consequence of the relevant decision.

The further term which is headed “Determining Hardship” in the terms of reference is specified as follows:

“Determining Hardship

The Hire Car Hardship Assessment Panel may determine its own procedures for handling any claim made to it, including interviewing claimants, receiving documentation and determining the sufficiency of the documentation relating to a claim.

The Hire Car Hardship Assessment Panel will determine that a claimant has suffered hardship if the Hire Car Hardship Assessment Panel is satisfied that:

- the claimant has demonstrated that the claimant has suffered a loss of:
 - income from the lease of the licensed vehicle as a direct consequence of the decision; or
 - capital value of a license where it is established that the loss occurred in relation to the transfer or assignment of the licence to a bona fide purchaser for value between 14 September 2001 and the date of the claim, and
 - due to the claimant's poor financial position, the claimant should be compensated for suffering this loss."

At the outset, it should be made clear that the fundamental procedure which was followed by the Panel was to ensure that the principles of procedural fairness were followed in order to guarantee that all of the operators concerned would have every reasonable opportunity to present their individual cases, should they wish to do so, or, in the alternative, to be represented by a professional person such as counsel, solicitor or accountant or by another family member. Although most appeared and spoke on their own behalf, others were represented by one or other of the class/persons aforesaid.

The procedures followed allowed such informality as appeared appropriate but with sufficient control to ensure that the principles of natural justice were followed in all respects. To the best of our knowledge and belief all those who wished to make a submission to the Panel within the specified terms were provided with a fair and proper opportunity to do so.

Except in circumstances where a procedure of group representation was requested, relevant operators were seen in private so as to ensure that the requirements of individual privacy were protected. This does not mean that the Panel required individual relevant operators to appear alone. Indeed, in most cases such persons were accompanied by a relevant person of their choice, whether that person was a spouse, or other family member or some other person who was professionally qualified in a relevant calling, as stated earlier herein.

At this stage we wish to observe that the final sale of licences by the Department was made via public auctions and that these were conducted in two sessions during September and October 1998, where at first five and later fifteen unrestricted 50 year licences were auctioned. The documentation regarding the auction indicated that it was being conducted to determine the market price for the licences at the time.

The relevant documentation in respect of that auction contained, what have been described as, warnings that prospective bidders should be aware that the purchase of a private hire car licence as an investment must be regarded as a speculative proposition because their values may vary both up and down from time to time due to market forces, the supply and demand for licences and private vehicles, and changing government policy.

The auctions for hire car licences conducted on behalf of TNSW in September and October 1998 were referred to in many of the submissions.

Certain of these submissions were made by those who made successful bids at the auction and other submissions were made by persons who made no bid but who were licence holders at the time of the auction or who later acquired a relevant licence.

Many of those who appeared before the Panel expressed an attitude of disbelief that a licence purchased from the “Government”, or with official backing of the “Government”, could be rendered valueless by a decision of government to “de-regulate” hire car operators, within a relatively short period of time following the sale. Several of those expressing this disbelief were persons who were born in countries other than Australia and who, therefore, may not have had a full understanding of the process of government in New South Wales.

Explanations about there being a policy to encourage competition at a national level with implementation being required at a State level was not accepted as helpful by current licence holders. In most cases it was claimed, by some of those who were adversely affected, that the changes made so far did not provide evidence of a public benefit in any sense. It was argued with great vigour that fees paid by consumers had not fallen, except in cases where passengers were induced to use particular hire cars by a process apparently known as “touting” at Sydney Airport, a practice described by many as “illegal”.

At the time the auction was conducted, the Independent Pricing and Regulatory Tribunal (IPART) had commenced its “Review of the Taxi Cab and Hire Car Industries” and this fact was also identified in the auction documentation.

As a result of the IPART Review, on 13 September 2001 the hire car industry reform package was announced. The package included:

- Lifting restrictions on age limits and types of hire cars to allow all modern luxury cars with a wheel base of at least 2800 mm to become hire cars;
- Deregulating wedding cars so they are not required to undertake annual free licence renewals, although operator accreditation is still required;
- Allowing oversize stretch limousines to be used for tourist services; and
- Reducing annual hire car licence fees in Sydney from \$16,100 per annum to \$8,235 per annum. The fee is based on a formula used for setting licence fees throughout the rest of the State. That is, the market value of an unrestricted, ordinary licence times the 10-year Commonwealth Bond rate.

Despite a number of benefits to operators being identified and the indication of a further review of the industry in 2003, there was significant concern within some sections of the community about the reforms.

It was in response to those concerns that it was decided to create a process for review in order to assess the nature and extent of any hardship being experienced. Hence the Hardship Assessment Panel was created.

Terms of reference were issued for the Hardship Assessment Panel and these are referred to earlier herein.

On releasing the terms of reference, a general invitation was issued to holders of perpetual hire car licences to submit claims of hardship to the Hardship Assessment Panel. The closing date for applications to the Panel was specified to be 1 September 2002. It should be noted that many of the claims were delayed and were received very close to the last date on which such claims could be received for consideration.

The Hire Car Hardship Assessment Panel began its deliberations in December 2001. The Panel in its role has considered advice from Transport NSW officers in relation to the hire car industry generally, the background in relation to the issuing of perpetual and short term hire car licences and the basis for the fees charged for those licences.

The Panel has received submissions from a large number of individual licence holders and has had ongoing communications with industry associations.

In this regard, the Panel received submissions and conducted interviews with representatives of the Motor Traders Association, Vintage & Classic Car Hire Association, Hire Car & Limousine Association and Chauffeured Limousines Association.

It must be recorded that there was a significant difference in the approach and/or submissions by certain associations of persons operating vehicles in the industry.

The Chauffeured Limousines Association indicated its view that:

“ ... purchasers of unrestricted perpetual licences we believe should be looked at as a commercial/speculative investment and ignorance should not be accepted as excuse for lack of research and the seeking of legal advice before purchase” (letter of 16 January 2002).

The *Vintage and Classic Hire Car Association (VCCHA)* claimed to be:

“ representing the operators of chauffeur driven private hire vehicles in New South Wales and that its membership consisted of persons who were 130 accredited owners – operating in excess of 400 vehicles.”

It was said by VCCHA that:

“Our association does not support any form of government financial assistance to the industry except in the most serious cases of hardship caused directly by improper or unlawful actions of the Department of Transport ...” (letter of 22 January 2002).

and that

“ ... speculative investors have entered our industry buying up retiring licences and exploiting lessee operators of these licences by regular increase in lease fees beyond the rate of inflation, without offering the protection of a fixed term agreement or giving consideration of the inevitable hardship caused by their ‘take it or leave it’ attitude towards spiralling lease payments” (ibid p2).

It will readily be seen and appreciated that these views are inconsistent with the views expressed by the vast majority of those who appeared before the Panel. Such views, however, are those of significant associations and must be considered by the Panel. Due consideration has been given to these views and weighed against the submissions made and the material supplied by others who appeared or who were represented before the Panel.

Due to the nature of the submissions from individual licence holders and the confidentiality of the issues to be discussed, as well as the desirability of hearing all persons wishing to present the facts and circumstances of their respective case, the Panel determined that it would interview all applicants on an individual basis. This arrangement saw the Panel interview 131 applicants who attended and their industry, legal or financial representatives and/or nominated family member.

We must indicate that our desire to ensure procedural fairness has caused us to be delayed in the finalisation of this report. The fact is that a good many of the submissions were received at the latest permissible time and certain of these required very detailed consideration.

Overall Summary of Submissions and Interviews

On the basis of the submissions and interviews with licence holders, four broad categories of licence holders emerged. These categories are:

1. Licence holders who operate their own hire car;
2. Licence holders who wholly or substantially own a perpetual licence and lease the licence to a hire car operator;
3. Licence holders who have incurred borrowings, some significant, to fund the purchase of their licence and who lease their licence to a hire car operator;
4. Holders of multiple licences, some with significant borrowings to purchase those licences, and who are left with substantial debts some guaranteed by mortgages on their homes and otherwise.

It is obvious that licence holders who operate their own hire cars were not directly impacted, from a revenue perspective by the reform package. There is, however, a strong argument that these licence holders have suffered an unrealised capital loss in the market value of their licences. Notwithstanding this, the loss may never be realised due to future changes in the market which could reinvigorate the market price of the licences to levels equal to, or in excess of, that achieved prior to 13 September 2001. We must add immediately that the prospect of such a situation appears highly unlikely.

In contrast, those who most recently purchased a licence with the intention of leasing it to an operator and using significant levels of borrowed funds for the purpose, appear to be affected adversely in varying degrees from a financial perspective.

In this regard, licence holders who lease their licence plates to others have suffered a revenue loss since the reforms were introduced and have also suffered a loss of capital value, albeit in most cases an unrealised loss.

In addition, uncertainty in the market appears to be making trading in the licences difficult at the present time, with a limited number of perpetual licences changing hands since September 2001. Two of these plates reportedly sold for \$80,000 and \$130,000 respectively, with the latter sale possibly including the sale of other hire car business assets.

It should also be noted, however, that some licence holders who have held their licences for a number of years have reaped significant financial rewards from ownership of the licences, with some receiving highly beneficial gains, on account of an increased unrealised capital value of such licences over the years, which now appear to have evaporated.

A further consideration in this matter is that despite the existence of broad categories of claimants, there is also a uniqueness to each claim. This uniqueness emanates from the differences in the financial, legal, professional and personal situations of each of the licence holders. In this regard, one claimant has submitted a claim on the basis that the Department issued an order for him to purchase a new vehicle in June 2001, as his existing vehicle did not meet the age restrictions at that time. Within three months of that order, the hire car reforms package was released which lifted restrictions on the age of vehicles able to be used for hire car activities. As the claimant had already entered into a contact to purchase the new hire car vehicle, he was obliged to take delivery of a vehicle which, from a business perspective, had diminished in value even prior to him taking delivery of it. This situation was said to have been a direct consequence of action or inaction by TNSW.

The myriad of scenarios in regard to the purchase price paid for a licence by a claimant, the options taken to fund the purchase, the current financial position of licence holders, their age and even their situation in regard to usage of the licence, make an equitable solution to this situation most difficult, particularly the consideration of some form of financial compensation suggested by many.

The fact that the Department of Transport in 1998, at the time the changes to the industry were being debated, auctioned hire car licences to the public, reportedly to establish the market price for the licences, created a result that makes an equitable solution on the basis of the terms of reference even more difficult.

Definition of Hardship

Mr Peter Capelin QC, for the MTA, made helpful submissions to the Panel on the definition of “hardship” in the circumstances surrounding the reforms to the Hire Car industry. Mr Capelin submitted definitions from the Oxford and Macquarie Dictionaries for the guidance of the Panel.

The Panel has also considered and had regard to the meaning of “hardship” in the context of the hire car industry and the recent reforms and has determined a meaning for the purposes of consideration of what recommendations should be made pursuant to the terms of reference.

For these purposes, “hardship” is considered to relate to substantial loss, realised or unrealised, which has been experienced as a direct result of the decision taken to reduce the hire car licence fees charged by TNSW from \$16,100 per annum to \$8,235 per annum.

There are, of course, other forms of hardship, apart from financial hardship; but the terms of reference appear to require that hardship, for the purposes of this report, must be related directly to certain specified losses.

In the context of the terms of reference, the Panel has established a ranking criteria for applicants considered to have suffered hardship, with consideration given to the nature of the loss, whether it is realised or unrealised, the financial position of the applicant, their ages, whether they took financial advice on the purchase of their plates and the extent of their knowledge of the Government’s auction of hire car licences. A schedule ranking our view of the priority to be afforded to those affected is appended hereto. We would prefer this list to be kept confidential in the interest of preserving the privacy of those concerned.

Several of the persons who appeared before this Panel made detailed submissions about the adverse effects of the reduction of licence fees on their business.

There are two immediate effects of the consequences of the alterations which occurred on 13 September 2001 about which complaints have been made by perpetual licence holders.

The first is the obvious reduction in the return on the investment by a hire car licence holder as a result of persons who were leasing licences from owners negotiating a greatly reduced rate for the relevant lease or, alternatively, by applying for and obtaining a short term licence at a substantially lower rate from the Department.

The second is that as a matter of common sense, persons could not be expected to invest \$150,000 or more in order to purchase a licence in the market place when a licence to operate a hire car is available from the Department, certainly on a short term lease but with good prospect of renewal, at a greatly reduced rate. Hence the reduction in capital value of a hire car licence. In fact, for all practical purposes the market for hire car licences appears, from the evidence available to us, to have disappeared.

It was claimed by most of those who appeared before this Panel that licence holders had suffered severe losses on account of the reduction in licence fees and that this had resulted in hardship being suffered. The argument is that there is effectively no real demand for perpetual licences.

In addition, serious concern was expressed about the prospect of the adoption of any further recommendations by IPART should there be a further review of the level of regulation of the hire car industry, which it is proposed should be undertaken during Year 2003.

In the hearings before this Panel, which is concerned with the assessment of hardship, where it exists, and the consideration of whether compensation in whatever form should be afforded those who have suffered such hardship, there has been a natural emphasis on losses and disadvantages which are alleged to have been suffered.

There is clear evidence that whilst some persons have endured substantial loss, others have made gains as a consequence of the reduction of short term licence fees for hire car operators. Those who have gained advantage are lessees of licences from perpetual licence holders.

It will be appreciated that there are several different classes of person who claim to have been adversely affected by the decision to reduce the level of fees payable in respect of the issue of hire car licences.

Firstly, there are those who have purchased hire car licences for the purposes of generating an attractive and presumably safe investment, in order to achieve a satisfactory annual income, as well as achieving a regular capital gain in the longer term. Some of these persons operated a hire car vehicle on a regular daily basis, some operated the vehicle part-time and engaged a driver to assist in the operation; while others played no part in the operation of a hire car but leased the licence to some other person, who paid a fee, which, prior to the time the licence fee was reduced, was generally fixed at \$16,100 pa in the Sydney metropolitan region but was reduced to a level of \$8,235 pa once the short term licence fee was slashed.

Secondly, there are persons who had never owned a perpetual licence, but who regularly entered into arrangements to sub lease the licence owned but not operated by the licence holder. Such persons have been beneficiaries of the reduction in licence fees, but they are said to be adversely affected, however, by the existence of those engaged in “touting” for work at Sydney Airport.

These persons have had the benefit of a reduced licence fee, either as a result of their arrangements with licence holders or by the acquisition of a short term licence from TNSW at a substantially reduced fee. Our inquiries have not disclosed evidence of reduced fares being paid by consumers as a consequence of the reduced licence fee, with the possible exception of those who have gained some advantage as a result of the unlawful and irregular practice by some, at Sydney Airport, which is known as “touting”, referred to above.

This latter practice appears at this stage to have more effect on taxis than on other hire car operators. That is not to say that it has no effect on hire car operators at present, some of whom have claimed that their operations at Sydney Airport are being hampered due to confusion and congestion with current parking arrangements on account of irregular and unlawful parking by those engaged in so called “touting” activities.

It follows, therefore, that there have been some who have gained as well as those who have lost as a result of the alteration in the level of licence fees.

The alleged loss of capital value of hire car licences is, of course, confined to those who own them. The argument that a person interested in operating a hire car is unlikely to pay \$150,000 for a licence either to a person who already owns one or at a Government auction, when a short term licence is readily available by the payment of an annual fee of \$8,235 appears to be logical and persuasive.

In the light of the terms of reference which govern the powers and functions of this Panel, it is essential that we indicate our understanding of what is intended by use of the word “hardship” for the purpose of our report and any recommendations to the Director General in which some form of compensation may be proposed.

Several of the licence holders who made submissions to the Panel, and Mr Capelin QC, who appeared on behalf of the MTA and certain of its members specifically, referred to action taken by the NSW Government in the provision of compensation for certain other industries which had been de-regulated. In particular, reference was made to benefits made available to egg producers, dairy farmers and professional fishermen. This argument is referred to earlier herein.

In addition, the MTA made a submission dealing specifically with the question of the proper meaning to be given to the term “claims of hardship”.

At this stage we should indicated that we sought and received from the library of the Legal Department of the Department of Transport copies of relevant decisions relating to the appropriate definition given in judicial decisions in respect of the word “hardship” in relevant circumstances. Copies of each of the reports of the respective judgments were supplied to MTA so that Senior Counsel might consider the material we acquired.

We wish to make it clear that we accept the argument made on behalf of MTA that we are required by the terms of reference to hear and consider each and all of the written claims made for compensation, providing such claims are made within the conditions specified in the terms of reference.

Only those who are within the restricted class specified in the terms of reference are entitled to make claims for compensation. The relevant section of the terms of reference is in the following terms:

“The Hire Car Hardship Assessment Panel will consider written claims of hardship from hire car operators who are the holders of a perpetual hire car licence.

The claim can only be made by operators

- who are the holders of a perpetual hire car licence; and
- who have purchased such licence prior to 13 September 2001; or
- who have leased the licensed vehicle as at 13 September 2001; and
- as a consequence of financial hardship incurred by perpetual licence holders due solely to the decision made on 13 September 2001 to implement the hire car reform package as it relates to the decrease in short term licence fees.

In this context “purchased” includes the transfer or assignment of a licence for which the operator has paid money and has not been reimbursed for that payment by the Department of Transport.

Any claim must be lodged with the Hire Car Hardship Assessment Panel Secretariat on or before 1 September 2002. The Hire Car Hardship Assessment Panel will not consider any claim for hardship arising after 1 September 2002.”

The terms of reference give some guidance and/or direction on how the Panel is to determine questions of hardship as follows:

“Determining Hardship

The Hire Car Hardship Assessment Panel may determine its own procedures for handling any claim made to it, including interviewing claimants, receiving documentation and determining the sufficiency of the documentation relating to a claim.

The Hire Car Hardship Assessment Panel will determine that a claimant has suffered hardship if the Hire Car Hardship Assessment Panel is satisfied that

- the claimant has demonstrated that the claimant has suffered a loss of:
 - income from the lease of the licensed vehicle as a direct consequence of the decision; or
 - capital value of a license where it is established that the loss occurred in relation to the transfer or assignment of the licence to a bona fide purchaser for value between 14 September 2001 and the date of the claim, and
 - due to the claimant’s poor financial position, the claimant should be compensated for suffering this loss.”

An issue arose in respect of the final provision which requires that a claimant, apart from having sustained certain losses, has a poor financial position.

The submission made on behalf of MTA is that this latter restriction should be regarded as “a financial position which is assessed purely from the operation of the licence which it is alleged has been devalued”. It was further argued that “the Panel should agree that the claimant’s independent financial means or lack thereof is not a relevant factor to be taken into account.”

This aspect of the MTA argument has caused us some concern.

Primarily, we have been concerned about how we would set about determining how we might ascertain every claimant’s individual personal financial position, if it were intended that we should, irrespective of the loss in income or in the capital value of a licence, need to ascertain that an individual claimant was in an impecunious position, before giving any consideration about whether such claimant had suffered “hardship”.

Had such a position been intended a different form of words might have been used. It could, for example, have been specified that claimants would have to show that they were in an impecunious position or in a state of poverty, before they were eligible to make a claim for compensation. This is not so.

The direction in the terms of reference is that a claimant must show either a reduced income or reduction in capital value as a consequence of the reduced licence fee, or both, and further have reached “a poor financial position”. In other words the severity of the reduction is a factor.

Further, a mere reduction in income or reduction in capital value of a licence could be such as not to have resulted in a “poor financial position”.

Presumably, if there had been a significant change in the circumstances of some perpetual licence holders, the financial position of hire car licence holders, or other relevant persons, may not have been dramatically affected in such an adverse manner. It follows that the size of any reduction is a factor to be considered.

It also follows, in our considered opinion, that if the losses incurred by those who make claims to this Panel have caused the claimants to have “a poor financial position” then their claims are entitled to be considered.

There is, however, a further aspect to this approach.

We have reached the conclusion that we should recommend that the Director General should introduce the form of compensation in a careful and phased manner. In this regard, as referred to earlier we have attempted to assist the achievement of just and equitable treatment by recommending a priority ranking for the Director General’s consideration, so that those claimants with the greatest need will receive priority in consideration. We are mindful of the recommendations of IPART about a small increase in licences for taxi cabs and we recognised the desirability that the number of any additional licences would need to be monitored carefully.

In assessing claims made for compensation on the ground of alleged hardship, we are “entitled to take into consideration” the following:

- “warnings and caveats issued by the Department of Transport that partial deregulation of the industry in the future was possible
- whether the claimant sought or received independent financial advice at the time of purchase
- how the former and current licence fees compare to returns from other investments and ventures
- where a claim relates to the capital value following assignment or transfer of the licence, proof of a bona fide transaction for value having occurred.”

We have referred elsewhere in this report to a consideration of “warnings and caveats” said to have been “issued by the Department of Transport that partial deregulation of the industry ... was possible.”

Certain of the claimants sought and obtained financial advice from their accountants, others accepted advice, prior to their purchase of hire car licences, from family members and friends to the effect that the purchase of a hire car licence was, on past experience, a good investment. There appears to have been no advice given that the arrangements in respect of licensing were likely to change in the immediate future. In fact, there appears to have been a fairly widespread impression that there was no need for any serious concern about the conduct of an inquiry. It appears to have been considered that this inquiry by IPART would not result in any significant change, any more than other similar inquiries held in relation to the hire car industry in previous years had resulted in any significant alteration in the circumstances of the industry.

We received no information about how licence fees, present or past, compare with returns from other unspecified investments or ventures. It is within our knowledge that investment in some other industries and ventures would have achieved better returns. We find it impossible to respond to this term in any detailed manner.

We were reminded on several occasions about how individual claimants would have achieved far greater returns had their investment in hire car licences been made in the Sydney real estate market, for instance. Such arguments, however, have little relevance to our principal consideration about whether claimants have suffered hardship as a result of the substantial decrease in licence fees.

There can be no doubt that if certain investments, claimed to have been made in order to provide for future superannuation benefits, had been made elsewhere better results would have been achieved. But this depends on circumstances applying at a particular time.

Many superannuation funds have experienced negative growth in very recent years. On the other hand, the same funds experienced very favourable growth in earlier financial periods.

The decisions made by perpetual licence holders to invest in such licences appear to have been made on advice which was considered appropriate at the time and based on past experience and performance.

To the best of our knowledge, there has been so little activity since 13 September 2001 in the transfer of licences, with only two such transfers occurring, there is no evidence of any lack of good faith.

We have, however, considered it appropriate to have regard to the undisputed evidence that licence holders have suffered quite serious unrealised losses in the capital value of their licences as a direct result of the introduction of substantially reduced licence fees.

We turn now to consider the benefit of various judicial decisions with respect to the proper meaning to be given to the term “hardship”.

As mentioned elsewhere herein, we sought and obtained copies of reports of various cases where judgments of various courts and tribunals had dealt with the question of whether some persons had suffered hardship through decisions of relevant bodies or authorities.

Although there are other cases where “hardship” has been defined, the following appear pertinent for the purposes of this inquiry.

1. O’Brien v Elliot
per Asprey J. Supreme Court of NSW
(1965) NSW 1473
2. The Marriage of Whitford
re Family Law Act, 1975 Family Court of Australia
24 ALR 424
3. re: Kabalan
per Gummow J Federal Court of Australia
review of definition 113 ALR 330 (1993)
40 FCR 560
4. Sing v Minister for Immigration
and Ethnic Affairs Federal Court of Australia
per Von Doussa J (SG 22 of 1995 Fed No 17/96 Migration)
10.10.95
9.2.96
5. Exell and Inspect-General in
Bankruptcy (2000) AATA 13 - 14.1.2000
Administrative Decisions Tribunal
Deputy President B M Forrest
6. re: Department of Social Security
And: Allan Collins No Q91/137 AAT 7669
Social Security (1991) 26 ALD 344
Administrative Appeals Tribunal
Miss S A Forgie – Deputy President
7. Rukat v Rukat Court of Appeal
(UK) 1974- 1975
Fam 1975 63
Megan, Lawton and Ormrod LJJ

In addition, we had regard to a decision of the Administrative Appeals Tribunal as follows:

re: Wang and Minister for Administrative Appeals Tribunal
Immigration and Cultural Affairs (2000) AATA 961
Mr B J McMahon – Deputy President

Further, we should indicate that we gave due consideration to the authority referred to in the submission made on behalf of MTA.

This was the case of Bos v Law in which Street CJ said:

“Where the discretion of a Court is to be directed to such a matter as hardship – a term incapable of accurate definition and depending largely upon the whole of the surrounding circumstances – then it is difficult to interfere with the decision of a Magistrate once he has come to a conclusion on that point unless he has diverted his mind to matters wholly irrelevant.” (70 WN [NSW] 38 at 39)

In *F G O'Brien Ltd v Elliot*, Asprey J having observed that there was no definition of hardship in the particular statute in respect of which the specific case was concerned held as follows:

“In its context I would be of the opinion that “hardship” would comprehend any matter of appreciable detriment whether financial (....) personal, or otherwise. Each case must depend upon its own particular facts (...) ...” ([1965] NSW 1473 at 1475).

In *re the Marriage of Whitford* (referred to above), which was a case pursuant to the terms and provisions of the Family Law Act, 1975 a Full Bench of the Family Court of Australia considered the meaning of “hardship” for the purposes of that Act. Their Honours held that, for the purposes of Section 44 (4) of the Family Law Act, the meaning of hardship “is akin to such concepts as hardness, severity, privation, that which is hard to bear or a substantial detriment ...” (Asche and Pawley SJJ and Strauss, J – 24 ALR 424 at 430).

In the particular case the term “hardship” was defined in the statute their Honours did not agree that the definition contained in the Family Law Act was apposite to the definition given by Asprey J referred to above.

Their Honours stated their view that “(I)n ordinary parlance, hardship means something more burdensome than ‘any appreciable detriment’. We consider that in sub-s 44(4) the word should have its usual, though not necessarily its most stringent, connotations.” (ibid at 431)

In *re Peter Kabalan*, the Federal Court of Australia, in a proceeding in respect of the Bankruptcy Act, 1966, his Honour Gummow, J held that “(A)ny condition which presses with particular asperity upon a person may be described as a hardship. The sense is conveyed by the definition in the Oxford English Dictionary, 2nd ed, which includes ‘hardness of fate or circumstance’”. (113 ALR 330 (1993), 40 FCR 560)

His Honour referred with approval to a passage in an English case in the following terms:

“In *Rukat v Rukat* (1975 Fam D 63 at 73 Lawton L J said:
‘The word ‘hardship’ is not a word of art. It follows that it must be construed by the courts in a common sense way, and the meaning which is put upon the word ‘hardship’ should be such as would meet with the approval of ordinary sensible people. In my judgment, the ordinary sensible man would take the view that there are two aspects of ‘hardship’ – that which the sufferer of hardship thinks he is suffering and that which a reasonable bystander with knowledge of all the facts would think he was suffering.’” (ibid)

The reasoning explained by Gummow J in *Kalaban* was followed by the Administrative Decisions Tribunal in *re Wang and Minister for Immigration and Multicultural Affairs* (referred to earlier herein).

In his reasons for his decision in that matter, Mr Deputy President Mr McMahon said:

“29. The Word ‘hardship’ has received attention in various contexts. In *re Kalaban* 113 ALR 330 Gummow J noted (unsurprisingly, as he put it) that each case must depend upon its own particular facts. I would respectfully add that the meaning of ‘hardship’ must depend upon the context in which one finds it.” (AAT 961 [3 November 2000])

It is, of course, a fundamental principle of the interpretation of the meaning of words that it must be taken from the context in which such words appear.

We have had regard also to the definition of the term hardship which is included in certain dictionaries.

In the *New Shorter Oxford Dictionary*, hardship is defined as:

“1. The quality of being hard to bear; painful difficulty 2. Hardness of fate or circumstance; severe suffering or privation” (4th ed – 1993)

A similar definition is contained in the *Macquarie Dictionary* (Second Revision) which contains the following:

“hardship – 1. a condition that bears hard upon one, severe toil, oppression, or need. 2. an instance of this; something hard to bear.”

In the light of all that we have read and considered, particularly the words used in our terms of reference, we apprehend that the term hardship is not to be understood only as financial hardship but might include other forms of hardship, about which we have heard a good deal during the extended hearing of the many and varied claimants who have made applications to this inquiry. We add immediately that we recognise and have followed the restriction contained in the terms of reference in this regard.

Compensation on a Case by Case or General Arrangement Basis

The Panel during its deliberations and following a search as to the reasons why the Department of Transport was auctioning the licences in September 1998 considered whether compensation should be provided to the hire car licence holders via a general arrangement or on a case by case basis.

In this regard, the ranking of the applicants facilitated the provision of compensation under both scenarios, with those most urgently in need possibly offered compensation prior to others in a less difficult financial position.

There were many submissions made which included reference to the auction of hire car licence plates in 1998. In almost every case the reference related to an expressed opinion that the perceived fact that the auction had been on behalf of “the Government”, all of the participants were entitled to believe and, in the case of those making the particular submission, did believe, that the value of the licence plates sold was a true and correct value which could be relied upon by others making similar purchases in the market.

In other words, it was asserted by several owners that they truly believed that the 1998 auction confirmed the then market value of a Sydney based hire car licence.

Indeed it was asserted that the circumstances were such as to lead to a belief that the result of the auction could be considered as properly representing some form of endorsement of the price achieved. It would follow, according to the argument, that as the Department did not take action to suppress the value of \$150,000 per licence, any reduction in that value should be compensated by the Department.

The auction was conducted in two stages by Pickles Auctions Pty Ltd under instructions from Department of Transport, which is the relevant New South Wales Government Department in respect of the regulation of the affairs of the hire car industry.

The auction of 20 hire car perpetual licences occurred on two separate dates, namely 15 September 1998 and 20 October 1998, with 15 licences being auctioned on the latter date and 5 licences being auctioned on the former.

Some warning was issued to those who were considering making a bid at the auction. This warning was, however, in the following terms:

“ADDITIONAL CONDITIONS

**AUCTION OF UNRESTRICTED ORDINARY
PRIVATE HIRE VEHICLE LICENCES**

...

11. Prospective bidders in this auction are warned that the purchase of a private hire vehicle licence as an investment must be regarded as a speculative proposition because their values may vary both up and down from time to time due to market forces, the supply and demand for licences and private hire vehicles, and changing government policies.
12. Furthermore, the Independent Pricing and Regulatory Tribunal is undertaking a competition policy review that includes in its terms of reference the legislation under which the hire car industry is regulated and, in particular, any restrictions on competition arising from the legislation. A copy of the draft terms of reference is attached.”

There is, at the time of writing this report, little doubt that certain officers of the Department of Transport regard the terms of the “warning” set out above to have been adequate to alert potential bidders of the possible risk of the future market value of the licences being drastically reduced.

If it had been the intention to give such a warning it appears to have failed.

It will be observed that the warnings referred to above were included on a page headed “Additional Conditions” and they were the last two items on the page. What preceded them was a description of the auction, advice about who might become a hire car operator, a description of the purpose of the auction, the proposed term of 50 years of a licence purchased, the condition associated with a right to transfer a licence to some other person, an indication that the Director General of the Department of Transport “may suspend or cancel a licence at any time” if it were to be found that “a licensee, lessee or sub-lessee’ breached the relevant legislation.

The terms also provided information about the payment of the amount specified in the bid, should it be successful.

There are four points to be observed in respect of these conditions. Firstly, the warnings were the last two items on the page. Secondly, the warning in paragraph 11 was, in a sense, trite as applied to the then current circumstances. Thirdly, the warning in paragraph 12 was clear enough to any person who had an understanding of National Competition Policy and the agreement negotiated between the Commonwealth and the States in respect of such policy, but not necessarily others. Fourthly, the terms of paragraph 2 which was in the following terms:

“2. The purpose of this auction is to determine the current market value of private hire vehicle licences and to issue them at a fee equivalent to such market value, as required by the Act. However, there is currently no separate application fee.”

is of particular interest in light of what followed.

The purpose “to determine the current market value” appears, with the benefit of hindsight, to have been pointless having regard to subsequent events.

We deal with the question of the purpose of this auction shortly. It is, however, important that we should make a further observation at this stage.

Had it been the intention of relevant officers of the Department to warn prospective bidders of the events which were to follow, such as the announcement by the Minister on 13 September 2001, the warning surely would have been in different and sharper terms. It certainly would have been displayed more prominently. In fact, had the outcome of the Independent Pricing and Regulatory Tribunal (IPART) been anticipated it is, at least, doubtful if the 1998 auction would have occurred. It is certainly very unlikely that sensible persons would have bid \$150,000 for a licence soon to be drastically devalued, and, particularly, to have incurred substantial debt at high rates of interest to achieve such a licence.

There is no doubt in our minds that the Minister and his senior officers, including the Director General, have acted within the highest ethical standards in this matter.

There is no evidence to suggest otherwise.

The real problem appears to have arisen on the basis of assumptions, made on past experience, but which were invalid.

On all of the material available to us we can find no evidence to suggest that the relevant persons had any advance knowledge of the likely outcome of the IPART inquiry. This is not to say that they were not aware of the existence of market forces in the trading and transfer of licence plates between hire car operators.

It is also beyond belief that the unexpected events such as the terrorist attack on the cities of New York and Washington DC or the tragic collapse of Ansett Airlines were in any way anticipated by the Minister or the Director General. The commercial effect of such events on the proprietors of hire cars is beyond our terms of reference, but we refer to them to illustrate the fact that some volatility in the market place can reasonably be expected.

It was argued on behalf of many hire car proprietors that there is a vast difference between “market forces” and a situation which is brought about by an alteration in the regulatory process.

On the other hand, those who are engaged in enterprise in a heavily regulated industry, such as the hire car and taxi industry, could be expected to be aware of the change in national policy in respect of the regulation of commercial activities. Even if such persons were not aware of the dramatic commitment of all of the States to such changes which are enshrined in relevant legislation, there is a definite duty on their advisers to keep themselves informed in this regard. It would appear from the information available to us that some of the advisers, at best, were either poorly informed or did not advise their relevant clients of the possibility of the full or partial deregulation of the hire car industry. We take this no further.

It is difficult to accept that professional advisers to hire car licence investors were taken by surprise by the contents of the IPART Report in respect of the proposed changes to the regulatory scheme, particularly the recommendations for a reduction in the level of fees charged for short term licence holders.

It must be observed that the impact of the changes which have occurred has been severe on those who have invested in perpetual hire car licences, both in respect of monthly incomes and the severe reduction in the market value of such licences.

Not only has the past level of licence fees been a contentious issue with complaints by interested parties being the subject of independent investigations, as referred to elsewhere herein, the effect of this past level on the restriction of entry into the industry of hire car owners and operators has been the subject of specific criticism. It is beyond argument that the independent inquiries which were undertaken in this regard were well advertised and should have been known by persons who gave advice of the likely beneficial prospects of investment in hire car licences.

In fact, prior to the inquiry by IPART an advertisement was published in the metropolitan press, which set out the items and matters which were to be reviewed. The advertisement was in the following terms:

“

INDEPENDENT PRICING AND REGULATORY TRIBUNAL
OF NEW SOUTH WALES

**REVIEW OF THE
TAXI CAB AND HIRE CAR INDUSTRIES**

This review has been referred to the Tribunal by the Premier, under Section 12A of the Independent Pricing and Regulatory Tribunal Act 1992 (Reference 98/142).

Background

This review is being undertaken as part of the State's commitment under the Competition Principles Agreement 1995 to review its legislation to ensure that it does not restrict competition unless it can be demonstrated that:

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.

Proposed Terms of Reference

The Tribunal will investigate and report on the following matters:

1. review the Passenger Transport Act 1990 to establish whether the legislation meets the requirements of the Competition Principles Agreement (1995) and Part IV of the Trade Practices Act 1974 (Commonwealth) as regard to the taxi cab and private hire car industries.
2. examine any restrictions on competition in the taxi cab and private hire car industries arising from the aforementioned legislation and ascertain whether the restrictions are in the public interest and are likely to accord with the authorisation provisions of section 90 of the Trade Practices Act 1974 (Cth).
3. identify any issues of market failure which are, or should be, addressed by legislation.
4. recommend any improvements to the legislation, policies of the Department of Transport or industry practices which would facilitate increased levels of service and competition.
5. consider alternative means for achieving the policy objectives of the Act which are consistent with the Competition Principles Agreement and public interest provisions of the Trade Practices Act 1974 (Cth).

In conducting this investigation, the Tribunal should consider:

- i. all restrictions on competition in, or arising, from the legislation;
- ii. the benefits and costs of the restrictions on competition identified in (a);
- iii. any unreasonable impediments to growth in the industries;
- iv. the importance of regulatory certainty;
- v. standards of quality, reliability and safety of services offered;
- vi. the needs of disabled passengers being catered for by the provision of wheelchair accessible taxis;
- vii. a need for greater opportunities for entry, including entry by owner/operators;
- viii. the cost of providing services;
- ix. the level of efficiency in the supply of services and the consequent effect on the charges faced by consumers;
- x. the social, financial, economic and administrative impacts of any recommendations made; and
- xi. any other matters that the Tribunal considers to be relevant.

Any comments on the proposed terms of reference, quoting Reference 98/142, should reach the Tribunal by 11 August 1998."

This advertisement was published in the Sydney Morning Herald, Newcastle Herald and the Illawarra Mercury on Wednesday 21 July 1998.

Enquiries were invited and the postal address was given.

Perhaps it should be emphasised that the date of the advertisement preceded the date of the auctions of hire car licence plates which were held in 1998.

Those who had significant investments in hire car licences and who had read the advertisement had a right to be concerned. Those who were giving advice to such investors had a duty to advise potential investors of the need to exercise caution.

Similarly, one would have expected officers of the Department of Transport and the auctioneers to have expressed a firm and clear warning to bidders of the need for caution.

It was said to us that such a warning was given.

In our opinion what was written failed the description of an appropriate and proper warning of the potential difficulties for certain hire car licence holders of the type and kind that were to be auctioned in 1998.

The warning given was more akin to an allegation of some uncertainty in a market which had been in operation for some years and which was regulated.

Such a warning was inadequate for the events which followed.

Whilst we do not feel that the warning given in the auction papers was sufficient to warn potential bidders, and or other perpetual hire car licence holders, of the consequences which were likely to follow, it must be recognised that with the benefit of hindsight some warning was given. That warning should have been sufficient to alert professional advisers that there existed a potential for substantial difficulty, particularly having regard to the history of past complaints and inquiries.

We should make it clear at this stage that we see no merit in the inference or imputation that the Department has some legal liability to assume responsibility for the payment of compensation for those who suffered a loss as a consequence of the changes that have occurred.

The material presented to the Panel by licence holders was quite extensive, including detailed financial statements.

It was shown that the licence plates had been purchased in most cases in the market place and, in some cases, by public auction. In the vast majority of cases the capital value of perpetual licences had appreciated over time by a substantial amount. It is very clear that this capital appreciation was the result of a system of tight regulation of the number of licences which were permitted and the relatively high cost of short term licences.

It is also clear that the potential of severe loss of value would have been anticipated by a financial adviser who was prepared to consider possible outcomes of an independent inquiry and the existence of the National Competition Policy. It would also appear, however, that no such consideration was given, at least to those who made submissions to the Panel.

The material presented illustrates that certain affected licence holders have experienced sufficient hardship, within the terms of reference. Some of these have suffered quite severely, while others are yet to face the actual difficulty of paying for heavy loans with substantially reduced income and a seriously devalued asset, the loss of which may not yet have been realised.

All of those who made claims to the Panel asserted their inability to dispose of their licence plates through the auction system. Most licence holders claimed that the value of their asset had disappeared and that no potential licence holder would pay an exaggerated price for a perpetual licence at the previous value when a short term licence was available at a very cheap rate.

It is not uncommon for certain operators to have negotiated a loan with a mortgage on their homes and to be confronted with a grossly overvalued asset and little prospect of being able to generate sufficient income from operational profits to discharge the mortgage in the short term.

Such persons face the prospect of losing their homes in order to pay debt on a licence plate which is extremely difficult, and probably impossible, to sell without incurring a very substantial loss in most cases.

There are cases where some women accepted the inflated value of hire car licence plates as part of divorce settlements, whilst in other cases some such plates were purchased from Transport NSW at a public auction at inflated values as late as October 1998.

In 1999 there was an inquiry into the hire car industry in New South Wales undertaken by the Ombudsman (NSW). This inquiry was undertaken as a result of complaints against the Department of Transport and its regulation of licence fees for hire cars with a consequential restriction of entry into the hire car industry.

The outcome of the Ombudsman's Report is of substantial significance in the resolution of issues which have arisen in respect of the hearing we have held in order to determine the matters of alleged hardship which are referred to us pursuant to the terms of reference.

In particular, we refer to the action taken to reduce the short term licence fee from \$16,100 per annum to a level of \$8, 235 per annum. The higher rate being calculated using the estimated market value of the hire car licence with a return of 14 per centum based on the rate of an earlier Commonwealth bond rate. At the present time the Commonwealth bond rate is substantially lower, which is achieved using the same principle but at the more contemporary rate: hence the setting of the current short term licence fee at a greatly reduced rate.

The terms and provisions of the Public Transport Act, 1990 imposed a duty on the Director General of the Department of Transport to determine the appropriate fees for short term licences having regard to the relevant current market value of hire car licences, provided such licences were capable of being traded. It is our understanding that this duty remained until 1997.

We have been advised that at the relevant time there was, as would be expected, consultation and agreement reached with the Motor Traders Association that the short term licence fee should be set at \$15,000 per annum, to be adjusted in accordance with movements in the Consumer Price Index (CPI) kept by the Australian Bureau of Statistics.

At the particular time, July 1990, hire car licence plates were being traded in the market place for \$110,000 and the long term Commonwealth bond rate was set at 14 per centum per annum. Apparently the fee level was fixed at this level as a consequence of the consultation and was intended to protect the capital investment of licence holders. This arrangement, and the consequences flowing from it, were the basis for many complaints and representations from persons who were adversely affected.

It is understood that representations and complaints made to the Minister and the Department at the time were not accepted and it was on account of these decisions not to alter the basis for the level of licence fees that led to the allegations made to the Independent Commission Against Corruption (ICAC) which were subsequently referred to the Ombudsman and complaints which were made direct to the Ombudsman which led to the Inquiry and Report by her in 1999.

Having reached a preliminary conclusion that pursuant to the terms of Section 26(1) of the Ombudsman Act, certain conduct of the Department may have been “wrong”, a decision was made to commence a formal investigation. This conclusion is set out herein

The history of hire car regulation discloses a large degree of dissatisfaction by several persons who have been, or who would have liked to have been, involved in the operation of hire cars.

The background of the complaint to the Ombudsman for the decision to have an investigation were described by her as follows:

(Beginning of extract from Ombudsman report)

“3. THE COMPLAINT

Background

- 3.1 Since 1992 when the Department of Transport implemented significant increases in the charges for short-term hire car licence fees, this Office has received a number of complaints from disgruntled and frustrated, existing and would-be, hire car operators. Up to 1995 these included complaints from Messrs Taberner, Oakley, Waters, Keatley and Photios MP on behalf of Sayegh. All these complaints were raised with the Department although not always in writing. Initially, these matters were declined for formal investigation in the Ombudsman’s discretion; partly because of the trade and commercial function involved, partly because of the advice provided by the Department to this Office, but also later, because the Department intended to undertake a comprehensive “review” which was hoped would resolve the problems without the involvement of this Office.

The Plant Complaints

- 3.2 In 1996 a complaint by Mr Plant, referred to this Office by the Independent Commission Against Corruption, was made the subject of preliminary enquiries. Mr Plant complained, amongst other things, of:
- the manner in which the Department determined the fee for short-term hire vehicle licences;
 - the failure of the Department to honour an undertaking that fee relief would be possible – instead the fee was increased;

- the failure of the Director General to fulfil the requirements of section 47 of the *Passenger Transport Act* and provide notification in writing of the decision/determination and the reasons for it;
 - the failure to advise him that the amount of the licence fee may be challenged on appeal to the Local Court; and
 - the way his complaints were being handled by the Department.
- 3.3 This complaint too was initially declined, partly due to assurances by the Department that applicants for a short-term hire car licence would in future be informed that an avenue of appeal to the Local Court existed but also because a review of the hire car area [The Cotton Review] had recently been carried out. The implementation of recommendations from this Review were awaiting Ministerial decision. As Mr Plant was currently exercising his right of appeal in the Local Court, it appeared the complainant's concerns would be attended to and the problem resolved.
- 3.4 As the short-term licence is of only 12 month duration, it must be reapplied for and reissued rather than renewed. On 30 September 1997, Mr Ellis MP, complained on Mr Plant's behalf. The issue was still Mr Plant's frustration at dealing with the Department and his belief was that the application of the Department's policy, as regards such fees, was contrary to the legislation and was resulting in the imposition of unrealistic and inflated amounts. He was also concerned that the Department proposed to undertake yet another review with the recommendations of the earlier reviews still not implemented.
- 3.5 During the time of declining Mr Plant's initial complaint and receipt of the new one, additional complaints highlighting the same problems had been received from existing or prospective hire car operators in other country areas [Messrs Campbell and Boyce]. After receipt of the Papalia complaint in November 1997, preliminary enquiries were again made [See 5.194] with the Department.
- 3.6 Preliminary enquiries revealed that the only change made since Mr Plant's earlier complaint was an amendment to the *Passenger Transport Act* to remove any reference to "market value" and to "clarify" that no appeal lay to the Local Court from the imposition of a licence fee. The policy regarding the calculation of the licence fee remained unchanged. The Department also confirmed that the recommendations of the earlier Cotton Review had not been implemented and that a further review was proposed.
- 3.7 The main issues revealed by our preliminary enquiries were:
- The Department appeared to be applying a policy which dissuaded or precluded would-be business people from applying for licences and conducting businesses which were otherwise lawfully permissible.

- Internal documents showed that the Department had been aware of the problems since 1992 yet persisted in applying what prospective applicants considered to be a discriminatory and unreasonable policy.
 - The Department recognised the inappropriateness of using the 1990 ten year bond rate of 14% as a computation factor when the current rate was below 7% yet persisted in applying it.
 - The legislation had been changed to remove both the right of appeal and the requirement that the fee set reflect market value.
 - The Department would not consider implementing any change to the calculation of licence fees pending a further review which had not yet commenced and which would take more than twelve months to complete.
- 3.8 Prior to deciding to investigate, two further complaints were received, one from Cook, the other from Ms Seaton MP o.b.o Combes. Both raised similar issues.

4. THE INVESTIGATION

- 4.1 Having reviewed the results of the preliminary enquiries and previous matters, it appeared that certain conduct of the Department may be wrong in terms of section 26(1) of the *Ombudsman Act*. A decision was therefore made to commence a formal investigation. On 4 June 1998 a notice of investigation was issued to the Department pursuant to section 16 of the *Ombudsman Act* together with a requirement under section 18 of the Act to produce relevant documents and information.
- 4.2 The conduct made the subject of investigations was:
1. The procedures and formula used to determine the licence fees payable for short term private hire vehicle licences from 1990 to the present.
 2. Action taken in response to submissions and complaints made by Trevor Plant to the Department concerning the licence fees he has been required to pay for a short-term private hire vehicle licence in Nowra from 1993 to the present.
 3. The Department's compliance with the *Passenger Transport Act 1990*, particularly section 39 (1) and (2).
 4. Action to restrict or remove the right of appeal or review possibly open to applicants against the imposition or calculation of licence fees payable for short-term private hire vehicles."

(End of extract from Ombudsman report)

It is to be emphasised that the Ombudsman's report followed an inquiry based on complaints that the licence fee was excessive. There can be little room for conjecture about the basis for the level of licence fee which was based on a rate of interest payable on the long term Commonwealth bond rate of 14 per centum per annum which became quite unrealistic at the time as interest rates receded.

It is inexplicable that financial advisers consulted by persons prior to the purchase of hire car licences, did not understand the unrealistic level of this notional interest rate being used at the time. It is not within our terms of reference to take this matter further, but we feel obliged to refer to the apparent lack of professional judgment by some financial advisers.

It is also important to repeat that there are at least two classes of persons engaged in the hire car industry: there are owners of perpetual licences who own the licence plates, and there are persons who lease those plates from the licence owners or otherwise obtain short term hire car licences from the Department by the payment of a relevant fee. The short term licence holders and those who leased the plates from owners were disadvantaged when the relevant fees were increased, but those in that class gained substantial benefit when the fees were reduced in September 2001.

The Ombudsman's Report referred to advice received by the Department of Transport from consultants Arthur Andersen in the following terms:

(Beginning of extract from Ombudsman report)

“ It was also noted that the market values for the hire car licences reflected the prevailing market value of the hire car business and not just the plate value.

5.95 Three possible methods were examined in this paper for determining the appropriate market price for short-term plates³:

1) **“Use of a tender or Auction System**

The most reliable method of determining the market value would be to release a small number of short-term plates in such a way that the market would set the value of the plates.”⁴

Mention was made of the fact that a licence with too short a term and no guarantee of renewal might be unattractive to the market because of the other costs associated with market entry in that a car was required, together with the necessary equipment, the cost of which would then be amortised over only one year, the length of the licence. There would be no potential for capital gains as the licence was non transferable. *“This would tend to depress the price that a prospective buyer of a short-term plate would be prepared to pay.”*

2) **“Release of Plates Using the Market Lease Value**

The practice of owners leasing permanent plates was noted and that:

³ As most of the information available to Arthur Andersen related to taxi plates in the Sydney area, this relates predominantly to taxi plates.

⁴ Note: This was apparently the method used by the Department in September 1998 after section 39(2) had been repealed and the IPART Inquiry was imminent. It claims to have consulted the industry regarding the issuing of the licenses. However, some industry associations and IPART advised against this course of action. It had been suggested by these parties that the purpose of the auction was to establish a price for compensation should deregulation be recommended by IPART, again placing the concerns of the industry before those of the public.

reasonably reliable information appears to be available on the amounts paid to lease plates ... The price paid to lease a plate has much in common with the market value of a short-term licence... Thus, the amount that a user would be expected to pay for a plate would reflect only the earning capacity of the plate in its use in the industry and not the potential capital gain that might accrue to the owner of a permanent plate.

The fact that *“if there is a shortage of plates a driver could expect to earn a higher level of income and hence be prepared to pay a higher price for the use of a plate”* was commented on.

In examining the Sydney market, the Report noted that both taxi utilisation rates and lease prices were falling. Notwithstanding, the price paid for taxi licence plates was increasing. It was explained that the price paid for a taxi licence plate is influenced mainly by long term factors and the fact that they are considered to be an investment influenced by inflation and interest rates and likened to the property market for determining a return on investment.

Most importantly, the report noted long term taxi plate value did not reflect what the short term market is doing.

3) **“Computing an Approximation to the Market Value**

The third method is potentially the most difficult to implement because of the difficulties of understanding all of the factors affecting the attractiveness of short-term plates at any point in time and then monitoring these factors over time... Under Section 39 of the Passenger Transport Act 1990, the price or fee must reflect what such a licence would be worth on the open market if it were transferable. The only available information on market values of licence plates is the price paid for long-term plates... it would be necessary to monitor the relationship between the price for short-term plates and the market value of permanent plates.

Having previously noted that a shortage of plates inflates the value, it recognised that over the last three years, no new unrestricted licences had been issued. Accordingly, a formula was developed for determining the base level price for a short-term licence.

$$S = (i+r)P$$

where

- S = price of a short-term licence
- i = long term government bond rate
- r = risk premium for the taxi industry
- P = market price of a permanent plate”

The Report then specifically looked at Hire Cars. It noted that some short-term licences for hire cars had been issued and the annual fee was now \$16,100 which “would appear prima facie to be significantly higher than the market value of such a licence.” [A 9% return equated to an annual fee of only \$7.650.]

“The market for hire car plates is probably thinner and less reliable than the market for taxi plates.

This raises some potential difficulties in trying to set the price of a short-term plate as there may be other factors affecting this segment of the market which are not relevant to taxis.”

The consultants did not analyse the hire car industry more closely because of data limitations but suggested a short-term hire car licence fee for the Sydney area of about \$8,500, significantly less than the \$16,100 being levied by the Department.”

(End of extract from Ombudsman report)

The Ombudsman’s Report was referred to the Inquiry undertaken by the Independent Pricing and Regulatory Tribunal (IPART).

There is a further report to which we should refer. This report is known, and has been referred to, as the Cotton Report; which is named after its author, Mr R J Cotton AM FCPA.

Mr Cotton was commissioned by the Department of Transport to conduct a review of the terms of reference for which described its purpose in the following terms

“The objective of this review is to examine the effectiveness of the Passenger Transport Act 1990 in so far as it applies to the regulation of private hire vehicles: hire cars, wedding cars, tourist vehicles, etc ...”

There followed in those terms of reference eight particular issues to be considered.

In addition he was required to have “full consultation with representatives of all interested groups ...”, some of which were specified.

The recommendations which were made in the Cotton Report were wide ranging but included a proposal in respect of the level of licence fees, which were proposed as follows:

“Recommended that the Metropolitan areas as defined that:-

- i) **The annual fee for an unrestricted licence for all vehicles (except motor cycles) be \$8000 per annum. Indexed annually for CPI effective 1st July 1997.**
- ii) **The annual fee for a restricted licence (weddings, school formals and graduations) be \$2000 per annum – for all vehicles except motor cycles. Indexed annually for CPI effective 1st July 1997.**
- iii) **That for Motor Cycles the fee per annum be \$1000 per annum unrestricted and \$500 per annum restricted. Indexed annually for CPI effective 1st July 1997.**

It should be noted that the basis proposed removes the specified point to point restriction and also the 10 special occasion journey for vintage and veteran vehicles.

In relation to the Country Areas

It is *Recommended that for the Country Areas as designed that:-*

- i) *The annual fee for an unrestricted licence for all vehicles (except motor cycles) be \$3000 per annum and for*
- ii) *A restricted licence it be \$750 per annum. Indexed for CPI effective 1st July 1997.*
- iii) *For motor cycles including trikes it be for an unrestricted \$300 per annum and restricted \$150 per annum but indexed for CPI effective 1st July 1997.*
- c) *In relation to the base annual fee as established in 1990 it is, recommended that this cease as from 1st July 1998 and that any such recognition within the industry be determined by the market place and not by the Department of Transport.*

By going through to 1998 this gives the Hire Car Industry adequate notice. It should also be recognised that Departmental and Industry services and information shown that it is a long time since anyone paid \$16100. They have gone for the average market rate of \$8000 to \$9550 per annum in lieu of \$16000 plus for one year.”

This recommendation was made in December 1996, but it was not followed at the time.

The IPART Report was published on 24 November 1999 and contained certain recommendations “to improve the regulation of taxis and hire cars in New South Wales”.

The IPART Report found “that regulating the quality of taxi and hire car services benefits passengers and the industries”. It also found that “restricting the number of taxi and hire car licences does not appear to generate any significant benefits for passengers, drivers, or anyone working in the industries other than the licence owners”.

The Report also records a finding that “increasing the number of taxis in Sydney would help improve the industry by augmenting the supply at peak times”. It was observed, however, that “to completely remove the current restriction on the number of taxis would involve making significant changes to the industry and its regulation”. Reference was made to “some unsuccessful attempts at deregulation in other jurisdictions” which led the Tribunal to recommend a “phased approach to increasing the number of taxi licences in Sydney over the next five years”.

The Tribunal found that it could “see no benefits from restricting entry to the hire car industry” and recommended that in respect of Sydney, Newcastle and Wollongong hire car licences should be issued on an unrestricted basis and be “subject only to the regulation of driver and vehicle standards”. It was found that “hire cars in other rural and regional locations” appeared “to operate relatively free of the problems experienced in Sydney” and that there was “little evidence ... of significant unmet demand for hire cars in most rural and regional locations”.

The principal findings of IPART were summarised in the “forward” of the report as follows:

(Beginning of extract from IPART report)

- “The number of taxis licences in the Sydney metropolitan area should be increased by 5 per cent per year for the next five years. These licences will be required to be available for hire during the weekday afternoon changeover time, be non-transferable, have a life of six years, and be leased by open tender.
- A review of passenger services outcomes, and an evaluation of the impact of any reforms and measures arising from this review on those working in the industries should be conducted in 2003. As part of that review, an assessment of the rate of issuing new licences should be considered.
- The Department of Transport should produce a report annually, comparing Sydney with other Australian cities. Its purpose would be to determine whether there are sufficient taxi licences to meet passengers’ needs. Measures to be applied include: the number of taxis per 1000 population, surveys of waiting time at taxi ranks, pick up times for telephone bookings, and number of hirings per taxi.
- Licence fees for annual hire car licences in Sydney, Newcastle and Wollongong should be reduced to an amount which reflects only the sum of administrative and compliance costs associated with the industry. This will make entry to the industry less restricted, while regulation of operators, drivers and vehicle standards will continue.
- The Department of Transport should, in conjunction with industry and local councils, investigate delegating the regulation of taxis and hire cars in NSW rural and regional areas to local councils. This approach warrants further investigation because it would allow licensing regulations to better reflect market conditions in difference regional and rural areas.
- Taxi co-operatives and companies should be subject to benchmark standards for average pick up times, driver and vehicle quality, provision of wheelchair accessible services, complaints handling, and taxi availability at changeover periods. The Department of Transport should produce a public report every six months comparing how each taxi co-operative or company has performed against these standards.
- Maximum taxi fares should continue to be regulated. A minimum fare of \$10 should apply from Sydney airport to give drivers an incentive to accept short trips. By reducing the economic penalty associated with servicing the airport, the incidence of short trip refusal will be reduced.

- The annual licence fee for metropolitan short term licences for wheelchair accessible taxis (WATs) should be reduced to an administration fee of \$1000 and Sydney taxi networks should be required to operate 10 per cent of their fleets as WATs. Licence fees should continue to not be charged for WAT licences in rural and regional areas. The subsidy paid under the Taxi Transport Subsidy Scheme should be increased by paying a \$5 collection fee to drivers for WAT hirings.”

(End of extract from IPART report)

IPART found that:

“the hire car industry in NSW is highly regulated, essentially to protect the demarcation between taxi owners and hire car owners. From 1965 to 1998, the number of perpetual, unrestricted licences in the private hire car industry remained static at about 240. A further 20 unrestricted licences were auctioned in 1998. Annual unrestricted licences have been available since 1990, but priced too high to attract significant numbers of new hire car entrants. Hire car licence holders must operate one of a limited category of vehicles and conform to minimum vehicle age requirements. Hire car fares are not regulated by the DoT.”

The recommendations by IPART in relation to the hire car industry are as follows:

(Beginning of extract from IPART report)

“Recommendations regarding the regulation of the NSW hire car industry

Private hire vehicles are high quality chauffeur driven vehicles which provide a passenger services through private arrangements. They differ from taxis in that they are not allowed to obtain passengers from the street or taxi ranks. Justification for regulating the hire car industry is therefore less clear, as all hire car work is telephone based. Although the DoT receives very few complaints about hire cars, reports on the hire car industry published in 1983 and 1996 argue that the constraint on the supply of licences in the hire car industry has stifled innovation and the development of new market opportunities.

The government has pursued deregulation of small specialised transport markets such as tourist vehicles and motor bikes, which do no impact upon taxis or hire cars. The DoT issues short term permits restricting these new entrants to their niche markets.

Opening entry to the general hire car industry would create new business opportunities, particularly for limousine services at the top end of the transport market. Strong demand for these services is likely to come initially from the airport and hotels. However, in time hire car operators are likely to develop a broader range of transport services.

If hire car operators succeed in establishing themselves in market segments currently serviced by taxis, this will free up capacity within the existing supply of taxis. This should result in a greater availability of taxi and hire car services at peak periods and at locations such as the airport.

The Tribunal sees little benefit in maintaining a distinction between unrestricted (perpetual and annual) hire car licences and restricted annual hire car permits.

Recommendation

The Tribunal recommends that the current restriction on the number of hire car licences be removed. Hire car licences should be issued to any person who can satisfy the quality-based entry requirements. All hire car businesses should operate under the same licence conditions.

The current annual, unrestricted hire car lease fee in Sydney is set by the DoT at \$16,000 pa (\$1330 per month). The perpetual versions of such licences have recorded sales in 1999 averaging \$150,000. Plate owners lease perpetual unrestricted licences for approximately \$1000 per month. The annual licence fee charge by the DoT is not achieving its objective of satisfying temporary, unsatisfied demand. Instead, the fee appears to underwrite unrestricted perpetual plate values.

Representing an unattractive commercial proposition, the annual licence fee requires restructuring. In South Australia metropolitan hire cars which compete directly with taxis are charged an annual fee of \$1000, while traditional hire cars which offer limousines service are charged a fee of \$50 per annum. In Victoria and Tasmania hire cars are charged a licence fee of \$150 and \$5000 per annum respectively. The Tribunal supports a significant reduction in the annual licence fee to enable operators to acquire these licences for a fee determined by the administration and compliance costs associated with issuing and regulating licences.

Recommendation

The Tribunal recommends that hire car licence fees be reduced to an amount which reflects the administrative and compliance costs associated with the industry.”

(End of extract from IPART report)

It is with the reduction in licence fees, and the consequence thereof, that is the major concern of most of those who made submissions to this Panel and who seek to be paid some form of compensation to cover their estimated loss of the capital value of their licences.

In addition to the loss of capital value of the licence, there was very strong criticism of a practice known as “touting” at Sydney Airport. This practice involves airline passengers on their arrival in Sydney being approached by certain hire car drivers, or by others acting on their behalf, offering transport to particular destinations at a greatly reduced fare, said to be at an uneconomic level.

This practice was described to us as “illegal” and contrary to requirements of current regulation.

As a consequence of the alterations made following the IPART Report, there has been, as observed elsewhere, the emergence of short term licence holders, and the emergence of hire car operators who engage in “touting” for passengers at Sydney Airport. This development was obviously not expected.

Transport NSW is aware of the practice and has undertaken steps to eradicating practices which are regarded as “unsavoury” by certain of those who made submissions to this inquiry.

The January 2003 issue of “Meter”, a publication of the 2002 NSW Taxi Council” contains the following:

“Sydney Airport Updates

From 20 December 2002, new rules and penalties were introduced at Sydney Airport to help crack down on the minority of Taxi and Hire Car drivers who continue to tout for business.

Offence for Taxis	Fine
Touting or soliciting work	\$5,000
Accepting any offer of hiring at any location other than the Taxi rank (unless pre-booked)	\$5,000
More than 3 metres from the Taxi (unless) collecting or removing luggage or in a holding bay)	\$1,000

Drivers are reminded that the rules apply to ensure the system works fairly for all drivers and provides a high level of customer service for passengers – so if you break the rules you will be penalised!“

Transport NSW has commenced a “crackdown” against the so called “touters’ who appear to have been effectively discouraged from engaging in the “unsavoury” practice of “touting”.

The 1999 Ombudsman’s Report contains the following:

“Background

3.1 Since 1992 when the Department of Transport implemented significant increases in the charges of short term hire car licence fees, this Office has received a number of complaints from disgruntled and frustrated, existing and would-be, hire car operators ...”

This very succinct statement highlights certain of the difficulties which confronted the Department of Transport in respect of the fixation and level of short term hire car licence fees. It should be kept in mind.

The Ombudsman's Report referred to several aspects of the paper produced by Arthur Andersen, one of which was in the following terms:

(Beginning of extract from Ombudsman report)

“5.94 This paper highlighted further anomalies with the method currently used and again put the Department on notice that:

The ratio of the short-term fee to the market value of the permanent licence does appear prima facie to be high given the current level of interest rates. The fact that few of the licences have been taken up would appear to support the hypothesis that these licences are priced above their market value.

It was also noted that the market values for the hire car licences reflected the prevailing market value of the hire car business and not just the plate value.

5.95 Three possible methods were examined in this paper for determining the appropriate market price for short-term plates:

1) **“Use of a tender or Auction System**

The most reliable method of determining the market value would be to release a small number of short-term plates in such a way that the market would set the value of the plates.” *(Footnote No 4)*

Mention was made of the fact that a licence with too short a term and no guarantee of renewal might be unattractive to the market because of the other costs associated with market entry in that a car was required, together with the necessary equipment, the cost of which would then be amortised over only one year, the length of the licence. There would be no potential for capital gains as the licence was non transferable. *“This would tend to depress the price that a prospective buyer of a short-term plate would be prepared to pay.”*

(End of extract from Ombudsman report)

The footnote used by the Ombudsman is very significant and is in the following terms:

“4. Note: This was apparently the method used by the Department in September 1998 after section 39 (2) had been repealed and the IPART Inquiry was imminent. It claims to have consulted the industry regarding the issuing of the licenses. However, some industry associations and IPART advised against this course of action. It has been suggested by these parties that the purpose of the auction was to establish a price for compensation should deregulation be recommended by IPART, again placing the concerns of the industry before those of the public.”

In view of the significance of the report of the Ombudsman we have found it desirable to reproduce extensively in this report the conclusions and findings of the Ombudsman which were in the following terms:

(Beginning of extract from Ombudsman report)

“6. CONCLUSIONS

Policies and procedures for determining the fee

- 6.1 Prior to September 1997, section 39 (2) of the Passenger Transport Act set out how the fee for a short-term hire car licence was to be determined by the Director-General; it was to be determined with reference to the market value of such a licence were it to be traded.
- 6.2 This was a difficult task in country areas as so few perpetual, unrestricted licences had been issued. It made sense to act, as the Department first did, by issuing a short-term licence for free if there were none in the area.
- 6.3 In June 1992 the Department increased the short term hire car licence fee without reference to the requirements of the Act but as a result of “strong representations” from the Taxi Council and country taxi operators. Available documentation shows that representations were apparently limited to a complaint from a specific area about a specific (and new) hire car operator who was also a former employee of the complainant taxi operator. The Department claims that there were “numerous complaints from several taxi operators, not just one operator.” However the files do not reflect this. The stated intentions of the complainant was that the Department more closely regulate hire vehicle operators.

As the Department stated in its submissions, it had “*only limited field staff and financial resources to directly enforce regulations ... throughout the whole of NSW. Consequently, the Department adopted the new licence fee policy to address the problem.*” It is this action, together with the decision “to maintain the policy”, that led to the most vehement complaints being made.

- 6.4 The Department has a statutory duty to apply the provisions of the Act. Implicit in this duty is a responsibility to do so fairly and in the public interest. This it did not do. Rather than take action against a specific hire car operator complained about, it increased the short term hire car licence fee to prohibitive amounts effectively denying hire car operators a reasonable livelihood and, in other cases, the chance to operate.
- 6.5 In implementing its policy change in June 1992 the Department admits that it was not based on legislation but rather from “*representations, including concerns expressed by the Taxi Council, about competition from hire cars experienced by country taxi operators, particularly in areas where a short-term licence fee had not been established by previous trade in hire car plates.*”

- 6.6 These representations from the Taxi Council are not on the Department's file while those from the MTA are clearly documented. Examining the copy of the complaint obtained via Mrs Oakley's FOI application makes one wonder what else was going on. These representations were apparently so significant and substantial as to convert the Department from being pro de-regulation, in accordance with the Government's plan for the industry, to increase fees by up to 400% and so cause many existing operators to leave the industry and others to decide not to enter. Great damage was caused to small business concerns, precisely what the Premier had sought to avoid when supervising the implementation of the new policy, by the Department acceding to the demands of the Taxi Council and not by deregulation as initially feared.
- 6.7 The 1992 policy change favoured the country taxi operators to the detriment of existing hire car operators and ultimately the public. It was implemented with indecent haste, without consultation with the industry most affected and without consideration of possible consequences on individual operators. There was no legal basis for this change, in fact, it was contrary to the legislation that the Department had a duty to administer. When criticised for again not consulting with industry prior to the introduction of changes to the Act in July 1997, the Department in its submissions provided details of meeting dates from the then Acting Director General's diary. When the dates are compared with the introduction of the legislation however, it can be seen that the 'consultations' took place after the legislation was passed and actually related to the Department's Discussion Paper which was also released in July. Even if consultation had taken place before the amendment was made, the Department can be criticised for not producing a written record of the consultations carried out. This would have allowed the views expressed to have then been integrated into a proper policy development exercise. There is no evidence from the Department's files that this happened.
- 6.8 The IPART Issues Paper expresses concern that where there is co-regulation, the regulator may be captured by the industry [see 5.34]. The concept of "capture" is a more subtle one than corruption. The facts of this case are indicative of this "capture" phenomenon. The seeming closeness of the relationship between the Department and the Taxi Council was such that the Department appeared to have to put the best interests of the public for more competitive public transport options and the small hire car businesses they were supposedly supporting, a poor second to the interests of existing taxi operators.
- 6.9 This 1992 "policy" change heralded in the use by the Department of the idea that fee increases were "policy" matters rather than "conditions" of a licence by claiming that the fee was now set "*under the policy which is established by the Director-General at that time*"

and that fees “*may be subject to policy change by the Government of the day*”. This variation was to allow future increases whether or not they were based on market value as specified in the Act or the CPI increase as previously decided by the Department.

6.10 By setting the fee so high the Department effectively prevented persons such as Mr Cook and Mr Quonoey entry into the market and so ensured that the value of the taxi plate used to set the value was bound to increase still further. In Griffith, just within the period 4/3/96 to 10/2/98, the value increased from \$150,000 to \$208,600, presumably due to lack of competition. There is validity in Mr Cook’s complaint that “*they require Hire car operators in the Country to subsidise Taxi operators. If a person wants to buy a taxi in Griffith and pay \$208,000 then that’s their business. Why do I have to pay \$5,741.00 just to make sure their financial situation is protected.*”

6.11 The Department has defended its use of the traded value of taxi plates (in areas where there have been no hire car plate trades) as a benchmark for the purposes of determining short term hire car licence fees on the basis of the scope for market competition between the industries especially in country areas [see 5.55]. The Department’s claim that the two industries – taxis and hire cars – are closely linked and that this justified the policy is problematic however. Apart from the basic observation made in letters and submissions to the Ombudsman, no documentation was produced by the Department showing this nexus between hire cars and taxis. The evidence contained in expert reviews and reports is that they are not. While competition between hire cars and taxis in country areas is appreciated, the Act was designed to increase competition and choice. The comparison of something short-term, non-renewable and non-tradeable with something permanent, established and tradeable also has inherent problems. The practice also did not promote equality as claimed by the Department and the Department was repeatedly informed of this fact. The available evidence suggests a taxi plate value is not an indication of the market value of a short-term hire car licence. Taxi plates are renowned for their investor potential and derive from a related but different industry; taxis operate under separate conditions. As it was noted in an internal departmental memo [Annexure 19]: “*The existing policy was formulated to protect the investment made to the industry by established taxi-cab owners ... Short term hire car licences should be assessed in regard to their own viability.*”

6.12 The Act goes to great lengths to distinguish between hire cars and taxi licences. Despite the Department’s claims, the use of one to determine the value of the other while ignoring the legislative requirement of market value had no proper basis. It is clear that the policy derived more from a desire to protect the interests of country taxi drivers than from the best interests of hire car operators and those of the public.

The policy change for reasons of “equity”

- 6.13 The Department claimed in its letters to complainants, policy notes, advice to Members of Parliament and this Office that the policy was revised to ensure equity across regions and between the taxi and hire car industries in country areas. The Macquarie Dictionary defines “equity” as “fairness, impartiality; that which is fair and just”. There was nothing fair or just about this policy change. The change favoured the taxi industry. One complainant validly queried “*why should the matter of equity be raised when hire cars cannot operate equally. Taxis have a very liberal set of operational rules and their exposure to the public is very high*”.
- 6.14 One of the reasons mooted for the change was that private hire vehicles were operating as defacto taxis in many country areas. This was the crux of the complaint by the taxi co-operative in Northern NSW. However, the complainant actually suggested that the Department more closely regulate this emerging industry. The “Conditions Acknowledgment” and the legislation provided the Department with the power to cancel or suspend licences should the operator fail to observe the conditions agreed to yet the Department, without review or consultation with the hire car industry, decided to attack the purported problem by raising the licence fee.
- 6.15 The stated objective was to discourage hire cars from acting as de facto taxis. As Mr Page MP commented “*Whilst I have no problem with that objective, the solution would seem to lie more in better policing of unacceptable practices by hire car operators, rather than the imposition of a 400% increase in licence charges, especially during these tough economic times.*” [See 5.69] Such an increase made the licences unviable and created a barrier to entry. The rationale that the new licence fee policy and the incumbent fee increases was necessary due to the Department having only limited field staff and financial resources, was expedient and served only the interests of the taxi operators.
- 6.16 The Department has stated that across the state at the time the policy was developed there was an approximate and reasonably stable correlation of 50:100 between traded values of hire car plates and values of taxi plates. Despite the Department's assertions, hire car plates did and do not always trade at 50% of taxi plates in the country and the Department's example of Bangalow/Ballina (\$44,000 - \$167,000) [see 5.61] inadvertently shows this. Few perpetual unrestricted licences have been issued in the country and this does make comparison difficult. As well, each country area is different. The paucity of accessible information and the shortcomings of the Department's Public Transport Management System (PTMS) database have been revealed in the provision of information to this Office and this clearly makes the Department's task even more difficult.

Additionally, the Cotton Report noted that the industry statistics were not that helpful either. [see 5.111]

- 6.17 The act required that the Director-General make his determination with reference to the market value of the licence were it to be traded. The Department's 1992 policy did not do this. The policy did not take into account recessions and booms. The fluctuations in the 10 year bond rate clearly show the volatility of the market since 1990. To persist in applying a rate of 14% was clearly wrong. The use of a minimum fee also conflicted with the market value concept. The disparity between the values in the border cities of Albury and Wodonga confirm that the Department has been setting the fees way above market value. The Quonoey case [see 5.104] is a graphic illustration of the distortion which arose as a result of the 1992 policy. Hire car licence fees in comparable areas were wildly disproportionate.
- 6.18 In setting the short-term hire car licence fee the Department chose not to follow the recommendations of the Arthur Andersen Report or the advice of its solicitors who were very specific that the fee should be set in accordance with the Act. This meant that when the fee was to be challenged in court as a result of the Plant appeal action the Department had to find out what the market price was.
- 6.19 In August 1995 the Department commenced research to help establish the current market value of licences in the Shoalhaven Area by advertising in the local newspapers and inviting expressions of interest. The highest response was an offer of \$1,100 significantly less than the \$10,900 being charged by the Department. The fact that in both the Plant and the Papalia matters the Department had to ascertain what the actual market value was by carrying out "market research" (or market testing) provides substantiation for the claim that they had not been setting fees in accordance with section 39 (2) of the Act.
- 6.20 Despite the advice of the Department's solicitors as to the need to comply with the legislation and the findings and recommendations of the Cotton Report the Department "maintained the existing policy". Consistency can be admirable but in this case it was contrary to law. Change was advised and was shown to be necessary. Change should have occurred.
- 6.21 As early as 1992 the Department was put on notice by Murrays Coaches that the way the fees were calculated was not in accordance with the Act yet they continued to impose a fee way in excess of market value.
- 6.22 Despite advice that their policy was wrong and contrary to the legislation, despite knowing hire car businesses were closing, the Department persisted stubbornly in administering a policy that was detrimental and contrary to law.

Even big businesses such as Murray's could not absorb the fees and told the Department "*Since the inception of the short term licensing scheme we have operated our private hire vehicles at a loss due to the excessive licensing fee charged by the Department.*" [see 5.85]

6.23 Departmental officers prepared submissions suggesting that the policy be modified but this was not agreed to. On a regular basis they submitted recommendations that the current bond rate, approximately 7%, be used rather than the 14% indicative of 1990. Senior management were provided with many opportunities to change. Repeatedly they declined these opportunities and decided that the policy would remain the same and that it would continue to be applied in the same way. [see Annexure 24]

6.24 Although repeatedly made aware of the detrimental impact on peoples' lives and their businesses brought about by this policy change, and the fact it was contrary to law, senior management carried on regardless. The Department appears to have had regard only to its policy when setting fees. Any objection was disregarded, overridden or silenced with the promise of a review.

6.25 Despite all the reviews held and the complaints made, no change in the Department's policy was made. The Department has stated that "*From 1990 to 1998 there was no change in Government policy concerning licence fees for short term hire car licences.*" This very fact is of concern.

6.26 Reviews, rather than a constructive action, appear to have been used to deter complainants and justify inaction. The reviews tended to produce findings critical of the Department's actions and so remained unimplemented. The Department responded to criticism by "digging in its heels". The decision to maintain the policy and the refusal to acknowledge publicly that the method it used was in fact inequitable only gave rise to further criticism.

6.27 The Act (and the Minister's letter to Ms Machin MP) [see 5.74] made it clear that it is the Director-General's responsibility to set the fees. The Minister's letter also stated that it was the Director-General at that time who established the policy which sets the fee and that only the Director-General could vary it. Section 39 made it clear that the fee "*is an amount determined by the Director-General*". There is nothing on files provided to this Office to indicate that the 1992 policy change was as a result of a directive by the Minister or that the then Director-General was constrained at any stage by ministerial direction in setting the fees. In fact the evidence is to the contrary; the Minister agreed with the policy formulated by the Department. The purpose of the O'Brien memo of 15 June 1992 [Annexure 10] was to "implement immediately the recent decision, endorsed by the Minister, to alter the cost of short-term licence fees ..."

6.28 When the Department increased the fee set in 1992 and came up against the obstacle of the “conditions” it had imposed on the licences, it suited them to define fees as conditions and use the provisions of section 35 to vary them. However, when licensees also interpreted them as conditions and exercised their right of appeal against the Director-General’s determination, the Department decided they were not conditions. The Department’s decision to change fees from being considered a condition of issue of the licence to claiming it was a “policy” issue was a deft move to avoid scrutiny and so silence dissenters. The Department appears to have considered that the removal of the requirement of “market value” from the Act by repealing section 39 (2) would make the setting of the fee purely a policy matter determined by the Director-General. Such a move would seem to ratify the Department’s earlier conduct.

6.29 The Cotton Report issued in November 1996 was most critical of the method used to determine licence fees and provided further ammunition for disgruntled licensees. Around this time as well, Mr Plant produced his valuation assessment documenting that \$1,000 was a reasonable fee, and then, in 1997, there was no response to the Bega Valley expressions of interest. All evidence clearly showed the Department to be in the wrong when determining licence fees.

6.30 It is an inescapable conclusion that the decision to change the Act to make licence fees non-appealable was motivated by a desire to remove the problem rather than face it; to ensure that the status quo was not disturbed. This change would supposedly allow the Department to continue operating and setting fees in precisely the same manner as it had done in the past.

This change was not principally motivated by concern for the public or the hire car industry but rather, bureaucratic self interest.

6.31 The Department passionately defended its change in calculating the fee to the extent of undermining the legislative intent of the Act and causing a number of hire car businesses to close and most to experience financial hardship. The Department continued to defend its actions with escalating adverse consequences for the hire car industry. Finally, having no real idea as to what the market values should be as the Act required, the Department in 1997 took steps to have the legislation amended to fit its operating policy. As the Department said in its submission: *“In any case, since September 1997, there can be no doubt that the policy approach is consistent with the Act.”* This is certainly true. The issue is not, however, whether the Department is free to change its policies due to emerging circumstances. Obviously, that is to be expected and of itself does not constitute maladministration. The issue rather is that the policy change it made was at the time contrary to law, unreasonable and discriminatory.

6.32 In submissions, the Department conceded the shortcomings in its past performance:

The detailed examples cited by the Ombudsman on this issue highlights the serious shortcomings in the past performance of the Department. The Department accepts that decision making and adoption of clear, comprehensive and consistent procedures by the Department in relation to short term licence fee determination at that time was fairly ad hoc following the introduction of the Passenger Transport Act in 1990 and tended to become even more inconsistent in the face of industry pressure and complaints.

The management issue for the Department at the time was, rather than fix the substantive cause of the problem (ie using out of date long term bond rate in the formula), senior executives approved one-off exceptions to established procedures in response to perceived crises. Over time, this created anomalies and precedents for fee setting, which compounded as other licence applicants used such anomalies and precedents to argue the case for lower fees in relation to their own licence applications.

This was rectified by the action taken by the Director General in June 1998, when a number of reforms to the hire car industry were announced including:

- linking short term country hire car licence fees to the current market bond rates which led to the reduction of licence fees for many operators; and
- inviting the Independent Pricing and Regulatory Tribunal (IPART) to undertake a competition policy review into the industry.

The Department's handling of complaints

6.33 Following the policy change, complaints were received state wide as well as from the city area. The Department did not handle the complaints generated by the fee increases in a proper manner. Although they relented in Mr Taberner's case and reduced the fee, this was only after extensive correspondence and his threat to go public. Although Messrs Plant and Papalia received a reduced fee, this was only after the instigation of legal action and result from an out of court settlement.

6.34 Section 35 was used improperly to silence Mrs Oakley who had threatened them with legal action. The file papers clearly show the evasive tactics employed by the Policy Office and the then Executive Director to remove her rights with the concoction of the defence of "public interest" to justify the Department's actions.

- 6.35 Mr Plant tried to resolve his concerns by dealing direct with the Department. He tried for some years in fact but was unsuccessful at having his complaint being taken seriously by senior management until he resorted to legal action. Even then, there was only a temporary respite so he turned to this Office.
- 6.36 Mr Plant was right. The fee he was charged in 1993 and 1994 was excessive. It was not based on market value but took into account irrelevant considerations such as the wish to remove any threat the hire car operators might pose to the viability of country taxi operators. Nothing on the Department's files justified such a determination by the then Director-General, not even representations from the Taxi Council. Memos actually documented departmental staff concern and recommendations for a lower fee be levied; expert advice was also that the fee was excessive. Yet Mr Plant's concerns were not taken seriously by senior management until he lodged an appeal. Senior management stubbornly refused to consider that his complaint might have merit and that the policy needed to be changed rather than the legislation. Middle management and staff at the Regional Office initially tried to assist Mr Plant but their recommendations were rejected.
- 6.37 The Department's files contain many other examples of persons complaining about the excessive nature of the fee levied for a short term hire car licence. Details of how the Department handled complaints received, for example the Oakleys, Mr Taberner, Mr Quonoey and Murrays Coaches have been set out earlier together with the more recent ones of Plant, Papalia and Cook.
- 6.38 In the Department's draft response [Annexure 2, pages 12-15] the complainants to the Department during the period in question were listed. Many of the summaries of the complaints and what happened to them include "no response on file". Clearly, most complainants just gave up, unable to afford the costs involved in challenging the Department to the extent necessary to get a favourable response.

The decision to remove the avenue of appeal

- 6.39 The Department was required under the Act to give reasons in writing to persons such as Mr Plant but failed to do so. The providing of reasons to applicants in instances such as this acts as a check on the exercise of discretionary power, prevents arbitrary action, ensures that irrelevant considerations are not taken into account and that a fair determination is made. The Passenger Transport Act required it. The Department's failure to do so was contrary to the public interest as well as contrary to law.

- 6.40 This Office since inception has been concerned about the rights of complainants to an independent form of review and that proper appeal procedures be established with information readily available to applicants as to the existence of these rights of review/appeal. This Office agrees with the legal advice provided to the Department in 1993 and takes the view that, whether or not there is a stated statutory responsibility to inform of an avenue of appeal, there is certainly a moral responsibility to advise affected persons of their right of appeal, particularly if their livelihood is at stake. The advice given should be in sufficient detail to enable them to realistically exercise such rights.
- 6.41 Despite the Executive Director, Vehicle Transport Policy Development approving in September 1993 the administrative procedure that “where a right of appeal or review exists then the person should be informed of that right” rarely, if ever, did this occur. Mr Plant was not so informed until 1995 and this was only as a result of the intervention of his solicitor. This withholding of such advice was despite his correspondence and contact with the Department making it clear that he was dissatisfied with the Director-General’s determination as to the licence fee payable.
- 6.42 The complaints received by the Department clearly indicated dissatisfaction with the fee set and many requested a review. It would have been prudent as well as morally correct, for the Department to inform them of the avenue of appeal to the local court then provided by section 52 (3) of the Act as they eventually did to Mr Plant after prompting from his solicitor. However the Department chose not to. Departmental letters in response to some complaints could be construed as actually diverting attention from the Department’s actions and the possibility or scope for individual appeal by advising that there would be a review and thereby holding out hope of possible change by the Department itself.
- 6.43 It would appear that the underlying reason the Department initiated action to have the Act amended was not to “clarify rights” as has been claimed by the Department both to this Office and to the Minister but to try to remove the possibility that all the licensees who had never been provided with reasons in writing and may still have rights of appeal, might activate those rights. Further, the 1997 amendment would seem to exist to prevent persons such as Mr Plant from appealing against the fee set which was his arguable right under the then Act. It was a cynical exercise to maintain the status quo and avoid litigation and external scrutiny.
- 6.44 The basis for appeal by the Plants and the Papalias was the Department’s apparent failure to determine the licence fee in accordance with the law, that is, section 39 (2) as it then was.

Accordingly, it was not sufficient to just alter section 52 (3) to stop appeals of the nature instigated by Mr Plant; it was also necessary to repeal section 39 (2). This supposedly then left the Department free to determine the fee according to policy rather than the existing law, a course of action it had been pursuing since the policy change in June 1992. Even though section 39 (2) was removed, the policy in its implementation still appears to be contrary to the intent of the legislation as set out in the Premier's letters which was to encourage deregulation and open up the market to competition by making short term licences available. However, while the amendment gave the Director-General a seemingly unfettered discretion in determining the amount of any fee for a short-term licence, such discretion must still be exercised reasonably and for proper purposes. To increase Mr Plant's fee from \$1,000 to \$11,200 was not reasonable [see 5.129] and appears to have been based on the fact that the Department believed that Mr Plant had now been silenced by this "clarification" of the legislation rather than for "proper purposes".

(End of extract from Ombudsman report)

There follows a very strong criticism by the Ombudsman of the Department and its officers. This criticism has no relevance to the matters with which this Panel is concerned in any direct or relevant sense.

The whole of the Ombudsman report is indicative of the very severe pressure the Department faced in respect of its efforts to prevent the situation in which hire car perpetual licences holders now find themselves.

Whatever difficulties were experienced by the Ombudsman and her office in their investigation, we feel obliged to observe that we received full cooperation from the officers who were assigned to assist us in our inquiries.

The feature of the reports which reviewed the pre-2001 system of regulation was the attack on its appropriateness and the strong criticism of the policy of the Department. It is to be emphasised that there were consistent reports which attacked the level of fees charged for licences and the consequential restriction on entry into the hire car industry.

In regard to our extensive quotation of a substantial part of the Ombudsman's report and, indeed the IPART report and the report by Mr Cotton, we wish to make it as clear as possible that we are not in any position to adopt or approve any of the allegations of fact contained in them, nor do we have evidentiary material to refute such findings.

Our intention in referring to the reports is to illustrate that the adoption of the IPART report and such of the recommendations as have been approved was the result of careful examination and recommendations of independent tribunals and persons and so not an act of whimsy.

It also serves to illustrate that leaders of industry bodies and financial advisers who did not warn perpetual licence holders of the likelihood of change did not act in accordance with the probability of the findings and comments contained in these reports. Those relying on informed advice from these respective sources obviously expected more.

It is important to observe that although there were understandably a large number of current licence holders who were highly critical of the changes made which have had a severely adverse effect on many, there remain others in the industry who advocate no compensation for those affected.

Feelings run high in respect of this matter and the issues are complex.

It is, however, very clear that for many who have invested in the hire car industry in good faith, the result of the changes has been that in most cases the potential losses are severe and, in certain cases, potentially could be financially disastrous.

Determining the Eligibility for Compensation

Owners who lease their plates have suffered a substantial loss on each licence since 13 September 2001. In this regard, a significant number of applicants in this category had borrowed funds to purchase their licences utilising their family homes as security for the loan. The loss of income for some of these applicants has meant that they were unable to meet loan repayments with at least three claiming to have been forced to sell their properties during 2001/02.

In this regard, an owner who sold his hire car licence during 2001/02 suffered an alleged capital loss of \$95,000.

In another case a licence holder faced the difficulty of continuing the education of his children.

Other circumstances included women who had accepted licence plates as part of property settlements in respect of marriage terminations and who now found it impossible to liquidate their asset.

There are many circumstances where Governmental economic decisions adversely affect market forces and create difficulties for investors.

There are many examples of this which include the following:

- (a) solicitors, barristers and medical practitioners following changes to:
 - (i) legislation re personal injury cases;
 - (ii) legislation re personal liability on account of negligence.
- (b) Manufacturing; where tariff levels are reduced or other such reductions or elimination of quota restrictions, and other forms of protection against imports being removed.

(c) Property, including housing, investors; where interest rates are increased, or where economic conditions discourage investments, or in particular locations where planning regulation is altered to allow certain development thereby affecting land values.

(d) Purchase of property with intention to re-develop and planning regulation is altered.

There are very many more decisions by governments which affect, either adversely or beneficially, those who invest in commercial or industrial enterprise.

Conclusion

After a careful consideration of all of the circumstances, including personal and financial of those whose circumstances fall within the scope of the terms of reference which govern the role of the Panel, we have reached the conclusion that it would be impossible to recommend a single form of financial compensation that would be fair, just and equitable in every case.

It could be felt by some of those who have made claims, including the MTA that the best and fairest way to allow compensation would be for the Government to buy-back, and lease-back the licence plates; but this would raise the argument about the determination of value. An immediate issue would be whether under such a scheme, which was preferred by many claimants, the proposed “buy-back” should be equivalent to a refund of the amount invested or whether some other value should be used. One example would be to compensate at the level of the “true market value”, as demonstrated by the prices paid at the 1998 auctions which were held for the purpose of determining such a value.

An issue which immediately springs to mind is that the 1998 value of perpetual licences arises as a consequence of a procedure which involved a rigid control of the entry of new participants, which was a practice of a controversial nature but which reflected government and Departmental policy at the relevant time.

The cost of adopting the suggested “buy-back” scheme for all perpetual licence holders was estimated by MTA to be in the order of \$40 million, which appears to be a conservative estimate.

The scheme of compensation that we have decided to recommend avoids this issue. Our proposal is consistent with the recommendations of IPART and other relevant reviews, but creates a further opportunity for all concerned to continue their desire to work in private hire public transport, will allow the hire car and taxi market to operate efficiently and should provide a fair, as well as satisfactory, solution to the dilemma of those who have invested in the industry in good faith.

The other major difficulty which would be avoided would be the effort to attempt an assessment of the personal wealth of individuals as a pre-condition of recommending some form of compensation.

Such an exercise would require a period of time of enormous proportion and require the use of coercive powers not within the scope of the Panel; and we add unlikely to be sought or granted in the circumstances of which the terms of reference were set.

Further, we are not aware of any scheme of financial or other form of compensation of the kind being considered in the review that has been the subject of a “means test”.

We should also add, that in any case we accept the argument advanced by Rockliffs, solicitors on behalf of the MTA that the “Panel is restricted to looking at financial hardship incurred by (perpetual) licence holders due solely to the decision” which was published on 13 September 2001 which related “ to the decrease in short term licence fees”.

We are also of the view from what was said to us during the hearings that the MTA would be prepared to accept a proposal very similar to what we propose.

We do not suggest that agreement of one or all of the parties would be essential before a proposal would be included. Nor do we suggest that our recommendation is identical to the indication we had from the MTA, but it can be said that our recommendation is of the same kind, but not as generous, as the intimation we heard from the MTA.

We say no more than if a recommendation we make is consistent in broad principle with the view of a large representative body, such as the MTA, the consideration of such a recommendation is entitled to serious consideration.

While some applicants have clearly demonstrated a loss and are in a relatively poor financial position, the circumstances surrounding other applicants are not as clear.

In contrast, some applicants have for many years reaped significant rewards from their hire car licences, earning significant annual capital appreciation, in addition to revenue from their investments. Notwithstanding these earlier gains, some of these have found that the value of the assets have now been slashed to a fraction of their earlier value. These applicants have suffered a financial loss as a result of the decision to reform the hire car industry and in some cases, despite earning significant financial rewards over a number of years, still demonstrate a relatively poor financial position during 2001/02.

The Panel received several claims by persons and trusts for compensation on account of perceived losses in respect of hire car operations undertaken outside of the Sydney metropolitan area.

In respect of this aspect, it was stated that it had been the intention of certain licence holders to transfer their licences to the Sydney metropolitan area with the benefit of selling them at a higher capital value. The loss of value of perpetual licence plates in the Sydney area had, therefore, impacted on those owners; at least, that was the argument.

We have been assured by officers of Transport NSW that no such right of transfer exists and that licence plates issued outside the metropolitan area are for the provision of services in the specified local area. Although they are entitled to operate into the various regions, metropolitan and otherwise, the relevant vehicles bearing hire car licence plates are to be garaged in the specified areas.

We gave serious consideration to all of the material placed before us in respect of this claim.

Alteration to licence fees in certain areas of the State occurred some time ago, and well before 13 September 2001.

The terms of reference which govern the functions and consideration of claims by the Panel restrict the persons who may make relevant claims. These provide that claims “can only be made by operators who suffered hardship.....as a consequence of financial hardship incurred by perpetual licence holders due solely to the decision made on 13 September 2001 to implement the hire car reform package as it relates to the decrease in short term licence fees”.

On careful reflection we are satisfied that those claimants who assert hardship as a consequence of decisions which were made prior to 13 September 2001 have no standing before the Panel and we are not entitled to hear or consider the merit of their claims. Simply put, the circumstances of such persons are not within the province of the Hardship Assessment Panel.

We wish to emphasise that we are unable to consider any claims which are beyond the matters which are included in the terms of reference which by their specific provisions restrict the functions of the Panel in a mandatory manner.

Possible Forms of Compensation

The Panel has considered a number of options to provide compensation to claimants who have demonstrated a loss due to the decision to reform the hire car industry. In this regard, consideration was given to the terms of reference which referred to recommendations for ex gratia payments and other forms of compensation.

Other forms of compensation which received consideration were:

- The issuing of an additional hire car licence to each licence owner; and
- Offering a taxi plate to each hire car licence holder in exchange for the hire car licence at a cost equal to the difference between the value of a hire car plate at 13 September 2001 and the current cost of a taxi licence plate.

Whilst we accept the advice that neither TNSW nor the Government of New South Wales has any binding legal liability to provide compensation to persons who have suffered losses as a result of the alteration to licensing policy, we recommend to the Director General that the following offers should be made to those whose financial integrity have been adversely affected:

1. Every person who made application to the Hire Car Hardship Assessment Panel prior to 1 September 2002 and who at present holds a current perpetual hire car licence for the Sydney Metropolitan transport district, and who held such a licence prior to 13 September 2001, should in exchange for that perpetual hire car licence be allocated an unrestricted taxi licence, providing such person makes a financial contribution which has due and proper regard to the difference existing at 31 December 2002, between the market value of a hire car licence applicable immediately prior to 13 September 2001, and the market value of a taxi licence on the same date.

Every person who made application to the Hire Car Hardship Assessment Panel prior to 1 September 2002 and who held a perpetual hire car licence for the Sydney Metropolitan transport district prior to 13 September 2001, but sold that licence prior to 31 December 2002, should be allocated an unrestricted taxi licence, providing such person makes a financial contribution which has due and proper regard to the amount that person received on the sale of the perpetual hire car licence in addition to the difference existing at 31 December 2002, between the market value of a hire car licence applicable immediately prior to 13 September 2001, and the market value of a taxi licence on the same date.

2. Those persons who through pressure of mortgage arrangements sold their homes and also sold their hire car licences during the relevant period should receive a benefit of the same kind as set out in paragraph 1 hereof on the payment of an amount of equal combined value, unless such person has received the benefit recommended in paragraph 1 hereof.
3. As there is an obvious need for great care in the allocation of taxi licences and the further need to have regard to the IPART Report in respect of additional taxi licences, the allocation should be made in accordance with a priority list which has been adopted by the Panel, based on need and financial circumstance.
4. Where a person holds more than one licence the allocation should be made on the basis that each person on the priority list having the right to receive one converted licence prior to the further allocation of converted licences to those holding more than one perpetual hire car licence.
5. Care should be taken not to flood the taxi licence market with additional licences. To this end, the transfer of hire car to taxi licences should be phased in over a period of at least two years and in accordance with the recommendation of the IPART Report, which recommended the number of taxi licences being increased by 5 per cent per annum between 2000 and 2005.

6. Should the beneficiaries wish to sell their hire car perpetual licence with the right to acquire the taxi licence at a time subsequent to 1 April 2003, they should be allowed to do so, provided it can be shown that the investment in the hire car licence was part of a bona fide superannuation plan.

**The Hon J M Riordan AO
Hardship Assessment Panel**

**The Hon Milton Morris AO
Hardship Assessment Panel**