

Taxi Service Bailment Agreements – Questions and Answers

This information has been developed to assist taxi operators and taxi drivers to understand and comply with the legislative requirements regarding taxi service bailment agreements.



General information

What does the term 'bailment agreement' mean?

In the taxi industry, a bailment agreement is used as the basis of the business relationship between an accredited taxi operator (operator) and an authorised taxi driver (driver). It is an agreement between an operator and a driver for the bailment of a taxi and covers what payment will be given by the driver to the operator for the right to bail their vehicle for a period of time as well as any other entitlements or obligations created and agreed to under the agreement.

What is changing regarding bailment agreements?

New legislation will be introduced from 1 September 2011 that requires operators and drivers to have written, signed bailment agreements that explain the terms under which the taxi is being bailed.

Why is the change necessary?

Many bailment agreements are verbal contracts and are not confirmed in writing. This makes it difficult for drivers and/or operators to provide evidence of their original agreement. So in circumstances where there is a dispute, a driver or an operator may choose not to seek justice due to the risk that the claim will be unable to be substantiated.

Who is affected by the changes?

All Queensland taxi operators and drivers will be affected by the new laws that will take effect on 1 September 2011 unless they are in an employer/employee relationship. Operators and drivers who are in an employer/employee relationship are already covered by existing laws regarding wages and employment benefits.

What benefits will the change provide?

The new laws will mean that both operators and drivers will have certainty of the terms of their agreements and written evidence of what is agreed, so that either party can enforce that agreement in circumstances of dispute. The new laws also provide protection for new or inexperienced drivers who may be vulnerable to set pay-in arrangements and may not know whether the set pay-in amount being offered is reasonable.

Has the taxi industry been consulted on the development of the new laws?

Yes. The Department of Transport and Main Roads has discussed these changes as part of regular forums with taxi industry stakeholders which include representatives from the Taxi Council of Queensland, independent operators and drivers and taxi booking companies.

In January 2011, the department distributed an information pack to all Queensland operators and drivers that provided information about the proposed bailment laws.

Will there be further changes?

The amendment to legislation about bailment agreements is one of 47 actions outlined in the *Queensland Taxi Strategic Plan 2010–2015* that seeks to deliver improvements to users of taxi services and those who work within the taxi industry over the next five years.

The introduction of new laws regarding bailment agreements is action 11.3 of the *Queensland Taxi Strategic Plan 2010–2015*. To view this plan in full, visit www.tmr.qld.gov.au or email taxi@tmr.qld.gov.au to request a copy.

Requirements of operators and drivers under the new laws

What must be included in the bailment agreement?

From 1 September 2011, all taxi service bailment agreements between an operator and a driver for the bailment of a taxi must be in writing, signed by both parties and include the following information:

- the date the bailment agreement was signed by the operator and the driver
- the name and address of the operator and the driver
- the operator accreditation number and driver authorisation number
- if the driver is paying the operator a percentage of takings as payment, the percentage
- if the driver is paying the operator a set pay-in amount, the amount and frequency of payment (for example,
 - \$500 per week)
- who is responsible for fuel, and if the cost is to be shared between the driver and the operator, the amount or percentage to be shared
- whether the operator has personal injury insurance for the driver, and if so:
 - whether the operator will maintain the insurance cover for the duration of the bailment agreement
 - the expiry date of the insurance cover
 - whether the driver must contribute to the cost of any insurance premium, and if so, the amount or percentage to be contributed
 - whether the driver must contribute to the cost of any excess payable for any insurance, and if so, the amount or percentage to be contributed
 - the information about the personal injury insurance cover (which is the information provided by the insurer and included in the product disclosure statement and schedule of cover) or how the driver can obtain the information from the operator about the personal injury insurance.

As well, an operator can only enter into a set pay-in arrangement if the driver has held Queensland driver authorisation for at least 12 months.

What are the operator's requirements?

An operator is required to:

- ensure that a taxi service bailment agreement is entered into before a driver drives a taxi that the operator is responsible for
- ensure that the taxi service bailment agreement includes all the information that the legislation requires it to contain
- provide the driver with a copy of the taxi service bailment agreement
- keep an electronic or paper copy of the taxi service bailment agreement for the duration of the agreement and for at least five years from when the agreement ends
- provide the driver with, and keep a copy of, any changes to the taxi service bailment for the duration of the agreement and for at least five years from when the agreement ends
- only enter into a taxi service bailment agreement containing a set pay-in arrangement if the driver has held Queensland driver authorisation for at least 12 months (continuously or accumulatively within the five years before the agreement is entered into)
- comply with a request from an authorised person to provide a copy of the taxi service bailment agreement, or;
- if the driver is an employee of the operator, the operator must provide a copy of a statutory declaration under the *Oaths Act 1867* stating the driver is an employee of the operator.

Do penalties apply if an operator doesn't comply with their obligations?

Yes.

- If you allow a driver to drive a taxi for which you are responsible without a bailment agreement in place, you may receive a penalty infringement notice of \$455 or a court-imposed penalty of up to a maximum of \$4554.
- If a bailment agreement does not contain all the information required by the new laws, you may receive a penalty infringement notice of \$455 or a court-imposed penalty of up to a maximum of \$4554.
- If you enter into a bailment agreement with a set pay-in arrangement with a driver who has not held Queensland driver authorisation for at least 12 months, you may receive a penalty infringement notice of \$455 or a court-imposed penalty of up to a maximum of \$4554.
- If you do not give a driver a copy of the bailment agreement, you may receive a penalty infringement notice of \$227 or a court-imposed penalty of up to a maximum of \$2277.
- If you do not keep a copy of the bailment agreement (including any agreed changes to the bailment agreement) for the period of time required by the new laws, you may receive a penalty infringement notice of \$227 or a court-imposed penalty of up to a maximum of \$2277.
- If you fail to comply with a request from an authorised person to provide a copy of the bailment agreement or a copy of a statutory declaration under the *Oaths Act* stating the driver is an employee, you may receive a penalty infringement notice of \$227 or a court-imposed penalty of up to a maximum of \$2277.

What are the driver's requirements?

A driver is required to:

- ensure that a bailment agreement is entered into before driving a taxi that the operator is responsible for
- ensure that the bailment agreement includes all the information that the legislation requires it to contain.

Do penalties apply if a driver doesn't comply with their obligations?

Yes. If you drive a taxi for which an operator is responsible without a bailment agreement in place, or the agreement does not contain all the information required by the new laws, you may receive a penalty infringement notice of \$113 or a court-imposed penalty of up to a maximum of \$1138.

Why are there higher penalties for operators than drivers?

There are higher penalties for operators because the operator is considered to have a greater level of responsibility than a driver for bailment agreements. While the bailment agreement provides benefits to both parties in that there is written evidence of what is agreed, it is the driver who will benefit the most as they will be better informed about the arrangements in place every time they drive the taxi.

Will there be compliance activities undertaken by the department?

Yes. Enforcement activities with regard to bailment agreements will be included as part of regular operator accreditation audits. During on-road enforcement activities, compliance officers will also ask drivers if they have a bailment agreement and will take further action if the driver indicates that they do not. In both circumstances, an authorised person will be able to request a copy of the bailment agreement from the operator to establish whether there is compliance with the new laws (Please note; the driver is not required to carry a copy of the bailment agreement with them).

If a driver and/or an operator advise that they are in an employer/employee relationship, then the operator will be requested to provide a copy of a statutory declaration under the *Oaths Act 1867* stating the driver is an employee.

Why are set pay-in arrangements restricted to drivers who have held Queensland driver authorisation for at least 12 months?

Drivers who are new to the taxi industry may not have the experience or knowledge to understand whether a set pay-in arrangement is the best option for them or that the amount being offered is reasonable. By restricting these arrangements to drivers who have held Queensland driver authorisation for at least 12 months, drivers will have time to become familiar with how the industry works and the level of income that can potentially be obtained.

Does the driver have to have held Queensland driver authorisation continuously for 12 months to have a set pay-in arrangement?

No. The 12 months can either be continuous or accumulative within the five years before the agreement is entered into. This is because regardless of whether the 12 month period has been continuous or accumulative over time, the driver will still have been involved in the industry for a sufficient period of time to enable them to make an informed decision about set pay-in arrangements.

How can a driver provide proof of holding Queensland driver authorisation for at least 12 months?

A copy of a Queensland driver authorisation history can be obtained free of charge from any Department of Transport and Main Roads Customer Service Centre by completing a *Release of Information Application Form F2121*.

Can I access a copy of the new laws?

Yes. You can access a copy of the new laws from the Office of the Queensland Parliamentary Counsel website at www.legislation.qld.gov.au. From 1 September 2011, the relevant laws regarding the requirement to have a bailment agreement, restrictions on set pay-in arrangements as well as the responsibilities of operators and drivers can be found in Chapter 4A of the *Transport Operations (Passenger Transport) Act 1994*. The relevant laws regarding what must be included in a bailment agreement can be found in Section 146B of the *Transport Operations (Passenger Transport) Regulation 2005*.