

DRAFT Model Bailment Agreement for Taxis and Minibuses

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DRAFT

Document details

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Change history

Version	Date	Author	Changes made
1.1	July 2018	Greg Turner	First version.
1.2	November 2018	Greg Turner	Amendments from initial consultation.

Acronyms

You will find the following acronyms in this document.

Acronyms	Full form
CPV	Commercial Passenger Vehicle
CPV ID	Commercial Passenger Vehicle Identity Card
CVL	Commercial Vehicle Licence
GST	Goods and Service Tax

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1 Definitions and Interpretation

In this agreement, unless the contrary intention appears:

Accredited Operator means an operator accredited under the *Commercial Passenger (Road) Transport Act*.

Agreement means the terms and conditions contained herein this document, under which the Bailor and Bailee agree to the bailment of the vehicle.

Bailment means the transferring of the limited operation of the vehicle from the Bailor to the Bailee for a specified shift or shifts under agreed conditions.

Bailee means the driver of the vehicle.

Bailor means the accredited operator to which the CVL identified in this agreement was issued and under which the vehicle operates.

Communications and Dispatch Network means a Communications and Dispatch Network approved under section 71 of the *Commercial Passenger (Road) Transport Act* and under which the vehicle is affiliated to accept bookings for the hire of the vehicle.

CPV means a Commercial Passenger Vehicle as defined in the *Commercial Passenger (Road) Transport Act*.

CPV ID means (Commercial Passenger Vehicle) Identity Card issued under section 74 of the *Commercial Passenger (Road) Transport Act*.

CVL (Commercial Vehicle Licence) means the licence issued to the Bailor under Part 4 (Taxi) or Part 5A (Minibus) of the *Commercial Passenger (Road) Transport Act* and upon which the vehicle is endorsed.

Director means the Director of Commercial Passenger (Road) Transport.

Driver means the person identified as the Bailee for the purposes of this agreement.

GST means Goods and Services Tax under Australian Taxation law.

Reportable Incident means an event where, as a result of the vehicle's operation or the driver's actions:

- a) results in damage to the vehicle, another vehicle, or any other property and that damage is potentially claimable under a policy of insurance; or
- b) where any person, including the driver, suffers an apparent or obvious physical or psychological injury; or
- c) an incident which is reportable to Police under a law in force; or
- d) any other incident identified as reportable in a Schedule or attachment to the Agreement (if any exist).

Inspector means an inspector appointed under the *Commercial Passenger (Road) Transport Act*.

Operator means the person identified as the Bailor and to whom the Director of Commercial Passenger (Road) Transport has issued the CVL identified in this agreement – for clarity, the operator, bailor and licence holder refer to the same party.

Shift means the continuous period of time in each 24 hour period, including start and finish times, which is specified in the Schedule.

Licence means a licence issued under Part 4 or Part 5A of the *Commercial Passenger (Road) Transport Act* to operate a vehicle for hire or reward and has the same meaning as a CVL.

The Vehicle means the vehicle/s endorsed on the CVL/s identified in this agreement.

2 Bailment

2.1 Agreement to Bail

- 2.1.1 The Bailor and Bailee agree to the bailment arrangement of the vehicle pursuant to all inclusions set out in this Agreement, including the Schedule and any attachments.

2.2 Period of Bailment

- 2.2.1 The vehicle will be made available by the Bailor to the Bailee during the agreed shift times.
- 2.2.2 Where the law allows an operator to substitute the vehicle with another vehicle e.g. with a substitute taxi, the Bailor may elect to substitute the vehicle with another suitable vehicle.
- 2.2.3 Unless the Bailor reasonably requires the vehicle to be returned during a shift e.g. for maintenance or inspection, the Bailee shall have (without enjoying any proprietary interest in the vehicle) exclusive use and possession of the vehicle for the entire duration of an identified shift, however may not engage the services of another person to drive the vehicle.

2.3 Cancellation of a Shift

- 2.3.1 The Bailor may cancel a shift or part of a shift upon giving reasonable notice to the Bailee, but in any event, prior to the scheduled commencement time of that shift.
- 2.3.2 The Bailee may cancel a shift or part of a shift upon giving reasonable notice to the Bailor, but in any event, prior to the scheduled commencement time of that shift.

3 Bailment Payments and Fees

- 3.1 Both Bailor and Bailee agree to comply with the bailment payment arrangements detailed in the Schedule;
- 3.2 The Bailor and Bailee must ensure a policy of insurance is in place which covers the driver of the vehicle from any injury arising from the duty of driving the vehicle for hire or reward.
- 3.3 The Bailor and Bailee agree to make payments necessary under this agreement within the written timeframes agreed to by both parties, whether or not those timeframes are specified in the Agreement.
- 3.4 Notwithstanding any regulatory obligation to present the vehicle to an inspector or member of the Police force, any bailment fee for a shift, or part of a shift, which is payable by the Bailee under the Schedule, is not payable where the vehicle is unable to be used for hire or reward, providing the reason for unavailability did not arise from any fault of Bailee.

4 Bailment Obligations for Parties

4.1 Bailor Responsibilities

During the term of the bailment agreement, the Bailor is responsible for:

- 4.1.1 Maintaining the currency of Operator Accreditation and the Commercial Vehicle Licence under which the vehicle is endorsed and approved to operate for hire or reward, including all costs associated with maintaining these authorities;
- 4.1.2 Paying for the purchase of the vehicle and all costs associated with the vehicle fitout, service and repair of the vehicle and, unless identified in the Schedule as a Bailee responsibility, fuel and insurance excess;
- 4.1.3 Ensuring the vehicle is in a roadworthy condition at the start of each shift and complies with the relevant in-service maintenance standards as approved by the Director;
- 4.1.4 Effecting all repairs to the vehicle in a timely manner and ensuring the vehicle is in a sound condition and fit for purpose;
- 4.1.5 Providing evidence upon request by the Bailee on the currency of the Bailor's operator accreditation, the CVL under which the vehicle is endorsed and the vehicle's registration;
- 4.1.6 Maintaining legal ownership of the vehicle;
- 4.1.7 Maintaining registration and insurance of the vehicle as required under Motor Vehicles Act in the name of the Bailor and that the vehicle remains endorsed on the CVL throughout the term of the Agreement;
- 4.1.8 Reporting to the Bailee in a timely manner, any changes to the Bailor's authority to operate a CPV or the vehicle, including any suspensions or cancellations of Operator Accreditation or the CVL under which the vehicle is operated;
- 4.1.9 Reporting to the Bailee in a timely manner, any changes of residential address or contact details relating to the Bailor;
- 4.1.10 Where not directly identified as a Bailee responsibility, supplying, or having readily available to the Bailee, all documentation and equipment necessary to the vehicle's operation in compliance with the Agreement and any other law applicable to the operation of the vehicle;
- 4.1.11 Where the Bailor engages an agent to act on his or her behalf to assist with the day to day operation of the vehicle, attaching a copy of the agent arrangement to the agreement – any agent arrangement must be in writing and comply with any minimum requirements set by the Director;
- 4.1.12 Ensuring the Bailee has received necessary instruction particular to the vehicle (e.g. wheelchair lift mechanism and restraints) and has received appropriate training and refresher training necessary for the legal operation of the vehicle; and
- 4.1.13 Maintaining all records and documents necessary to the Agreement (including the Agreement), for not less than three years after expiry of the Agreement and producing any maintained record or document to the Bailee or the Director when requested.

4.2 Bailee Responsibilities

During the term of the bailment agreement, the Bailee is responsible for:

- 4.2.1 Complying with any reasonable request from the Bailor to make records of journeys and make documents relating to the operation of the vehicle;
- 4.2.2 Recording all shifts worked by the Bailee;
- 4.2.3 Recording the total amount of Gross Fares earned during each shift;
- 4.2.4 Recording the total number of completed journeys made during each shift;
- 4.2.5 Reporting to the Bailor in a timely manner, any enforcement action taken during the shift by an Inspector, Police Officer or other competent authority in relation to the vehicle or driver;
- 4.2.6 Reporting to the Bailor in a timely manner, any changes to the Bailee's authority to drive a motor vehicle or the vehicle, including any licensing suspension or cancellation;
- 4.2.7 Inspecting the vehicle prior to commencing each shift to ensure it is fit for purpose and complies with the standards approved by the Director. The Bailee must report any faults found to the Bailor in a timely manner, but in any event, by the end of the shift;
- 4.2.8 Reporting to Bailor in a timely manner, any changes of residential address or contact details relating to the Bailee;
- 4.2.9 Providing to the Bailor in a timely manner, records and documents required to be made by the Bailee in accordance with the agreement and applicable laws;
- 4.2.10 Notifying the Bailor on becoming aware of any defect or damage to the vehicle, or any item unlawfully removed from the vehicle – notification must be effected in a timely manner, but in any event, by the end of the shift;
- 4.2.11 Notifying the Bailor as soon as practicable, of any injury caused to a person as a result of the operation of the vehicle;
- 4.2.12 For the duration of each shift;
 - a) Exercising proper care and control of the vehicle,
 - b) Maintaining possession, and being sole driver of the vehicle for the shift;
 - c) Maintaining the vehicle in a clean condition;
 - d) Not modifying, adding or removing any vehicle component or equipment without express permission of the Bailor;
 - e) Complying with applicable road laws, the conditions of CVL, the Act and applicable regulations made under the Act and any codes of conduct approved by the Director; and
 - f) Ensuring the relevant driver's licence, 'h' endorsement and CPV ID Card is current.

5 Mutual Obligations for the Bailor and Bailee

The Bailor and Bailee agree to;

- 5.1 Comply with the provisions of any law in place in the Northern Territory Legislation, including regulations, standards and codes of conduct that apply to the operation of the vehicle, accredited operators and drivers of commercial passenger vehicles;
- 5.2 Comply with all rules and by-laws of the Communications and Dispatch Network under which the vehicle operates (if any exist);
- 5.3 Both Bailor and Bailee are responsible for ensuring a policy of insurance is in place at all times which covers the Bailee from any injury arising from the act of driving the vehicle for hire or reward;
- 5.4 Carry out obligations under the Agreement in a reasonable and responsible way and render reasonable assistance to each other upon reasonable request, in order to give effect to the Agreement;
- 5.5 Not do anything, or refrain from doing anything, which could adversely affect the ability of the Communications and Dispatch Network under which the vehicle operates (if any), to comply with its legal obligations; and
- 5.6 Not do anything, or refrain from doing anything, which could adversely affect the ability of the other party from carrying out their obligations under the Agreement.

6 Reportable Incidents

If a Reportable Incident occurs involving the vehicle or its operation, the Bailee will;

- 6.1 As soon as practicable, provide a report of the incident to the Bailor, including the following particulars (if known):
 - a) Any party involved in the incident
 - b) If the incident involves a collision with another vehicle, the registration details of the other vehicle and the personal details of the driver of that vehicle
 - c) Names and contact details of any witnesses;
 - d) Whether any person suffered an apparent injury as a result of the incident; and
 - e) Any obvious damage to or loss of property arising out of the incident.
- 6.2 Within 48 hours of receiving any below notice, give to the Bailor:
 - a) A copy of any statement made by the Bailee to the police concerning the incident;
 - b) The incident record number issued to the Bailee by the Police; and
 - c) Any document posted, delivered or served on the Bailee by or on behalf of any person or party making any claim against the Bailee and/or Bailor.

7 Termination and Repossession

- 7.1 The Bailor or Bailee may immediately terminate the Agreement where:
- a) The other party has breached any clause or obligation under the Agreement, including defaulted payment;
 - b) Where the currency of one or more effecting authorities has changed e.g. suspension/cancellation/non-renewal of a driver licence, operator accreditation or the vehicle registration;
- 7.2 The Bailor or Bailee may terminate the Agreement for any other reason where seven days' written notice has been provided to the other party;
- 7.3 Upon termination of the agreement by the Bailee, the Bailee shall return the vehicle to the operator's usual place of business (within the approved area of operation) in a similar condition to that on commencement of the shift, unless the vehicle is unsafe or is incapable of being driven. Where the vehicle can be safely driven, the return of the vehicle will be at the Bailee's expense; and
- 7.4 Upon termination of the agreement by the Bailor, the Bailor shall collect the vehicle from the Bailee (within the approved area of operation). The collection of the vehicle will be at the Bailor's expense.

8 Relationship Limited to Bailment Arrangement

- 8.1 The Agreement does not create a relationship of agency, employment, partnership, subcontractor or franchise between any party, nor does it establish a vehicle or CVL lease arrangement.

9 Costs and Taxes

9.1 Agreement Costs

- 9.1.1 Each party must bear its own costs (including legal costs) of, and incidental to, the preparation, negotiation and signing of the Agreement.

9.2 GST

- 9.2.1 Both parties agree that any amounts payable under the Agreement are inclusive of any GST that may apply.

10 General Provisions

10.1 Entire Agreement

The Agreement;

- 10.1.1 Constitutes the entire Agreement between Bailor and Bailee as to its subject matter and includes the Schedule and any attachments (if applicable);
- 10.1.2 In relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by either party; and

- 10.1.3 Unless otherwise lawful to disclose the contents, or part thereof, to another party, the Agreement remains confidential in nature and binds all parties identified herein. All parties agree to the release of the contents of the Agreement where of material significance to an investigation by the Director or another law enforcement agency, and may be used in legal proceedings as evidence of the Agreement.

10.2 Variations

- 10.2.1 The Bailor and Bailee may make amendments from time to time to the 'Additional Items' clause or vary the agreed Shifts specified in the Schedule. Any amendment or variation must be agreed to, and signed by, both parties.
- 10.2.2 Any amendment or variation made to a general clause of this agreement or the Schedule must not alter the implied general obligations of either party, diminish or remove a party's obligation under a law in place in the Northern Territory or render the Agreement non-compliant with the Minimum Requirements for Bailment Agreements for Taxis and Minibuses, as approved by the Director.

10.3 Waiver

- 10.3.1 The failure of either party to fulfil an obligation under the Agreement is not a waiver of a party's right:
- a) To claim damages for breach of that obligation; and
 - b) To fulfil another obligation under the Agreement, unless written notice to that effect is given by that party to the other.

10.4 Authority

- 10.4.1. The Bailor and Bailee authorise a copy of the Agreement to be made available to any Communications and Dispatch Network and to the Director or an Inspector upon request.
- 10.4.2. The Bailee authorises the Bailor to make enquiries to Communications and Dispatch Networks about the details of any complaints made about the Bailee while in the capacity of a driver of a Commercial Passenger Vehicle;
- 10.4.3. The Bailee authorises the Bailor to make enquiries about the status of the Bailee's driving authorities from the Communications and Dispatch Network or the Director;
- 10.4.4. The Bailor authorises the Bailee to make enquiries about the status of the Bailor's accreditation and the vehicle's registration and CVL from the Communications and Dispatch Network or the Director.

11 The Schedule

Period of Bailment	
The Agreement between the named Bailor and Bailee remains in force, unless otherwise terminated, for the below period (dates inclusive):	
Start Date: / / 20	To End Date: / / 20

Operator Section (Bailor to Complete)		
Name of Bailor (Operator)	ABN	
Name of nominated company director or manager if CVL held by company	ACN (if company)	
Operator Accreditation number	CVL number/s	Vehicle Registration Number/s (use Attachment A if required)
Principle Place of Business (Address)	(street number and name)	
	(suburb)	(Postcode) 08
Telephone contact	(1)	(2)
Name of Communications and Dispatch Network under which the Vehicle operates (indicate N/A if not operating under a network)		

Driver Section (Bailee to Complete)		
Name of Bailee (Driver)	ABN	
Driver Licence number	CPV ID card number	Approved CPV ID card Categories
Principle Place of Business (Address)	(street number and name)	
	(suburb)	Postcode 08
Telephone contact	(1)	(2)

Agreed Shifts of Bailment							
(Each shift must not exceed 15 hours in each 24 hour period)							
	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Start							
Finish							

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Conditions of Bailment			
ITEM	Party responsible for payment (Delete party not applicable)	Amount / Percentage	
1. Bailment Fee – Fixed Fee (Item 1 is only valid where Item 2 is not used)	Bailee to Pay	\$ _____ . _____ per shift (NOTE: only available if Item 2 not valid)	
2. Bailment Fee – Percentage split of fares taken during a shift by Bailee	Bailor and Bailee to make necessary payment adjustments of fare takings as required	Bailee = __ % Bailor = __ % (Percentages must add up to 100%)	
3. Fuelling of the Vehicle	Bailor / Bailee	On Shift: Completion / Commencement	
4. Driver Injury Insurance	Bailor / Bailee	Insurer: Policy #:	
5. Excess – Driver Injury	Bailor / Bailee	Excess Amount: \$ _____ . _____	
6. Excess – Public Liability	Bailor / Bailee	Excess Amount: \$ _____ . _____	
7. Excess - Vehicle Insurance Claim	Bailor / Bailee	Excess Amount: \$ _____ . _____	
8. Instruction carried out with driver on wheelchair accessible vehicle	Bailor: Driver instructed <input type="checkbox"/> Vehicle not wheelchair accessible <input type="checkbox"/>		
9. Bailor as Agent Arrangement in place for the vehicle	Bailor: Yes <input type="checkbox"/> No <input type="checkbox"/>	If yes, a copy of the arrangement is attached	Yes <input type="checkbox"/>

Equipment		
(The Bailor shall provide with the Vehicle the following additional equipment for each shift)		
1. Emergency Vouchers relating to the Transport Subsidy Scheme	2. EFTPOS Terminal suitable to transact a payment under the Transport Subsidy Scheme	3. Documents and equipment suitable for make any records required to be made by the Bailee under the Agreement e.g. job totals, vehicle inspections, incidents
4.	5.	6.
7.	8.	9.

Additional Terms of Agreement
(no additional inserted term may contravene any law in place or another clause of the Agreement)

12 Execution / Acceptance Provisions

Before signing, both parties have considered and agree to the terms and conditions of the Agreement, including the Schedule.

Upon signing, both parties affirm that any information provided as part the Agreement is true and correct to the best of their knowledge.

SIGNED: _____

(Bailee/ Driver)

DATE: _____

SIGNED: _____

(Witness)

DATE: _____

SIGNED: _____

(Bailor/ Operator)

DATE: _____

SIGNED: _____

(Witness)

DATE: _____

