

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 2301/19

Plaintiffs: **QUEENSLAND LICENCED TAXI OPERATORS**
(the names are set out in the attached Schedule)

AND

Defendant: **THE STATE OF QUEENSLAND**

CLAIM



The plaintiff claims:

- A. Equitable compensation.
- B. Damages for breach of contract.
- C. Damages pursuant to the ACL.
- D. Interest pursuant to section 58 of the *Civil Proceedings Act 2011*.
- E. Costs.
- F. Such further or other relief as the court thinks fit.

The plaintiff makes this claim in reliance on the facts alleged in the attached Statement of Claim.

ISSUED WITH THE AUTHORITY OF THE SUPRME COURT OF QUEENSLAND

and filed in the Brisbane Registry on:

06 MAR 2019

Registrar:

mp

FILED	1939.25
MP	
FILED	
EXTD	

To the defendant:

TAKE NOTICE that you are being sued by the Plaintiff in the Court. If you intend to dispute this claim or wish to raise any counterclaim against the Plaintiff, you must within 28 days of the service upon you of this claim file a Notice of Intention to Defend in this Registry. If you do not comply with this requirement judgment may be given against you for the relief claimed and costs without further notice to you. The Notice should be in Form 6 to the *Uniform Civil Procedure*

CLAIM

Filed on behalf of the Plaintiff
Form 2, Version 2
Uniform Civil Procedure Rules 1999
Rule 22

O'SULLIVANS LAW FIRM

120 Rose Street Woolloowin QLD 4030
Tel: (07) 3857 3333 Fax: (07) 3857 3330
as town agents for:
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Rules. You must serve a sealed copy of it at the Plaintiff address for service shown in this claim as soon as possible.

Address of Registry: QEII Courts of Law, 415 George St, BRISBANE QLD 4000


If you assert that this Court does not have jurisdiction in this matter or assert any irregularity you must file a Conditional Notice of Intention to Defend in Form 7 under Rule 144, and apply for an order under Rule 16 within 14 days of filing that notice.

If you object that these proceedings have not been commenced in the correct district of the Court, that objection must be included in your Notice of Intention to Defend.

The Plaintiffs are not suing in a representative capacity but in their own right in their right in the names set out in the attached Schedule.

PARTICULARS OF THE PLAINTIFFS:

Name:	Queensland Licenced Taxi Operators (the names are set out in the attached Schedule)
Residential or business address:	The addresses are set out in the attached Schedule
Solicitor's name: and firm name:	Eugene Bernard Michael O'Sullivan O'Sullivan's Law Firm
Solicitor's business address:	120 Rose Street Woolloowin QLD 4030
Address for service:	C/- O'Sullivan's Law Firm Tel: 07 3857 3333 Fax: 07 3857 3330 120 Rose Street Woolloowin QLD 403 as town agents for Maitland Lawyers Suite 1005/530 Little Collins Street MELBOURNE VIC 3000
DX (if any):	(03) 99097166
Telephone:	eugene@osullivan's-lawfirm.com
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E-mail address (if any):	

Signed: 

Description: Solicitor for the Plaintiffs

Dated: 6 March 2019

This claim is to be served on: The State of Queensland
c/o the Crown Solicitor
State Law Building
Corner Ann & George Streets
BRISBANE QLD 4000

IN THE SUPREME COURT OF QUEENSLAND

Registry: Brisbane

No:.....

BETWEEN:

Plaintiffs

QUEENSLAND LICENCED TAXI OPERATORS
(the names of which are set out in the attached Schedule)

AND

Defendant

THE STATE OF QUEENSLAND

STATEMENT OF CLAIM

The Claim in this proceeding is made in reliance on the following facts:

1. Each of the Plaintiffs whose names and details are listed in the first schedule hereto:
 - (a) is the owner of a taxi licence issued in the State of Queensland pursuant to the provisions of the *Transport Operations (Road Transport) Act 1994* (“**the Act**”) (as amended from time to time) and the regulations thereunder; and,
 - (b) is carrying on business by the provision of a taxi service and/or a booked hire service pursuant to the provisions of the Act.

STATEMENT OF CLAIM

Filed on behalf of the Plaintiffs

Form 16, Version 2

Uniform Civil Procedure Rules 1999

O’SULLIVANS LAW FIRM

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PARTICULARS

Particulars of the licences and accreditations of each Plaintiff will be provided prior to the trial of the proceeding

2. Each of the individual Plaintiffs listed in the schedule hereto is a natural person of full age and capacity.
3. Each of the corporate Plaintiffs listed in the schedule hereto is a body corporate, duly incorporated and having the power to sue and be sued in its own name.
4. In or about the year 1994, the Defendant determined to restructure the legislation that controlled and by which the Defendant exercised over, taxi licence holders in the State of Queensland.
5. In accordance with this determination the Defendant introduced a bill in the Queensland State Parliament to implement this proposed scheme and in 1994, passed the Act.
6. The Act, subject to exceptions in relation to licensed bus services, railways and other transport operations not relevant to this proceeding, prohibited any person from carrying passengers by road for reward unless that person was the holder of a taxi licence.
7. The Defendant invited applications from the public for taxi licences in October 1994 and on a number of subsequent dates thereafter.

THE ISSUE OF ORIGINAL LICENCES

8. A number of the Plaintiffs ("**original licensee Plaintiffs** ") listed in the First Schedule hereto each applied for and were granted a taxi licence ("**original licence**") pursuant to the provisions of the Act.

PARTICULARS

Particulars of those Plaintiffs who are original licensees will be provided prior to the trial of the proceeding.

9. Pursuant to an agreement for the issue of an original licence, each of the original licensee Plaintiffs paid to the Defendant a fee for the grant of the licence.
10. The price paid by the original licensee Plaintiffs for the grant of a licence varied, but was set by the Defendant either at a pre-determined amount or on the basis that a minimum

amount was called for and thereafter a competitive tender would see the highest bidder procure the licence.

11. The price of each licence:
 - (a) was premised on the assumption that the licence would, in the absence of a breach of its terms, be renewed from time to time and would continue indefinitely;
 - (b) was not related to or calculated by reference to, the cost of administering the taxi licence scheme;

PARTICULARS

Section 74 of the Act provided that a taxi service licence is for a term of 5 years and would be renewed if its terms and conditions were complied with.

The annual licence fee paid by a licence holder was a nominal amount. The price paid for the issue of a new licence was derived from a public tender based upon recent sales of licences in the same region.

12. Each original licence entitled the original licensee Plaintiffs to operate a taxi service from specified premises, subject to compliance with the provisions of the Act and the regulations made thereunder.
13. Under the terms of the original licence, each licensee was required to adhere to minimum standards including minimum standards as to safety and cleanliness in order that the licence would be renewed in the following years.

REPRESENTATIONS

14. In accepting payment of the licence fee and in granting each original licence the Defendant represented to each original licensee Plaintiff that:
 - (a) subject to the original licensee Plaintiff complying with the terms of the licence and paying the required annual fee, the licence would be renewed at the expiration of the original term and would be renewed at the expiration of each subsequent term;

- (b) the Defendant, whether by itself, its servants or agents would not take any step within its power or control or fail to take any such step within its power or control which would destroy or alter adversely to the original licensee Plaintiffs the basis on which the parties had respectively contracted in relation to the grant and purchase of the licence;
- (c) the Defendant whether by itself, its servants or agents would take reasonable steps to ensure that anyone who did not hold a taxi licence would not carry out services which were otherwise only able to be carried out by the holder of a taxi licence;
- (d) any licences to operate a taxi service granted by the Defendant would be subject to restrictions, regulations and control identical with or similar to the restrictions, regulations and controls imposed on the licence granted to the original licensee Plaintiffs;
- (e) the licence would be renewed for successive terms of five years if its conditions were complied with;
- (f) the Defendant would not by any act or omission within its power undermine the rights conferred on the original licensee by the grant of the licence.

PARTICULARS

The representations were partly in writing and partly to be implied.

Insofar as they were in writing they were contained in the terms of the licences granted to the original licensee Plaintiffs and the wording of the relevant legislation.

Further, they were contained in a letter dated 29 April 1994 from the agent of the Defendant, then Minister for Transport to taxi licence holders stating, inter alia, that:

- *“the Government’s position has been consistent and clear. There will be no deregulation of the taxi industry in this State;”*
- *“the existing cap on taxi licences will be retained, thus preserving the general value of licences;”*
- *“I hope this clarifies the Government’s preferred approach to taxi industry reform in Queensland, and puts to rest the fears in the industry that a policy of deregulation may be introduced”.*

Further, in an open message from the agent of the Defendant Minister for Transport published in the January/February 1994 edition of *Queensland Taxi* the then Minister of Transport on behalf of the Defendant said:

- *“it is stressed that the reforms applying to taxis do not include de-regulation. The number of operators entering the industry will continue to be controlled by government by the sale of taxi licences through open tender”.*

Further, in an address to a Queensland taxi conference which was published in the January/February 1994 edition of *Queensland Taxi* the then Minister for Transport on behalf of the Defendant said:

- *“the review highlighted the considerable debate about the number of taxi licences and the cost of them, varying last year from about \$150,000 in Brisbane to almost \$300,000 on the Gold Coast. In some cases, successfully winning a ballot for a new licence has been like winning the casket. These licences have been so undervalued by the department that new holders enjoyed windfall profits simply by winning a new licence ballot. In future, taxi service licences will be issued through open tender.”*

Insofar as they were to be implied, they were to be implied from the conduct of the Defendant calling for expressions of interest in the purchase of taxi licences, from the purchase price of such licences, from the financial and regulatory obligations imposed on the original licensees, from the terms of the legislation and from the transferability of the licence and from the conduct of the Defendant as is more particularly pleaded in the Statement of Claim herein.

15. By reason of the representations described in paragraph 14 herein, subject to the licensee abiding by the requirements of the existing legislation and complying with the terms on which the licence was granted, the original licensee Plaintiffs had or reasonably believed it had a permanent right to operate a taxi service coupled with an assumption or expectation that:

- (a) other taxi operators were required to comply with the same obligations;
- (b) only licensed taxi operators would be permitted to carry passengers for reward by road;
- (c) the exclusive right to carry passengers for reward in the State of Queensland was, and would be, limited to licenced taxi owners;

- (d) any taxi licences granted to any other person would be granted in accordance with, and subject to, the controls and limitations provided for in the Act;
 - (e) the viability of the business of carrying passengers for hire and reward as a consequence of holding such a licence was protected under and by the provisions of the Act.
16. The assumptions or expectations described in paragraph 15 were:
- (a) reasonably made by the original licensee;
 - (b) also made by the Defendant; and
 - (c) known by each of the Plaintiffs and the Defendant that each other party was acting on that same assumption or expectation
17. The obligations placed upon the original licensees pursuant to the terms of the licence and which were incurred by them included:
- (a) capital expenditure in respect of the purchase of the licence;
 - (b) initial expenditure in respect of compliance with the requirements of the legislation; and
 - (c) annual expenditure to continue the taxi operation at the level required by the legislation with particular reference to the mandated requirements to ensure a minimum standard for safety and cleanliness of the vehicle.
18. The Defendant:
- (a) was aware of the belief referred to in paragraph 15 above;
 - (b) continued to endorse that belief so that it and the Plaintiffs continued with the same assumptions or expectations;
 - (c) was aware of the scale of expenditure referred to in paragraph 17.

PARTICULARS

The awareness is evidenced by the representations for the Queensland Minister for Transport referred to in the Particulars to subparagraph 14 together with the terms of the Act when the Defendant initially propounded in 1994 and subsequent amendments to the Act.

The continued endorsement is evidenced by the continuation of the scheme created by the Act, the sale by the Defendant of licences by tender based upon prevailing market values and the promulgation of the Queensland Taxi Strategic Plan 2010-2015 which provided, inter alia, that:

- *“Government plays a critical role by providing new taxi licences in response to demand. The state government has finalised a review of the taxi service licence model in order to ensure that the system which maintains a critical balance between quick response times and industry viability is modern and efficient.”*
- *“We need to plan ahead and continue to work closely with our stakeholders to improve the taxi system into the future. Simply put, a strategic plan helps us understand where we want the taxi system to be in the future and how we are going to get there. For consumers and other purchasers of taxi services, this plan tells them what government will be doing to ensure that taxi system continue to deliver the services that they want, when they want them, to a standard and a value to their satisfaction. For taxi industry stakeholders, this plan spells out the future direction for the taxi system, with a clear set of objectives and initiatives for the industry to plan against and to respond to and outlines how this is to be done on a sustainable basis. For TRM, this plan will inform taxi policy development and guide better decision making into the future. The result will be a taxi system where all stakeholders will know the future direction, objectives, strategies and initiatives that will guide the system to 2015 and beyond.”*
- *“The core elements of the taxi system are ... market entry restrictions.”*
- *“From an economic or market regulation perspective TOPTA establishes a regulatory regime that empowers TMR to fix the number of taxi licences within each declared taxi service area to match demand and set maximum taxi fares.”*
- *“Under TOPTA, TRM sets the number of taxi licences for each declared taxi service area. The single most important determinant of reliable waiting times for all taxi uses then, is the department’s ability to strike and maintain the right balance between the number and mix of taxi licences within each taxi service area and the underlying demand of taxi services. Too few licences and waiting times will deteriorate. Too many licences and the underlying commerciality of the taxi system itself might be put at risk.”*
- *“Under the existing regulatory frame work, new taxi licences can only be issued for purchase by public tender and, other than for the voluntary surrender of licences by current licence holders, there is no mechanism for reducing the total number of licences a foot in the event of a sustained decline in the demand for taxi services. This lack of flexibility, together with the high asset value of taxi licences under the*

current arranges, is a significant barrier to new entrants to the taxi industry especially, but not solely, or existing drivers wanting to become owner/drivers. The way in which the regulatory frame work seeks to deal with this problem is to enable taxi licences, once purchased, to be leased by the licence holder to a third party willing to operate the licence... independent research undertaken by LEK Consulting found that subleasing through taxi booking companies provides industries stability in that owners have greater certainty around lease payments and booking companies have greater certainty about the number of taxis in their fleet which, in turn, stabilises affiliation fees for operators. Benefits also include more stable lease values and consequently a reduced likelihood that inexperienced operators would agree to excessive lease payments. While there is no intention to ban sub-leasing, ways to encourage active participation in the industry will be explored. For example, this might include alternate options to perpetual licences that will remove barriers to licence ownership and placing certain conditions on licences that will ensure active participation of licence owners in the industry. The introduction of a peak demand taxi product may improve the capacity of government to be flexible in its response to changes in the demand for taxi services. The potential impact upon the value of existing licences and the financial viability of existing operators will need to be taken into account."

- *"The commercial viability of the taxi system is fundamental to the system's financial sustainability."*

The awareness of the expenditure arises from the imposition of *ad valorem* stamp duty on the sale and transfer of taxi licences together with the issuing of new licences for tender based upon then prevailing market values.

19. By reason of the matters referred to in paragraphs 8 to 18 herein;
- (a) Each original licensee Plaintiff adopted an assumption that the taxi licence issued to it was a permanent asset recognised by the Defendant;
 - (b) The Defendant by its actions adopted the same assumption;
 - (c) The Defendant and each original licensee Plaintiff conducted their relationship on the basis of that common assumption;
 - (d) The Defendant knew or ought to have known that each original licensee Plaintiff would act on that basis.

PARTICULARS

The Plaintiffs refer to and repeat the Particulars subjoined to paragraph 14 and 18.

20. The Defendant was, from at least 29 April 1994, aware that a departure from the assumption made by each original licensee Plaintiff and endorsed by the Defendant would cause detriment to each of those original licensee Plaintiff.

TRANSFER OF ORIGINAL LICENCES

21. Under the terms of the original licences, each of the original licensee Plaintiffs had a right to transfer the original licence to another person.
22. A number of the Plaintiffs listed in the Schedule hereto (“**transferee licensees**”) on a date subsequent to the issue of an original licence purchased that original licence by way of a transfer from the then holder of that original licence.

PARTICULARS

Particulars of those Plaintiffs who are transferee licensees will be provided prior to the trial of the proceeding.

23. In accepting payment of the duty payable upon the transfer of the licence and in accepting and granting the transfer of each licence to the transferee licensee, the Defendant represented to each transferee licensee that:
 - (a) subject to the transferee licensee complying with the terms of the licence and paying the required annual fee, the licence would be renewed at the expiration of its current term and would be renewed at the expiration of each subsequent term;
 - (b) the Defendant, whether by itself, its servants or agents, would not take any step within its power or control or fail to take any such step within its power or control which would destroy or alter adversely to the licensee, the basis on which the parties had respectively contracted in relation to the transfer of the licence;
 - (c) the Defendant whether by itself its servants or agents would take reasonable steps to ensure that anyone who did not hold a taxi licence would not carry out services which were otherwise only able to be carried out by the holder of a taxi licence;
 - (d) any licences to operate a taxi service granted by the Defendant would be subject to restrictions, regulations and control identical with or similar to the restrictions, regulations and controls imposed on the licence the subject of the transfer;
 - (e) the licence would be renewed for successive terms of five years if its conditions were complied with;

- (f) the Defendant would not by any act or omission within its power undermine the rights conferred on the transferee licensee by the acceptance and grant of the transfer of the licence.

PARTICULARS

The Plaintiffs refer to and repeat the Particulars subjoined to paragraphs 14 and 18.

- 24. By reason of the representations described in paragraph 23 above, subject to the transferee licensee abiding by the requirements of the existing legislation and complying with the terms on which the licence was granted, each transferee licensee had or reasonably believed it had a permanent right to operate a taxi service coupled with an assumption or expectation that:
 - (a) other taxi operators were required to comply with the same obligations;
 - (b) only licenced taxi operators would be permitted to carry passengers for reward by road;
 - (c) the exclusive right to carry passengers for reward in the Defendant was, and would be, limited to licenced taxi owners;
 - (d) any taxi licences granted to any other person would be granted in accordance with, and subject to the controls and limitations, provided for in the Act;
 - (e) the viability of the business of carrying passengers for hire and reward as a consequence of holding such a licence was protected under and by the provisions of the Act .
- 25. The assumptions or expectations described in paragraph 24 were:
 - (a) reasonably made by the transferee licensee;
 - (b) also made by the Defendant; and
 - (c) known by each of the transferee licensees and the Defendant that each other party was acting on that same assumption or expectation.
- 26. The obligations placed upon the transferee licensees pursuant to the terms of the licence and which were incurred by them included:
 - (a) capital expenditure in respect of the purchase of the licence;

- (b) initial expenditure in respect of compliance with the requirements of the legislation;
and
 - (c) annual expenditure to continue the taxi operation at the level required by the legislation with particular reference to the mandated requirements to ensure a minimum standard for safety and cleanliness of the vehicle.
27. The Defendant:
- (a) was aware of the belief referred to in paragraph 24;
 - (b) continued to endorse that belief so that it and the Plaintiffs continued with the same assumptions or expectations;
 - (c) was aware of the scale of expenditure referred to in paragraph 26.

PARTICULARS

The Plaintiffs refer to and repeat the particulars subjoined to paragraph 18.

28. By reason of the matters referred to in paragraphs 21 to 27 herein:
- (a) Each transferee licensee adopted an assumption that the taxi licence issued to it was a permanent asset recognised by the Defendant;
 - (b) The Defendant its actions adopted the same assumption;
 - (c) The Defendant and each transferee licensee conducted their relationship on the basis of that common assumption; and,
 - (d) The Defendant knew or ought to have known that each transferee licensee would act on that basis.

PARTICULARS

The Plaintiffs refer to and repeat the Particulars subjoined to paragraphs 14 and 18.

29. The Defendant was, from at least 29 April 1994, aware that a departure from the assumption made by each transferee licensee and confirmed by the Defendant would cause detriment to each of those transferee licensee Plaintiffs.

THE ISSUE OF NEW LICENCES BY TENDER

30. From time to time subsequent to October 1994, the Defendant determined in accordance with the Act to issue new taxi licences by way of tender in a particular area ("**tendered licence**").
31. A number of the Plaintiffs ("**tendered licensees**") listed in the Schedule hereto each tendered for and was granted a tendered licence issued by the Defendant pursuant to the provisions of the Act.

PARTICULARS

Particulars of those Plaintiffs who are tendered licensees will be provided prior to the trial of the proceeding.

32. Pursuant to an agreement for the issue of the tendered licence, each of the tendered licensees paid to the Defendant a fee for the grant of the licence.
33. The price paid by the tendered licensees for the grant of a licence varied but was set by the Defendant based upon the prevailing market rates for existing licences with a competitive tender that would see the highest bidder procure the tendered licence.
34. The price of each tendered licence:
- (a) was premised on the assumption that the licence would, in the absence of a breach of its terms, be renewed from time to time and would continue indefinitely;
 - (b) was not related to or calculated by reference to, the cost of administering the taxi licence scheme;
 - (c) was based upon the price paid for recently transferred licences in commercial transactions where existing licence holders were the vendors of those licences.

35. Each tendered licence entitled the tendered licensee to operate a taxi service from specified premises, subject to compliance with the provisions of the Act and the regulations made thereunder.
36. Under the terms of the tendered licence, each licensee was required to adhere to minimum standards including minimum standards as to safety and cleanliness whereupon the licence would be renewed in the following years.
37. In accepting payment of the licence fee and in granting each tendered licence the Defendant represented to each tendered licensee that:
 - (a) subject to the tendered licensee complying with the terms of the licence and paying the required annual fee, the licence would be renewed at the expiration of the original term and would be renewed at the expiration of each subsequent term;
 - (b) the Defendant, whether by itself servants or agents would not take any step within its power or control or fail to take any such step within its power or control which would destroy or alter adversely to the licensee, the basis on which the parties had respectively contracted in relation to the grant and purchase of the licence;
 - (c) the Defendant, whether by itself its servants or agents would take reasonable steps to ensure that anyone who did not hold a taxi licence would not carry out services which were otherwise only able to be carried out by the holder of a taxi licence;
 - (d) any licences to operate a taxi service granted by the Defendant would be subject to restrictions, regulations and controls identical with or similar to the restrictions, regulations and controls imposed on the licence granted to the tendered licensee;
 - (e) the licence would be renewed for successive terms of five years if its conditions were complied with;
 - (f) the Defendant would not by any act or omission within its power undermine the rights conferred on the tendered licensee by the grant of the licence.

PARTICULARS

The Plaintiffs refer to and repeat the particulars subjoined to paragraphs 14 and 18.

38. By reason of the representations described in paragraph 37 herein, subject to the tendered licensee abiding by the requirements of the existing legislation and complying with the terms on which the licence was granted, the tendered licensee had, or reasonably believed it had, a permanent right to operate a taxi service coupled with an assumption or expectation that:
- (a) other taxi operators were required to comply with the same obligations;
 - (b) only licenced taxi operators would be permitted to carry passengers for reward by road;
 - (c) the exclusive right to carry passengers for reward in the State of Queensland was, and would be, limited to licenced taxi owners;
 - (d) any taxi licences granted to any other person would be granted in accordance with, and subject to the controls and limitations, provided for in the Act;
 - (e) the viability of the business of carrying passengers for hire and reward as a consequence of holding such a licence was protected under and by the provisions of the Act .
39. The assumptions or expectations described in paragraph 38 were:
- (a) reasonably made by the tendered licensee;
 - (b) also made by the Defendant; and
 - (c) known by each of the Plaintiffs and the Defendant that each other party was acting on that same assumption or expectation.
40. The obligations placed upon the tendered licensees pursuant to the terms of the licence and which were incurred by them included:
- (a) capital expenditure in respect of the purchase of the licence;

- (b) initial expenditure in respect of compliance with the requirements of the legislation; and
 - (c) annual expenditure to continue the taxi operation at the level required by the legislation with particular reference to the mandated requirements to ensure a minimum standard for safety and cleanliness of the vehicle.
41. The Defendant;
- (a) was aware of the belief referred to in paragraph 38;
 - (b) continued to endorse that belief so that it and the Plaintiffs continued with the same assumptions or expectations;
 - (c) was aware of the scale of expenditure referred to in paragraph 40.

PARTICULARS

The Plaintiffs refer to and repeat the Particulars subjoined to paragraphs 14 and 18.

42. By reason of the matters referred to in paragraphs 30 to 41 herein:
- (a) Each tendered licensee adopted an assumption that the taxi licence issued to it was a permanent asset recognised by the Defendant;
 - (b) The Defendant by its actions adopted the same assumption;
 - (c) The Defendant and each tendered licensee conducted their relationship on the basis of that common assumption;
 - (d) The Defendant knew or ought to have known that each tendered licensee would act on that basis.

PARTICULARS

The Plaintiffs refer to and repeat the Particulars subjoined to paragraphs 14 and 18.

43. The Defendant was, from at least 29 April 1994, aware that a departure from the assumption made by each tendered licensee and confirmed by the Defendant would cause detriment to each of those tendered licensees.

TRANSFER OF TENDERED LICENCES

44. Under the terms of the tendered licences, each of the tendered licensees had a right to transfer the tendered licence to another person.
45. A number of the Plaintiffs listed in the Schedule hereto ("**tendered licence transferees**") on a date subsequent to the issue of a tendered licence purchased that tendered licence by way of a transfer from the then holder of that tendered licence.

PARTICULARS

Particulars of those Plaintiffs who are tendered licence transferees will be provided prior to the trial of the proceeding.

46. In accepting payment of the duty payable upon the transfer of the licence and in accepting and granting the transfer of each tendered licence to the tendered licence transferee the Defendant represented to each tendered licence transferee that:
- (a) subject to the tendered licence transferee complying with the terms of the licence and paying the required annual fee, the licence would be renewed at the expiration of its current term and would be renewed at the expiration of each subsequent term;
 - (b) the Defendant, whether by itself its servants or agents would not take any step within its power or control or fail to take any such step within its power or control which would destroy or alter adversely to the licensee, the basis on which the parties had respectively contracted in relation to the grant and purchase of the licence;
 - (c) the Defendant whether by itself its servants or agents would take reasonable steps to ensure that anyone who did not hold a taxi licence would not carry out services which were otherwise only able to be carried out by the holder of a taxi licence;

- (d) the Defendant, whether by itself servants or agents would not by any act within its power or control permit to be done or omit to be done anything to destroy or alter adversely to the licensee the basis on which the parties had respectively contracted in relation to the transfer of the licence;
- (e) any licences to operate a taxi service granted by the Defendant would be subject to restrictions, regulations and controls, identical with or similar to the restrictions, regulations and controls imposed on the licence the subject of the transfer;
- (f) the licence would be renewed for successive terms of five years if its conditions are complied with;
- (g) the Defendant would not by any act or omission within its power, undermine the rights conferred on the tendered licence transferee by the acceptance and grant of the transfer of the licence.

PARTICULARS

The Plaintiffs refer to and repeat the Particulars subjoined to paragraphs 14 and 18.

47. By reason of the representations described in paragraph 46 herein, subject to the tendered licence transferee abiding by the requirements of the existing legislation and complying with the terms on which the licence was granted, the tendered licence transferee had or reasonably believed it had a permanent right to operate a taxi service with an assumption or expectation that:
- (a) other taxi operators were required to comply with the same obligations;
 - (b) only licenced taxi operators would be permitted to carry passengers for reward by road in Queensland;
 - (c) the exclusive right to carry passengers for reward in Queensland was, and would be, limited to licenced taxi owners;
 - (d) any taxi licences granted to any other person would be granted in accordance with, and subject to the controls and limitations, provided for in the Act;

- (e) the provisions of the Act were such as to ensure that the viability of the business of carrying passengers for hire and reward as a consequence of holding such a licence was protected under and by the provisions of the Act .
48. The assumptions or expectations described in paragraph 47 were:
- (a) reasonably made by the tendered licence transferee;
 - (b) also made by the State of Queensland; and
 - (c) known by each of the Plaintiffs and the State of Queensland that each other party was acting on that same assumption or expectation
49. The obligations placed upon the tendered licence transferee pursuant to the terms of the licence and which were incurred by them included:
- (a) capital expenditure in respect of the purchase of the licence;
 - (b) initial expenditure in respect of compliance with the requirements of the legislation; and
 - (c) annual expenditure to continue the taxi operation at the level required by the legislation with particular reference to the mandated requirements to ensure a minimum standard for safety and cleanliness of the vehicle.
50. The Defendant:
- (a) was aware of the belief referred to in paragraph 46;
 - (b) continued to endorse that belief so that it and the Plaintiffs continued with the same assumptions or expectations;
 - (c) was aware of the scale of expenditure referred to in paragraph 49.

PARTICULARS

The Plaintiffs refer to and repeat the Particulars subjoined to paragraphs 14 and 18.

51. By reason of the matters referred to in paragraphs 44 to 50 herein:

- (a) Each tendered licence transferee adopted an assumption that the taxi licence issued to it was a permanent asset recognised by the Defendant;
- (b) The Defendant by its actions adopted the same assumption;
- (c) The Defendant and each tendered licence transferee Plaintiff conducted their relationship on the basis of that common assumption;
- (d) The Defendant knew or ought to have known that each tendered licence transferee would act on that basis.

PARTICULARS

The Plaintiffs refer to and repeat the Particulars subjoined to paragraph 14 and 18.

52. The Defendant was, from at least 29 April 1994 aware that a departure from the assumption made by each tendered licence transferee and confirmed by the Defendant would cause detriment to each of those tendered licence transferee.

ESTOPPEL BY CONVENTION AND PROMISSORY ESTOPPEL

53. The Defendant has:
- (a) by the price charged for the taxi licence;
 - (b) by imposing *ad valorem* stamp duty upon the transfer of a taxi licence;
 - (c) by and in terms of the Act;
 - (d) by the controls which it imposed pursuant to the terms of the Act;
 - (e) by reason of its knowledge of the costs associated with setting up of a viable taxi business;
 - (f) by the statements by the Queensland Minister for Transport in 1994 and following;
 - (g) by the publication of the Defendant's *Queensland Taxi Strategic Plan 2010-2015*,

induced, and encouraged the continuity of the assumption or expectation of the Plaintiffs, that the rights attaching to a licence would not be diminished or adversely affected by any action taken by the Defendant.

54. In the premises, the Plaintiffs and each of them have acted in reliance upon an assumption that the Defendant:

- (a) would not authorise the carriage of passengers by road for reward in Queensland by persons who were not required to comply with the provisions of the legislation and regulations governing the operations of taxi operators;
- (b) would not alter in any significant way, or in such a way as to adversely affect the interests of the Plaintiffs, the law governing the right to carry passengers for reward granted by the taxi licence;
- (c) would not permit persons other than licenced taxi operators to carry passengers by road for reward;
- (d) would not permit persons to carry passengers by road for reward in circumstances where they were not subject to the same restrictions and controls as the Act and its regulations imposed on the taxi licensees.

55. The assumption or expectation induced by the Defendant was one, which:

- (a) was reasonably made on the part of the Plaintiffs; and
- (b) at the time of inducing the said assumption or expectation in the Plaintiffs, the Defendant could lawfully satisfy.

56. By reason of the foregoing, there arises an estoppel by convention, or alternatively, an equitable promissory estoppel, conditional on the performance by the Plaintiffs of their obligations pursuant to the terms of their respective taxi licence/s and in accordance with the provisions of the Act, that so long as the Plaintiffs continued or remained willing to meet their obligations under the terms of their licence/s and under the terms of the legislation:

- (a) the Plaintiffs were each entitled to the renewal of their taxi licences from time to time;
 - (b) the terms of the licence would not be significantly changed by the Defendant unilaterally;
 - (c) persons not holding a taxi licence would not be permitted to compete with the Plaintiffs in their taxi operations other than on equivalent terms or terms that were compatible with the provisions of the Act as it then was and with the expectation that the Act would not change except on just terms.
57. From in or about April 2014, the Defendant, in breach of its duties to the Plaintiffs, has permitted persons not possessing a taxi licence (“**the rideshare drivers**”) to carry passengers by road for reward in Queensland.
58. On or about 11 August 2016, the Defendant published its *Five Year Strategic Plan for Personalised Transport Services* (“**the strategic plan**”) which signified its intention, inter alia, that:
- (a) ride-booking services will be legalised and the market for booked hire services will be opened up creating opportunities for new and existing participants;
 - (b) existing taxi service licence holders will be compensated by the receipt of a payment of \$20,000 per taxi service licence, capped at two licences per licence holder.

PARTICULARS

The strategic plan is in writing in a document published by the Defendant and entitled “*Queensland’s Personalised Transport Horizon*” and the references described in sub-paragraphs (a) and (b) above are to be found on pages 3 and 10 respectively.

59. In breach of the rights and entitlements of the Plaintiffs, the State of Queensland took no steps to enforce the provisions of the Act against the rideshare drivers carrying passengers for hire and reward in contravention of the Act.

60. In further breach of the rights and entitlements of the Plaintiffs, the Defendant, by the *Transport and Other Legislation (Personalised Transport Reform) Amendment Act 2017* (2017 Act No. 18), amended the Act and/or the regulations thereunder to render lawful the actions of the rideshare drivers in carrying passengers by road for reward in Queensland, but did so without:
- (i) ascertaining the economic need for the issue of new licences;
 - (ii) requiring the payment of a comparable licence fee; and
 - (iii) requiring the ride-share drivers to ensure appropriate or at least, minimal standards of compliance with respect to safety and cleanliness.
61. In or about 2017 by the passage of amendments to the Act and the promulgation of regulations under and pursuant to the Act, the Defendant implemented the changes that had been foreshadowed by it in the publication of the strategic plan.
62. The Defendant:
- (a) has not required the rideshare drivers to pay for, or obtain, a taxi licence;
 - (b) has not required the rideshare drivers to comply with the rules and regulations governing taxi operators;
 - (c) has allowed the rideshare drivers to exercise many of the rights previously held only by licenced taxi drivers without complying with the rules and regulations which fetter and control the owners of taxi licences.
63. In the premises, an equity arises which only can satisfied by holding the Defendant estopped from denying that the Plaintiffs each has a permanent right to operate a taxi service within a licensing scheme whereby:
- (a) the controlling relevant legislation is in accordance with the terms of the Act as it then was;

- (b) other taxi operators are required to comply with the same obligations;
 - (c) only licenced taxi operators are permitted to carry passengers for reward by road in Queensland;
 - (d) the exclusive right to carry passengers for reward in Queensland is limited to licenced taxi owners;
 - (e) any taxi licences granted to any other person are granted in accordance with, and subject to the controls and limitations, provided for in the Act.
64. By permitting non-licenced operators to operate unlawfully as set out in paragraphs 57 to 59 herein, the Defendant has acted unconscionably and in breach of the rights and proprietary entitlements of the Plaintiffs.
65. Further, by permitting non-licenced operators to lawfully carry passengers for hire or reward as set out in paragraphs 60 to 62 herein the Defendant has acted unconscionably and in breach of the rights and proprietary entitlements of the Plaintiffs.
66. By reason of the actions of the State of Queensland as described herein the Plaintiffs have suffered loss and damage.

PARTICULARS

Loss and damage includes:

- i. loss in capital value of the taxi licence;
- ii. loss in capital value of plant and equipment including taxi vehicles;
- iii. loss of earnings during the period of unlawful activity by the rideshare drivers;
- iv. loss of earnings as a consequence of the amendments to the legislation whereby the carriage of passengers by the rideshare drivers was authorised by the Defendant;
- v. loss of future earnings.

Full particulars of the loss and damage sustained by each of the Plaintiffs will be provided prior to trial.

AUSTRALIAN CONSUMER LAW

67. The Defendant has:

- (a) by the sale of taxi licences at market rates; and
- (b) by the imposition of stamp duty at *ad valorem* rates on the transfer of licences, acted in the course of trade and commerce within the meaning of the *Australian Consumer Law* (“ACL”).

68. The Plaintiffs refer to and rely upon the allegations contained in the preceding paragraphs, and say further, that the conduct of the Defendant as described herein was conduct in the course of trade and commerce within the meaning of the Australian Consumer Law.

69. By reason of the matters aforesaid the Defendant has in the course of trade or commerce engaged in conduct that is unconscionable within the meaning of the unwritten law from time to time contrary to the provisions of section 20 of Schedule 2 of the ACL.

70. Further, and by reason of the matters aforesaid the Defendant has in the course of trade or commerce and in connection with:

- (a) the supply or possible supply of goods or services; or
- (b) the acquisition or possible acquisition of goods or services;

to or by one or more of the Plaintiffs, engaged in conduct that is in all the circumstances unconscionable within the meaning of the provisions of section 21 of Schedule 2 of the ACL.

71. By reason of the matters aforesaid the Plaintiffs have sustained loss and damage.

PARTICULARS

The Plaintiffs refer to and repeat the Particulars to paragraph 66.

Full particulars of the loss and damage for each of the Plaintiffs will be provided prior to trial.

BREACH OF CONTRACT

72. The Plaintiffs refer to and repeat the matters alleged in paragraphs 8 and following and say further that the issue by the Defendant of a taxi licence to the:

- (a) Original Licensees;
- (b) Transferee Licensees;
- (c) Tendered Licensees;
- (d) Tendered Licence Transferees

created a contract between the licensee Plaintiff and the Defendant (“**the Taxi Licence Agreement**”).

PARTICULARS

The Taxi Licence Agreement was partly in writing and partly to be implied. Insofar as it was in writing it was contained in the terms set out in the licences granted to the original licensees and the wording of the relevant legislation.

Insofar as it was to be implied, it was to be implied from the conduct of the Defendant calling for expressions of interest in the purchase of taxi licences, from the purchase price of those licences, from the financial and regulatory obligations imposed on the Plaintiff licensees, from the terms of the legislation and from the transferability of the licences.

Further, it was to be implied in order to give business efficacy to the Taxi Licence Agreement.

73. There were terms of the Taxi Licence Agreement that:

- (a) the Defendant would not by any act within its power or control do anything to destroy or relevantly to diminish the value of the licence;
- (b) subject to the licensee complying with the terms of the licence and paying the required annual fee, the licence would be renewed at the expiration of its current term and would be renewed at the expiration of each subsequent term;
- (c) the Defendant, whether by itself servants or agents would not take any step within its power or control or fail to take any such step within its power or control which

would destroy or alter adversely to the licensee the basis on which the parties had respectively contracted in relation to the grant and purchase of the licence;

- (d) the Defendant, whether by itself its servants or agents would take reasonable steps to ensure that anyone who did not hold a taxi licence would not carry out services which were otherwise only able to be carried out by the holder of a taxi licence;
- (e) any licences to operate a taxi service granted by the Defendant would be subject to restrictions, regulations and controls identical with or similar to the restrictions, regulations and controls imposed on the licence the subject of the transfer;
- (f) the licence would be renewed for successive terms of five years if its conditions are complied with;
- (g) the Defendant would not by any act or omission within its power undermine the rights conferred on the transferee licensee by the acceptance and grant of the transfer of the licence.

PARTICULARS

The terms were and are to be implied.

- 74. Wrongfully and in breach of the Taxi Licence Agreement the Defendant has:
 - (a) not required the rideshare drivers to pay for, or obtain, a taxi licence;
 - (b) not required the rideshare drivers to comply with the rules and regulations governing taxi operators;
 - (c) allowed the rideshare drivers to exercise many of the rights previously held only by licenced taxi drivers without complying with the rules and regulations which fetter and control and regulate the owners of taxi licences;
 - (d) breached the terms described in paragraph 73 above.
- 75. By reason of the matters aforesaid the Plaintiffs have suffered loss and damage.

PARTICULARS

The Plaintiffs refer to and repeat the Particulars to paragraph 66.

Full particulars of the loss and damage for each of the Plaintiffs will be provided prior to trial.

AND THE PLAINTIFFS CLAIM:

- A. Equitable compensation.
- B. Damages for breach of contract.
- C. Damages pursuant to the ACL.
- D. Interest pursuant to section 58 of the *Civil Proceedings Act 2011*.
- E. Costs.
- F. Such further or other relief as the court thinks fit.

These pleadings were settled by the following barristers:

G. NASH. Q.C.;

I. COLEMAN. S.C.;

D. ATKINSON. Q.C.;

J. RIBBANDS

A. CAMPBELL

Signed:.....

Description: Maitland Lawyers

Solicitors for the Plaintiffs

Date: 6 March 2019
