



LEGAL INFORMATION FOR TAXI DRIVERS

Your Rights and Responsibilities

Prepared by Fitzroy Legal Service and Springvale Monash Legal Service



SPRINGVALE MONASH
LEGAL SERVICE Inc.

Disclaimer

This is general legal information only, and is not intended to be legal advice. If you need legal advice, please contact a community legal centre.

Contents

Legal Help	4
The Driver Agreement/Bailment Agreement	5
Fines and Infringements.....	6
Runners: Taxi Fare Evasion	10
Accidents and Insurance	12
Compensation: WorkCover Insurance	17
Compensation: Victims of Crime	20
Dealing with the Police	21
Violent Behaviour.....	25
Sexual Assault.....	28
Family Violence	31
Privacy	32
Where to Get Help.....	33
Accident Details	33

Legal Help

Community Legal Centres

Community legal centres provide free legal help for people who cannot afford a private lawyer. This includes free legal advice, and free or low-fee legal representation.

Community legal centres also provide community legal education sessions and advocate for law reform.

Fitzroy Legal Service and Springvale Monash Legal Centre have lawyers with expertise in taxi matters. These legal centres no longer offer specialist taxi clinics, however they still have knowledge and expertise in taxi matters. See the 'where to get help section' for more details.

You can also find other community legal centres online at:

https://www.fclc.org.au/find_a_community_legal_centre.

Victoria Legal Aid

Victoria Legal Aid helps Victorians with their legal problems. You can call Victoria Legal Aid on 1300 792 387 for free legal advice or visit their website www.legalaid.vic.gov.au for legal information.

The Driver Agreement/Bailment Agreement

The Driver Agreement is an important document because it sets out the rights and responsibilities between the driver and the owner/operator. It contains many of the arrangements regarding insurance, the bond and WorkCover.

The Driver Agreement is an implied agreement. This means the conditions automatically apply, regardless of whether you sign a contract when you take possession of an operator's taxi.

If you are in a dispute with an owner/operator or their insurance company, the Driver Agreement is a good place to start if you want to know what your rights are.

Important

The Driver Agreement is only a contract between you (the driver) and the owner operator. It is NOT a defence against other parties (including other drivers or insurance companies). See the insurance section of this booklet for more information.

Fines and Infringements

Who can issue fines?

Fines can be issued by local councils, Victoria Police or Taxi Services Commission (TSC)

- Parking offences are usually issued by local councils
- Citylink/Eastlink issues fines for driving on a toll road with no ETAG/low ETAG account balance.
- Other traffic offences such as speeding, running a red light, reckless driving, are issued by Victoria Police.
- TSC can issues fines for breach of taxi regulations. Police can issue fines on behalf of TSC.

Local councils enforce (follow up on) their own fines. All other fines related to driving will be enforced by Fines Victoria (formerly Civic Compliance).

What is the fines process?

The fines system (2018)



The previous fines system (before 2018)



What happens if I ignore a fine?

If fines are not paid on time, additional financial penalties are added.

This is still the case if you move house and the fine is sent to the wrong address.

From the commencement of the new fines system in 2018, you have less time to deal with a fine than previously. The life cycle of the fines system is shorter.

Tip

For options on paying fines, go to finesfixer.org.au. If you have multiple fines or need more information, visit a community legal centre.

Do I have to pay the fine?

You have options depending on the circumstances:

- I was driving at the time, and I did the wrong thing.

You will have to pay the fine. It is better to pay earlier, rather than later. If you have the money to pay the fine, pay it earlier rather than later to avoid extra penalties.

- I was driving at the time, I did the wrong thing, but I don't have enough money to pay the fine.

You can call the body who issued the fine and ask for an extension or a payment arrangement. A financial counsellor can help work out a payment plan that will work for you.

- I was not driving at the time.

You can *nominate another driver*. You can do this online at: www.online.fines.vic.gov.au. You will need information about the other driver, including their licence number, address and date of birth. You will only be able to do this in the Infringement Stage of the fine.

Tip

Check the operator's driving log to see who was driving at the time. Make sure the driving log is filled out correctly.

- I think there has been a mistake, or I have exceptional circumstances.

You can challenge a fine, either by asking for a review, or going to court. Please seek legal advice before going to court.

You can only challenge a fine in court when it is at Infringement Stage or within 14 days of finding out about the fine.

- I was homeless, a victim of family violence, had mental health issues or a substance dependency at the time the fine was issued.

These are recognised special circumstances to challenge a fine – however please seek further legal advice around the repercussions of special circumstances.

It is important to deal with fines straight away or you start to run out of options.

Important

If you have a 'Notice of Final Demand', a Seven-Day Notice, a summons from court, or have been sanctioned by the Sheriff, please seek legal advice as soon as possible.

Tips on avoiding fines

1. Top up your e-TAGS.

You can be issued with fines for using tollways without an e-TAG or if your account balance is low. You can set up direct debit, and an online account to monitor how much money is in your e-TAG account.

2. Change your details with VicRoads and your operator if you move house.

You have a responsibility to notify VicRoads and your operator when you move. If you are fined, you will receive fines in a timely manner and do not miss any due dates.

Important

Fines won't disappear if you move address. They will continue to build up.

Obey road laws and parking signs, even if passengers ask you not to. You will be the one who gets fined, not your passenger.

Runners: Taxi Fare Evasion

Is taxi fare evasion a criminal offence?

Passengers who do not pay their fares are breaking the law. Fare evasion is covered by 'obtaining financial advantage by deception' in the Crimes Act 1958 (Vic). Fare evasion is not a civil matter.

A person caught and charged with this could face up to 10 years prison.

What can I do about taxi fare evasion?

1. Request prepay as a person is entering a taxi

Prepay can be requested at any time, not just between 10pm – 5am. It should be requested especially for long journeys and if it's in the night time.

2. Report taxi fare evasion to the police.

Despite fare evasion being a criminal offence, anecdotal evidence from drivers shows that many police officers do not deal with taxi driver complaints about taxi fare evasion seriously.

However, reporting fare evasion to police could still be useful in terms of statistics which can inform law reform.

What can't I do when faced with a runner/fare evader?

Some things you should not do:

- You should not hold passengers in the taxi as this can be considered false imprisonment.
- You should not use any force to get money from fare evaders as this can be considered assault.
- You should not chase the fare evaders. This is so you remain safe, and aren't getting into anymore danger.
- Do not keep any property left in the taxi. Hand in any property left in the taxi to police or lost property as soon as you can.

Accidents and Insurance

What should I do if I have an accident?

If you are in an accident, you must:

- Stop. You can be charged for leaving the scene of an accident or not leaving your details even if nobody is in the other car.
- Make sure everyone is OK and help if necessary, such as calling an ambulance if someone is hurt.
- Call the police if someone is hurt.
- The police might not come if nobody is seriously hurt, but it is important to report an accident to them as soon as you can.
- If the police do attend the accident scene they will interview the people involved and any other witnesses. Police may charge the drivers with breaking the road laws.
- Exchange details with the other driver or the owner of any property that is damaged, even if nobody is hurt. It is an offence to leave the scene of a vehicle accident without doing this.

What details should I exchange?

Name, phone numbers, registration numbers, insurance company details.

Give the contact details of your owner/operator as they have the insurance details.

We have a section on our back cover to record these details if you are in an accident.

After a crash, it is also a good idea to:

- Tell your owner/operator that you were in a crash.

- If you have been injured, go to the doctor. See our ‘Compensation’ section for more information.
- Take photos or videos of any damage for insurance claims
- Get the contact details of any witnesses
- You should NOT admit liability. It is for the insurance companies to decide to what extent each party was at fault.

Who is responsible to pay for any damage in crashes involving taxis?

Generally, if regular drivers (not taxi drivers) cause a crash, they are responsible for paying for any damage or any insurance excess if they have it.

This not the case for taxi drivers. After 30 June 2014, new laws in the taxi industry placed implied conditions in every driver agreement. Part of these new implied conditions are that the taxi operator is supposed to indemnify (cover) the damage even if the driver is at fault.

Under these implied conditions, the taxi operator is expected to:

- Indemnify (insurance to cover) the taxi, and
- Pay any excess regardless of whether the taxi driver is at fault.

The taxi driver needs to:

- Report the incident to the taxi operator as soon as possible (details of all people involved, witnesses, injuries, damage to property). This includes minor incidents, to ensure you are always covered.

- Give to the operator copies of any statements the taxi driver makes to the police.

A taxi driver can legally sue the operator if they have not organised insurance cover.

What happens if the insurance company does not pay?

If an insurer refuses to pay for the damage to another person car, the other person may bring legal proceedings against the driver and the operator.

A taxi driver can be ordered by the Court to pay damages to the driver of the other car, even though they are supposed to be insured by the operator.

A taxi operator can be ordered to pay damages to the driver of the other car, even if they are supposed to be insured by a taxi club.

If you get a letter of demand or a summons to Court, it is important to seek legal advice as soon as possible, even if you don't think it is your fault, or it is the owner operator's responsibility.

The Bond

Owners should set up a bond with their driver. A bond can be paid in a lump sum, or in instalments. The operator must keep the bond in a designated bank account.

The operator can only take money from the bond if:

- The driver does not split the fares 55/45 with the operator; or
- The taxi or equipment in the taxi is damaged as a result of the taxi driver's conduct – where it is the taxi driver's fault.
 - For example, the driver was using his/her mobile phone, driving whilst under the influence of drugs or alcohol, or where there has been a single vehicle accident (eg. reversing in to a pole).¹

Important

If you have not paid a bond, the operator cannot claim any money from you to pay for the accident.

There are, however some rules about the bond:

- The maximum of the bond is \$1,000. An operator cannot ask for more than this in a single incident.
- The bond must be prepaid. An operator cannot ask a taxi driver to put more money in the bond if they are under \$1,000, or deduct money from their salary to pay for damage.
- If money is taken out of a driver's bond, they need to top it back up until it reaches \$1,000.
- A driver never has to pay any excess to the insurer. This is the operator's responsibility.

¹ Commercial Passenger Vehicles Victoria, "Driver Agreement FAQs", <http://taxi.vic.gov.au/drivers/accredited-driver-responsibilities/driver-agreement/driver-agreement-faqs#bond>.

For example, Sami is paying a bond in instalments - \$10 per shift. Sami is in an accident early in his driving career, he only has \$200 in his bond account. The cost of the excess is \$800. The owner of Sami's taxi can only take \$200 out of Sami's account. The owner cannot ask Sami to put in more money. Sami must start paying the bond again.

Important

If you have an accident, please get legal advice from a community legal centre.

The Transport Accident Commission (TAC)

The Transport and Accident Commission (TAC) covers transport accidents directly caused by the driving of a car, motorcycle, bus, tram or train. The TAC can provide support services for people injured in transport accidents as a driver, passenger, pedestrian, motorcyclist or, in some cases, a cyclist.

The TAC is a 'no-fault' scheme. This means that the medical benefits will be paid to an injured person regardless of who caused the accident

The TAC can also pay income support during recovery and in the case of some serious injuries, a lump sum payment.

For more information go to their website: www.tac.vic.gov.au or phone: 1300 654 320 or 1800 332 556.

Compensation: WorkCover Insurance

What happens if I get injured at work?

As a taxi driver, you are entitled to WorkCover – a compensation scheme for injuries at work. You can claim WorkCover for work-related physical or mental injury or illness.

Taxi operators must by law have a WorkCover policy and pay the premiums under that policy.

Important

If you have signed a bailment/driver agreement, you do not need to set up your own WorkCover policy. That is the responsibility of the operator.

Even if the operator does not have a WorkCover policy, you will still be eligible to claim WorkCover. The obligation of operators to have WorkCover policies is separate from a taxi driver's right to claim WorkCover.

What are the types of compensation available?

You can claim compensation for:

- Medical expenses
- Counselling
- Lost earnings because you were unable to work
- Expenses related to death
- Other lump sum compensation, including damages.

How do I put in a WorkCover claim?

Tip

Keep any receipts or invoices from medical treatments you receive as a result of the workplace incident.

1. Make sure your injury is recorded in the Register of Injuries

Your employer must keep a register of injuries at your workplace.

This can be filled in by you or someone on your behalf and should be done within 30 days of the injury.

Important

If you don't notify your employer, you may not be entitled to compensation.

2. Report the accident and your injury to police if it was a motor vehicle accident.
3. Get a certificate of capacity

If you can't do your normal job and would like compensation for loss of income, you should see a doctor and ask for a WorkCover certificate of capacity, similar to a medical certificate.

The certificate needs to describe the injury, anticipated time off work and possible alternative duties.

4. Complete a WorkCover Worker's injury claim form. You can get a claim form:
 - Online – WorkCover website www.worksafe.vic.gov.au
 - Your employer
 - Any Australia Post office

- Work Safe Advisory Service on 1800 136 089 or info@worksafe.vic.gov.au.
5. Give your employer the Claim Form with attached WorkCover certificate(s) of capacity.

After you have put in the form, you may have to attend another medical examination by an independent medical practitioner.

Tip

If you want to claim for WorkCover, follow this process as soon as you can. The sooner you submit the claim, the sooner a decision can be made on whether your employer is liable for your injury or illness and required to compensate.

WorkCover information and help

WorkSafe Victoria

General enquiries: 03 9641 1555

Advisory Service: 1800 136 089

24 Hour emergency line: 13 23 60

Website: www.worksafe.vic.gov.au

Community legal centres can help fill out forms or writing letters to taxi operators.

Compensation: Victims of Crime

A victim of crime is a person who has suffered physical or emotional injury, or financial loss because of a crime. Victims of crime may have been injured in a violent attack, experienced a sexual assault, or been the subject of a robbery.

You can claim for Victims of Crime compensation for:

- Counselling and medical expenses
- Safety related expenses
- Loss or damage to clothing worn at the time of the incident
- Loss of earnings
- Dependency upon a deceased primary victim (related victims only)
- Assistance for reasonable funeral expenses

How do I make a Victim of Crime claim?

1. Report the crime to police
2. Keep any receipts and invoices from any medical treatment you've received, or receipts from any safety related purchases
3. Fill out an <http://victimsofcrime.com.au/enquiry-form/>
4. See a Community Legal Centre for more information and support.

See: www.victimsofcrime.com.au for more information.

Dealing with the Police

Safety and the police

The job of the police is to keep the community safe. If you are feeling unsafe or threatened in your cab, remove yourself from the situation and call 000.

When do I need to report a crime?

If you have been a victim, or a witness to a crime, you should report it to police.

If you have been involved in a car accident where people are seriously hurt, you must report it to the police.

Important

It is important to report crimes, including fare evaders to the police as it helps build statistics which could be helpful for law reform and advocacy.

How do I report a crime to police?

1. At the police station

Go to a police station and request they take your statement.

If the police officer does not want to take your statement, insist that they do or ask to speak to a more senior police officer (such as the Sargent).

Record the name of the police officer and the police station you made the statement.

If you feel the officer has not been helpful, it may be worth going to another station.

2. Crime Stoppers

If you were a witness of a crime, you can call Crime Stoppers on 1800 333 000 or report a crime on their website crimestoppers.com.au.

You can remain anonymous.

What powers do the police have?

If you are driving or walking in public areas, police can:

- Stop you and ask for your license or name and address if they suspect you are committing a crime. Police must tell you the reason for asking for your details.
- Conduct a pat-down search and search your bag and your car if they suspect you of carrying weapons, drugs or graffiti implements. The search must also be on reasonable grounds unless they have a warrant against you. You can ask for a copy of the search report. A strip search must be conducted in privacy and by a police officer of the same gender.
- Police have also the power to conduct random searches and ask for your details in designated areas such as King Street without any reasonable grounds.
- Breathalyse or drug test drivers.

Important

Make sure you do not provide a false name and address. Police can charge someone for providing incorrect details, even if it was a joke.

Do I have to answer any police questions?

There are many reasons why police may ask you questions. You may be a witness in a car accident, or they may be questioning you as a suspect.

If you are suspected of committing a criminal offence, you may be arrested and be held in police custody. Police should tell you if they think you are a suspect in a criminal offence.

Important

You must give your name and address but otherwise you have the right to silence in a police interview. If you are unable to get legal advice, you should say 'no comment' in a police interview.

While in custody, you have the right to two phone calls, one to your family or friend and one to a lawyer. If you do not have a lawyer, Victoria legal Aid can give you advice over the phone.

Always get legal advice if you have been arrested and the police are about to interview you.

If you were not able to speak to a lawyer prior to their interview, you should seek assistance from a community legal centre as soon as possible.

While in custody, police have the power to take your fingerprints. However, they must get your consent if they wish to take your photo, body samples or conduct an ID parade unless they have a court order.

Can I complain about the police?

Police must obey the law, and that includes respecting your rights.

You can ask a police officer for their name, identification numbers, police station, and rank. You should write these details down or ask for this information to be provided in writing. You will need these details if you wish to make a complaint.

If you feel like a police officer has not respected your rights, or disobeyed the law, you can make a complaint. All complaints about police can be made to:

Victoria Police Compliments and Complaints

(http://www.police.vic.gov.au/content.asp?Document_ID=11933)

OR

Independent Broad-based Anti-corruption Commission (IBAC)

by visiting (<http://www.ibac.vic.gov.au>).

Community legal centre can give you advice about options and the process to lodging your complains.

Violent Behaviour

What is violent behaviour?

Violent behaviour is any behaviour that causes another person any injury to the body that interferes with a person's health or comfort. The injury only has to be slight – it can include pain or bruising.

The following conduct can lead someone to being charged with a violent behaviour offence:

- Assault including hitting, punching, or spitting on someone
- Killing
- Sexual and indecent assault
- Threatening to kill or injure someone

It is also violent behaviour if the behaviour places another person in fear of being injured.

There are many violent behaviour offences and committing these offences carry very serious penalties.

What does the law say about self-defence?

Self-defense means using 'necessary', 'reasonable' and 'proportionate' force to protect yourself.

Unfortunately, there are no easy rules that can tell us what self-defense means in every situation.

In some situations, if force isn't deemed to be necessary, reasonable or proportionate you might be in danger of facing an assault charge.

Important

In situations of danger, think of the best way to bring yourself to safety, including getting out of the cab if necessary, and call 000.

What should you do if you have been a victim of violent behaviour?

If you have been a victim of violent behaviour you should:

- Report it to police as soon as possible.
- Request access to the CCTV from your taxi. Only police and the TSC can view this footage.

Tip

Request CCTV access within the first 72 hours. Footage may be wiped after this time frame.

Report the crime to police as soon as possible. Failing or delaying to report can provide the perpetrator the opportunity to report against you.

- Contact a community legal centre to make enquiries about possible compensation (WorkCover, Victims of Crime).

Tip

If a customer is acting in an inappropriate way, you can record their actions in the 'Taxi incidents' page at the back of this booklet.

What are the consequences of being accused of violent behaviour?

The accused can be charged with a range of offences depending on:

- The injuries suffered by the victim

- What the accused meant to happen
- What the accused should have realised would happen as a result of their actions.

The TSC may cancel or suspend the taxi driver's accreditation if a driver is charged with violent behaviour.

Importantly, the TSC can cancel or suspend accreditation even if a driver is charged with a crime that did not occur in a taxi.

For example, if a driver is charged with assault or other violent behaviour related to family violence, the TSC can still cancel their accreditation.

If found guilty, the perpetrator can receive a criminal record. This can result in jail, a fine and have implications for visas.

Sexual Assault

What is sexual assault?

Some examples of sexual or indecent assault are:

- Rape;
- unwanted kissing, rubbing, groping and touching
- exposing genitals;
- forcing someone to watch porn;
- suggesting sexual activity;
- questions and comments of a sexual nature;
- Touching someone's wallet or cellphone without their consent is also considered to be sexual assault.

Example:

The following conversation is considered sexual assault as it is questions or comments of a sexual nature and suggests a sexual activity:

Driver: You did not pick up anyone tonight?

Passenger: No, just a girls' night out with friends

Driver: So you got no man tonight?

Passenger: Laughs uncomfortably

Driver: It's a shame you have to go home by yourself with no man tonight.
I can come to your house.

What is consent?

Consent is when someone agrees to something. Two people cannot have sex or 'indecent activity' unless they both consent.

What is not consent?

When someone says no, there is no consent.

- A person does not have to say “no” – their tone, mood, or actions must be considered. Therefore it is always best to get clear consent rather than presume someone is consenting because they have not said “no”.
- When someone is incapacitated because they are asleep, unconscious or so affected by alcohol or drugs they cannot consent.
- Children (anyone under the age of 16) cannot consent.
- People with mental or cognitive impairments cannot consent.

Example:

If one person does not agree and the other person continues their behaviour or threatens them, they are breaking the law.

Example:

Two people begin intimate relations. One person changes their mind, and does not want to continue. There is no longer consent.

What can you do if you have been the victim of a sexual assault?

If a passenger is making any inappropriate conversation, is acting indecently, or you are a victim of any other form of sexual assault, you should:

- Report the incident to police. Make sure you report the incident within 72 hours, so that CCTV footage can be used to assist you.
- Seek medical and other support services if you have suffered any physical or psychological injuries.
- Contact a community legal centre to make enquiries about possible compensation.

Fitzroy Legal Service has found instances where taxi drivers have waited too long to report incidents, and the other party have made statements to police instead. In these cases, the taxi drivers did not have access to the CCTV footage.

What are the consequences for someone accused of sexual or indecent assault?

The accused can be charged with a range of offences:

- The TSC may cancel or suspend the taxi driver's accreditation if the accused is charged with a serious offence.
- The perpetrator can receive a criminal record if found guilty of the offence. This can have an impact for visas and future employment.
- If convicted, the person can be listed on the Sex Offenders Register.

Family Violence

Family violence is any physical violence and emotional abuse between family members. It is also a pattern of coercive control that one person exercises over another in order to dominate and get their way.

Family violence is behaviour that physically harms, causes fear, or prevents a person from doing what they want, or act in a way they did not freely choose.

Family violence can be: physically or sexually abusive, emotionally or psychologically abusive, economically abusive, threatening, or coercive.

In most cases in Australia, the perpetrators of family violence are men and the victims are women and children.

Important

The TSC can cancel taxi licenses if a driver has been charged with violent behaviour related to family violence.

Privacy

Can passengers take photos and/or videos of a taxi driver?

Some taxi drivers have had passengers take photos and video drivers when they are driving. The drivers found this distracting and unpleasant. Do privacy laws protect taxi drivers in this instance?

In Victoria, a person can film another person without their consent, however this differs from state-to-state. However, filming can be distracting and may impact on your ability to drive a taxi in a safe manner.

If a passenger is taking a photo or video of you, and this bothers you can ask the passenger to stop and that their behaviour is distracting and a safety hazard. You can also ask the passenger to take a photo of your ID card if they have any concerns.

Where to Get Help

Community Legal Centre	Address	Contact	Free legal advice services – drop-in only, no appointments
Fitzroy Legal Service	Level 4 Fitzroy Town Hall Access via laneway and courtyard at 126 Moor Street, behind the Fitzroy Library	(03) 94193744 fitzroy-legal.org.au	Monday to Friday, 6.00pm – 7.00pm
Springvale Monash Legal Service	5 Osborne Avenue, Springvale	(03) 9545 7400 smls.org.au	Mondays, 6.00pm – 7.30pm Tuesdays, Wednesdays and Fridays, 9.30am – 12.30pm Tuesdays, Wednesdays and Thursdays, 7.00pm – 8.30pm

Please note these are starting times for the drop-in services. It is a first-come first-served service and clients are advised to arrive earlier than the session starting time.

Help for perpetrators of family violence:

No to Violence - Men's Referral Service: 1300 766 491

Online Live Chat: <https://www.ntv.org.au/get-help/live-chat/>

Help for victims of family violence:

Victim's Assistance Programs:

1300 362 739 (Merri Health – Northern and North Eastern suburbs)

03 9928 8741 (Monash Health – South Eastern suburbs)

03 9448 5517 (Co Health – Western suburbs)

Accident Details

Details	
Date	
Time	
Other party Name	
Other Party Number	
Other party insurance details	
Witness name	
Witness number	

Details	
Date	
Time	
Other party Name	
Other Party Number	
Other party insurance details	
Witness name	
Witness number	

Taxi Incidents

Date:	
Time:	
Route:	
Other useful information	
How was the customer acting?	
What actions did I take?	

Do I need to request CCTV footage?	No – Yes – do so in the next 72 hours