

18 April 2006

Mr Jonathan Curtis
Committee Secretary
Senate Legal & Constitutional Committee
Parliament of Australia
Email: LegCon.Sen@aph.gov.au

Dear Mr Curtis

RE: Inquiry into the Migration Amendment (Employer Sanctions) Bill 2006

Thank-you for your invitation via email, dated 3 April 2006, to provide comments on the Migration Amendment (Employer Sanctions) Bill 2006 recently introduced into the Senate.

We note in the Explanatory Memorandum to the Bill that it is the Government's intention that non-traditional work relationships such as the bailor-bailee arrangement used in the taxi industry should be included in the purview of the Bill.

There are approximately 70,000 taxi drivers in Australia. Under the various State or Territory regulations that apply, all taxi drivers are required to meet certain standards pertaining to -

1. health and fitness;
2. character and history of offences;
3. competencies to operate a motor vehicle and provide a taxi service.

The bailor of a taxi (i.e. a taxi operator) is only entitled to bail a taxi to a taxi driver who holds a current authority or certification to drive a taxi issued by the relevant State or Territory government.

Accordingly, if (but only if) all State and Territory Governments have, and maintain, effective mechanisms in place for restricting -

1. unlawful non-citizens' access to a taxi driver authority / certification (as a matter of "character and history of offences"); and
2. lawful non-citizens' access to a taxi driver authority / certification in breach of visa conditions (again as a matter of "character and history of offences");

the Australian Taxi Industry Association (ATIA) would not anticipate that the intent of the Bill to present a problem for our industry.

Please note that this is a matter for further investigation, and possible future comment, by the ATIA. It is also a matter of interest that properly should be reviewed by the Senate Legal & Constitutional Committee.

However, the ATIA is concerned about the ambit of 245AG(2) and the following reference in the Explanatory Memorandum -

104: This paragraph also allows for the situation in which the owner of a taxi bails or licenses a taxi to a person who is not the driver. In these circumstances, if the owner intends that the driver will drive the taxi, the owner will "allow" the driver to work, despite the fact that the contractual relationship is between the owner and another person.

It is commonplace in the Australian taxi industry for a person to own a taxi licence which is leased or assigned to a second party (i.e. a bailor) who then uses the licence to bail a taxi to one or more third parties (i.e. bailee taxi drivers). In such cases, the taxi licence owner typically exercises no effective control over the day to day operations of the taxi, and accordingly, may not know anything about any of the taxi driver associated with the bailor.

We understand that a taxi licence owner would only commit an offence under the current reading of the Bill if he/she exercised an intention for an illegal non-citizen to drive a taxi associated with his/her taxi licence and did so on the basis that he/she knew of the unlawful circumstance or was reckless as to knowledge of that unlawful circumstance.

However we believe that the broad ambit of 245AG(2) is undesirable and unnecessary. Similar to the precedent established under State and Territory legislation, legal responsibilities in regard to the bailment of taxis to taxi drivers under the Migration Amendment (Employer Sanctions) Bill should reside with, and be restricted to, the bailor. It is the bailor's responsibility to ensure that his/her taxi is only bailed to a taxi driver who holds a current authority or certification to drive a taxi issued by the relevant State or Territory government.

Should you require any further information or clarification in regard to the issues raised in this letter please do not hesitate to contact me directly on (07) 3847 3500.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Blair Davies', with a stylized flourish at the end.

Blair Davies
Executive Director