

**TAXI DRIVERS LICENSING BILL 2013**

*Council's Amendment — Consideration in Detail*

The following amendment made by the Council now considered —

Clause 42, page 38, after line 29 — To insert —

- (7) Where under this section a person is directed to give any information, answer any question or produce any document or record —
- (a) that person cannot refuse to comply with that direction on the ground that the information, answer, document or record may tend to incriminate the person or render the person liable to any penalty; but
  - (b) the information or answer given, or document or record produced, by the person is not admissible in evidence in any criminal proceedings against the person other than proceedings for perjury.

**MR D.C. NALDER:** I move —

That the amendment made by the Council be agreed to.

I thank members for their previous support of the Taxi Drivers Licensing Bill 2013. Before I outline the background to the amendment, I would like to acknowledge Hon Ken Travers because it came about as a result of discussions held between Mr Travers and the parliamentary secretary outside the chamber in a spirit of cooperation and bipartisanship.

Clause 42 confers powers on authorised officers for the purpose of enforcing the provisions of the bill. It contains powers that are abundantly common throughout the Western Australian statute book such as the power to require a relevant person to give information, to answer a question put to the person or to produce a document or record in the possession or under the control of the person. I understand that concern was expressed that such powers conferred in clause 42 might abrogate the common law right to silence of a relevant person. That is not the case. Case law has comprehensively established that evidence obtained under compulsion is not admissible in proceedings against the person who was so compelled unless those proceedings are proceedings for perjury because the relevant person provided false and misleading information to the authorised officer. It is similarly clear on the point that although legislation can be made that abrogates a person's right to silence, that legislation must expressly state that the right to silence is abrogated. The bill contains no such provision. The bill is not intended to do away with the right to silence of taxidrivers, plate holders, passengers or any other person to whom it might apply. Having said this, the common law right to silence can be codified in a statute that empowers an authorised officer to require a person to give information, to answer a question put to the person or to produce a document or record in the possession or under the control of the person.

Codification does not change a person's right at common law. It does, however, clearly articulate the existence of the protection, thereby providing comfort to a person to whom the law might apply. That is what the amendment does. It expressly states these two important things: first, that a person cannot refuse to comply with a requirement imposed by an authorised officer pursuant to clause 42 on the ground that information or an answer given or a document or record produced by the person might incriminate the person or make the person liable to a sanction; but, second, that the information or answer given or document or record produced by the person is not admissible in evidence in any criminal proceeding against the person other than proceedings for perjury.

Several members interjected.

**The SPEAKER:** Member for Warnbro, I call you to order for the third time. Member for Armadale, if you shout out again, you will be asked to leave the chamber.

**Mr D.C. NALDER:** I thank Hon Ken Travers for pointing out that the inclusion of such a provision, although it does not add anything to a person's existing common law rights, will provide the comfort that I mentioned to relevant players in the taxi industry. This is entirely appropriate. The amendment will not require any change to the manner in which the provisions of the bill are to be enforced by authorised officers.

**Ms R. SAFFIOTI:** Thanks for the opportunity to rise to discuss this issue. I note that it was actually the former Minister for Transport who introduced this bill to Parliament. I think it is an opportunity to ask the new Minister for Transport some particular questions about this subclause. I note that the former Minister for Transport talked about the taxi industry. I quote what the former Minister for Transport, the member for Vasse, said —

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That was acknowledged by every person who spoke. The other thing that was acknowledged by every person who spoke, which is the second out of three points, is that there are a few what I termed “bad apples”, but they were also called “rotten eggs”, and the member for South Perth introduced a new term “rogue”. Whatever they are called, those drivers who do not do the right thing represent a small percentage of the totality of drivers who provide a wonderful service. That small percentage has a disproportionate impact on the industry and on people’s appreciation and understanding of the industry.

They were very significant comments made by the member for Vasse. The issue of taxi licensing and taxi standards was raised by the former Minister for Transport on a number of occasions, particularly this issue of rogue drivers and bad apples. That was the justification behind including such strong and significant measures in this bill. I ask the minister what information he has about what percentage of drivers currently in the industry he would term “bad apples” or those bringing disgrace to the industry as a whole?

**MR D.C. NALDER:** I am not sure what relevance that has and what value I can add by speculating on what I believe to be rogue elements and the percentage within the taxi industry. I am not sure what the relevance is when I put this forward. I do not wish to add anything about what percentages or numbers are out there.

**Ms R. SAFFIOTI:** It is a pretty significant issue. This bill was introduced by the former Minister for Transport and was all about standards in the industry and the fact that some rogue drivers were embarrassing the industry as a whole. As a result, the government introduced very strong legislation, particularly on this issue about compelling drivers and passengers to provide information. The new Minister for Transport would obviously have received briefings about the taxi industry. Exactly how significant is the issue today; has it improved over the past number of years; and what impact are these bad apples or rotten eggs having on the industry as a whole?

**MR D.C. NALDER:** The government takes the taxi industry very seriously. I have requested briefings from the Department of Transport about the industry. I am comfortable that there are processes in place. I have confidence in the department to continue to work through this issue. The point of this legislation is to assist in continuing to provide a safer environment for all consumers who use the taxi industry. I have confidence in the department to work through this. That is not to say that further issues will not arise that we wish to tackle. We will tackle them as they come forward.

**Mr P. PAPALIA:** I am reading with incredulity the amendment that has come to us from the other place. It states —

- (7) Where under this section a person is directed to give any information, answer any question or produce any document or record —
  - (a) that person cannot refuse to comply with that direction on the ground that the information, answer, document or record may tend to incriminate the person or render the person liable to any penalty; but
  - (b) the information or answer given, or document or record produced, by the person is not admissible in evidence in any criminal proceedings against the person other than proceedings for perjury.

This government is absolutely devoid of any credibility with respect to people being compelled to give evidence that may incriminate them. What does the minister propose to do with the taxi industry to restore some sort of confidence in his government when it is applying these standards to it in such a hypocritical fashion? Why does the minister expect the taxi industry to respond in a positive manner? Why would the minister expect it to respect his implementation of this legislation when he cannot even get a member of his own government to comply with these basic standards that he is imposing on the taxi industry? What is the minister going to do to restore some sort of faith in this pathetic government and pathetic leadership demonstrated by his Premier and him as the minister responsible for this legislation? How on earth is the minister going to try to restore any sort of faith by the taxi industry in his government?

**Ms M.M. QUIRK:** In terms of the subclause, I raised it when the Taxi Drivers Licensing Bill 2013 was debated in this place previously. But in terms of the requirement to compel drivers to answer questions or provide information, I just ask the question: how much does the failure to answer questions or provide information hamper the authorities from investigating matters and what impediments does that put before the authorities in adequately enforcing standards in the industry?

**Dr A.D. BUTI:** I hope the minister will get up at some stage and respond to some of our questions. That was a very legitimate question.

The minister mentioned in his explanation and rationale for the subclause that has been presented to us by the other chamber that it does not remove any common law rights et cetera; I do not think that is 100 per cent true. It

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is quite surreal that today we should be debating this amendment about the compulsion to answer a question after we have had the fiasco of the minister's government today. I am not asking the minister to respond to the fiasco today because that is up to the Premier, but, really, the credibility of this government in compelling taxidrivers to answer questions is incredibly surreal and hypocritical when the minister formerly responsible for this bill is refusing to comply fully with his duties as a citizen and a public official.

Getting back to this subclause, as the minister knows, it is in addition to clause 42 as it stands. Clause 42 states that a person can be directed to give such information as required to answer a question put to the person et cetera. That question can put by an authorised officer, which is defined as a police officer or a person designated by the chief executive officer under clause 41(2). It does not have to be a police officer. It could be anyone; it could be any public servant. We now have a scenario of a government not condemning one of its own members for not fully cooperating with the police over a very important matter, but the minister is saying that under this amendment any public servant can compel a taxidriver to answer a question, even if it may incriminate that person. The addition of this subclause means that a person cannot refuse to comply with that direction on the ground that that information, answer, document or record may tend to incriminate the person or render the person liable to any penalty. The minister will say that that does not change in common law because there is a guarantee there that it cannot be admissible in evidence in any criminal proceeding except in a proceeding for perjury. As the minister would very well know, although the evidence provided under compulsion to any public servant as a result of the addition of this subclause cannot be admissible in any criminal proceeding, it provides intelligence to the person and they can seek that information in some other way. I will ask the minister because I would like him to get up on his feet and explain the legislation that he has put before the house. If I am the public servant who asks a question of a taxidriver, who cannot refuse to comply with my direction, and I obtain certain evidence, that evidence itself is not admissible in criminal proceedings. But now that I have the evidence, I can go to another party and obtain that evidence. Is that correct, minister? Is it correct that I can go to another party and obtain the same evidence and that evidence can be used in any criminal proceedings? Would the minister please respond? This is amazing.

**Mr W.J. JOHNSTON:** This is extraordinary. I know that this minister is new to his job, but he has obviously been told, "Don't engage because this is embarrassing to the government." There are only two reasons that the minister is not answering questions. Either he is completely and utterly incompetent and is receiving a salary under false pretences—that is one chance—or he has been told not to get involved in debate because he has been told how embarrassing this is. It is extraordinary, is it not, that the minister is refusing to answer questions on a provision that makes people answer questions? What an embarrassment! Is this government that incompetent?

The Minister for Transport has sitting so close to him the Minister for Environment and the Minister for Corrective Services, both of whom demonstrate incompetence in this chamber every time they rise to their feet. Is the Minister for Transport refusing to rise to his feet because he does not want to embarrass himself again like he did in question time today? "Oh my God, I can't answer this question. It's only question time. But don't expect me to know and answer. I'm only getting paid all this money as a minister. Don't expect me to know anything." Come on! What an embarrassing performance by a minister who people say is the future leader and who has been put on the front bench to replace the member for Cottesloe when the member for Cottesloe retires, because apparently the Liberal Party has gone off the member for Scarborough.

What I say is, "Premier, retire." We would love to see the honourable Minister for Transport elevated to the position of Premier because in question time we would get about 17 questions in. There would be 17 questions in question time because he would stand up and say, "I can't answer that. You didn't give me notice. I didn't know that you were going to ask me about something in my portfolio; and, oh my God, this is the first time I've ever brought legislation to the chamber. It's only got one clause, but don't expect me to answer a question. My God, there's one clause." Can the member for Fremantle imagine that; he had to get briefed? His answer in question time was, "I can't remember my brief." Mate, there is only one subclause. What is it—nine lines? Does the Minister for Transport not know anything? Why is the minister accepting a salary if he is not going to do his job? He has a job here. The Premier told us this. He came into this chamber and said that the only place that accountability occurs is in this chamber.

**Mr D.C. Nalder:** Is this your question on this amendment?

**Mr W.J. JOHNSTON:** The minister is happy to interject like a fool but he is not happy to do his job and get his pay by answering questions. Every question from this side of the chamber has been reasonable and fair, and this incompetent buffoon sits there like an idiot not capable of answering a simple question from the member for Armadale, who is a very learned person. Think about his qualifications: a Doctor of Laws from the University of Oxford; winner of the Sir John Johnson award because of his capacity as a lawyer; and a lecturer at Murdoch University in law. He is one of the most learned people and he asks the Minister for Transport a question.

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Several members interjected.

**The SPEAKER:** Member for Jandakot, I call you to order for the first time.

**Mr W.J. JOHNSTON:** The member for Armadale asked a very simple question—a question that I also was going to ask: if the person discloses information, is that capable of being used as intelligence by the police force? What was the minister's answer?

*Point of Order*

**Mr P. PAPALIA:** I am having trouble hearing the member for Cannington because the member for Carine is interjecting so loudly from the other side of the chamber. I have a bit of hearing damage and it is very difficult for me to hear.

**The SPEAKER:** Members! Member for Cannington! Member for Carine, I call you to order for the first time. Member for Warnbro, now you know what it is like for people to be unable to hear in this chamber!

*Debate Resumed*

**Mr W.J. JOHNSTON:** The minister was unable to answer that question. This is the minister who is paid to do the job! There are nine lines in this legislation, and he cannot answer a single question, which means either that he is incompetent or he has been told to shut up; there can be no other answer. He cannot tell me that he, as a first-term member of Parliament, is going to treat this chamber with such disrespect as to ignore its rules. That is an outrage! There are only two explanations, and one is that he has been told to shut up because everyone on his side knows how stupid and embarrassing this is, because of the behaviour of the drunken member for Vasse. That is the situation: he has come in here to continue the ongoing cover-up of the member for Vasse's bad behaviour, which is tolerated by the Premier.

**Ms S.F. McGURK:** Mr Speaker, I am interested in what the member for Cannington has to say.

**The SPEAKER:** Before the member for Cannington continues, there has been some quite intemperate language used by him; I will just remind him of that.

**Mr W.J. JOHNSTON:** I am not quite sure which intemperate word the Speaker is referring to.

**The SPEAKER:** Well, you think about it.

**Mr W.J. JOHNSTON:** The minister has some choices; one is to continue to disrespect the chamber and to behave in the way that he is behaving. We know why this is being done; it is because the Liberal Party has no standards. This morning I was listening to 6PR and heard a member of the Liberal Party say that the future of the member for Vasse was in the hands of the electors of Vasse. That is not true; the future of the member for Vasse is in the hands of the Liberal Party. The member for Vasse can only stand as a candidate at the next election if he is endorsed by the Liberal Party. What are the standards of the Liberal Party? How low has it fallen?

Several members interjected.

**The SPEAKER:** I am going to ask the member for Cannington to address this amendment.

**Mr W.J. JOHNSTON:** Indeed I am; I am addressing the fact that the minister is too scared to answer questions in this chamber. The opposition is posing perfectly reasonable questions, but there is such disrespect from the other side for the conventions of the Parliament. The government has brought this piece of legislation to us and it has a total of nine lines. Either the minister is stupid or he has been told not to talk; they are the only two —

**Mr J.H.D. Day** interjected.

**Mr W.J. JOHNSTON:** The Leader of the House just interjected and said that if I sat down there would be an answer. There have been five questions from this side of the chamber and the minister is refusing to answer them. The behaviour of this government is so disrespectful to the Parliament that it is an embarrassment to the people of this state; it is an embarrassment to the people who bring us to this place. The government defends a man who got drunk, drove a car and crashed it into several other cars and his own gate; that is what happened.

**Mr V.A. Catania:** How is this relevant?

**Mr W.J. JOHNSTON:** Why is this relevant? Because the government is providing a benefit to the member for Vasse that is not proposed to be provided to taxidriver. This is hypocrisy and a double standard. As the member for Armadale rightly pointed out, whilst the information provided under these circumstances is not directly capable of being used to incriminate the person, it is like the evidence provided to the Corruption and Crime Commission: the evidence itself is not admissible, but the information is used to provide the evidence to the court. That is the purpose of having these types of provisions and the only reason for doing this. When it cannot find the information, the government forces an answer like this. The Minister for Corrective Services, sitting

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next to the Minister for Transport, gave disgraceful speeches in support of his legislation about custodial officers, and now we are getting some limited protection courtesy of the hardworking member in the North Metropolitan Region, Hon Ken Travers. He was pilloried by the former Minister for Transport. Members will remember the things he used to say; they were not about his performance or ability, but his appearance. That is what he used to say about Hon Ken Travers. We all remember how the former Minister for Transport used to treat the former member for Forreestfield. What a disgrace! It was unacceptable behaviour, but it was acceptable to the Premier. According to the member for Hillarys, it was applauded by the Liberal Party's party room. That is the behaviour that members opposite accept. I could not trip over the Liberal Party's standards they are so low, and yet they expect better behaviour from taxidrivers! What does the minister do? He sits there with his smug countenance pretending to be intelligent. Either the minister is completely and utterly incapable of doing the job or he has been told not to speak. There are only two choices.

**Mr D.C. Nalder:** Is that the question?

**Mr W.J. JOHNSTON:** They are the two choices. The minister has had all the questions already and all the opportunities to answer, but he is too scared. We know that he gets told what to do. The minister now starts giggling away. He is incapable of standing up to the Premier, incapable of being responsible to this Parliament and incapable of doing any of his duties. What happens in question time? Oh, my God! It is a question without notice in question without notice time! The minister says, "Tomorrow, when questions without notice are asked, can you give me notice of the question?" What a ridiculous performance. The minister is embarrassing himself. Do not worry about your Liberal colleagues. Do yourself a favour—treat Parliament with respect and then we will treat you with respect.

**Mr D.C. NALDER:** We obviously have the bastion of intelligence sitting over the other side with the member for Cannington. The member for Cannington claimed there were only two reasons why I did not get up and respond. There is possibly a third. The third is that this amendment was proposed by one of the opposition's colleagues. This is an amendment that we agreed to with their colleague, and I acknowledge the efforts of their colleague in putting this forward. I am somewhat bemused by the debate that has gone on.

Several members interjected.

**The SPEAKER:** Members! Member for Albany!

**MR D.C. NALDER:** These amendments were suggested by Hon Ken Travers. The government agreed to them and I am putting them forward on that basis. From my perspective, if members opposite do not agree with them and they do not believe we need to do something in the taxi industry to make the taxi industry more accountable, then they can vote against this amendment.

**Dr A.D. Buti:** You should answer the question, though.

**MR D.C. NALDER:** Call a division and vote against it. It is your call.

*Adjournment of Debate*

**MR J.H.D. DAY (Kalamunda — Leader of the House)** [11.04 pm]: I move —

That the debate be adjourned.

*Division*

Question put and a division taken with the following result —

Ayes (28)

Mr P. Abetz	Mr M.J. Cowper	Mr C.D. Hatton	Dr M.D. Nahan
Mr F.A. Alban	Ms M.J. Davies	Mr A.P. Jacob	Mr D.C. Nalder
Mr C.J. Barnett	Mr J.H.D. Day	Mr S.K. L'Estrange	Mr J. Norberger
Mr I.C. Blayney	Ms W.M. Duncan	Mr R.S. Love	Mr D.T. Redman
Mr I.M. Britza	Mr J.M. Francis	Mr W.R. Marmion	Mr M.H. Taylor
Mr G.M. Castrilli	Mrs G.J. Godfrey	Mr P.T. Miles	Mr T.K. Waldron
Mr V.A. Catania	Mr B.J. Grylls	Mr N.W. Morton	Mr A. Krsticevic ( <i>Teller</i> )

**Extract from *Hansard***  
[ASSEMBLY — Tuesday, 6 May 2014]  
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Mr Dean Nalder; Ms Rita Saffioti; Mr Paul Papalia; Ms Margaret Quirk; Dr Tony Buti; Mr Bill Johnston;  
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Noes (14)

Ms L.L. Baker  
Dr A.D. Buti  
Mr W.J. Johnston  
Mr D.J. Kelly

Mr F.M. Logan  
Mr P. Papalia  
Ms M.M. Quirk  
Mrs M.H. Roberts

Ms R. Saffioti  
Mr C.J. Tallentire  
Mr P.C. Tinley  
Mr P.B. Watson

Mr B.S. Wyatt  
Ms S.F. McGurk (*Teller*)

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Pairs

Mr J.E. McGrath  
Ms E. Evangel  
Mr A.J. Simpson  
Mrs L.M. Harvey  
Mr T.R. Buswell  
Mr R.F. Johnson  
Dr K.D. Hames

Mr J.R. Quigley  
Mr M.P. Murray  
Ms J. Farrer  
Mr M. McGowan  
Ms J.M. Freeman  
Mr R.H. Cook  
Mr D.A. Templeman

Question thus passed.

Debate adjourned.