

## TAXI AMENDMENT BILL 2007

### *Committee*

The Chairman of Committees (Hon George Cash) in the chair; Hon Adele Farina (Parliamentary Secretary) in charge of the bill.

#### **Clause 1: Short title -**

**Hon SIMON O'BRIEN:** As I indicated during the second reading debate, the opposition will seek during the course of the committee stage to explore a number of items of concern. This is not a time to revisit the second reading debate, but I must admit I refrained from interjecting on the government's right of reply in favour of detailed analysis during the committee stage. That is what I ended up doing, but I must tell you, Mr Chairman, it was a pretty close run thing at one stage because the response given by the government to matters of concern raised by me and other members, including Hon Murray Criddle, in certain cases seemed to be to misunderstand the points we raised. As several of us raised the same points, I think the misunderstanding is on the government's part, and further parts of the government's response were contradictory, when setting out what the government is proposing to do by this bill or by its taxi policy, if it has one. I am battling to work out this government's policy for the taxi industry. One view shared universally by those in the taxi industry is that they do not seem to know what the government's policy is either. The bill contains some contradictions, which we will get to shortly.

Opposition members will faithfully allow clause 1 to be adopted so that the bill can be progressed, as we said we would, but I am blown if I will let it go by without pointing out that I will during the course of the committee stage be returning to those matters and finding out whether the government can explain, clause by clause, the things we asked it to explain during the course of the second reading debate, because so far the government has not. I am not satisfied with what we have heard about a number of matters responded to in the speech read in reply by the parliamentary secretary.

I will leave the detail to the clauses as they arise. I am in a good mood, so I will not go into any greater detail now about clause 1, beyond indicating that it is a long way to the end of this bill at the rate we are going and with the government's attitude.

**The CHAIRMAN:** Your mood might deteriorate.

**Hon SIMON O'BRIEN:** It is touch and go, Mr Chairman. I am feeling a bit niggly.

**Hon Shelley Archer:** A bit?

**Hon SIMON O'BRIEN:** Just a bit by my standards. When Hon Shelley Archer has been here a bit longer, she will know that there are stages of being niggly. At the moment it is at a pretty low level. It moved up a notch with the way that the minister responsible for this bill treated this house during question time and the contempt that is obviously held for this Parliament day after day after day, as we fail to get answers to questions -

**Hon Adele Farina:** You do get answers to questions.

**Hon SIMON O'BRIEN:** Day after day we are served up with notes saying that the government cannot be bothered to provide an answer to the question on that day. The goodwill that we have towards allowing this bill to progress is there, but it has not got much enthusiasm behind it. I indicate that the Liberal opposition will support the keeping of clause 1 in this bill that the government has finally decided to bring on for debate.

**Hon PAUL LLEWELLYN:** I give some notice that because quite a number of supplementary notice papers have been produced, and a fair amount of chopping and changing has occurred, I would like to see us go through the committee stage very thoroughly so that we can follow the logic of the changes and the amendments to the principal act. I would like to deal with one clause at a time, get some fairly clear explanations and move on.

#### **Clause put and passed.**

#### **Clause 2: Commencement -**

**Hon SIMON O'BRIEN:** I note that the commencement dates are twofold: first, for clauses 1 and 2 on the day of royal assent and for the rest of the act on the day after assent day. Is this normal, and what is the reason for there being two different commencement dates?

**Hon ADELE FARINA:** My advice is that this is a standard form of words used by Parliamentary Counsel. I cannot provide any further explanation than that.

**Hon SIMON O'BRIEN:** I have been in this place for many years and I have looked at a lot of legislation. This strikes me as something slightly unusual. It would normally be the case that unless there is a requirement for different operational provisions to have varying start dates, an act would commence on the day it would receive

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royal assent, not the day after. I am surprised that this is the case. Perhaps the parliamentary secretary can tell us from where her advice comes, because, as I say, this is news to me.

**Hon ADELE FARINA:** As I stated earlier, the advice I have received from my advisers is as previously stated. Parliamentary Counsel is not present today to provide advice, so I cannot elaborate on the explanation for the provision being written in the way it is.

**Hon SIMON O'BRIEN:** In my remarks on clause 1 I made reference to asking questions and not getting answers. I was interjected on by the parliamentary secretary at that point who said, "You do get answers."

**Hon Adele Farina:** In question time.

**Hon SIMON O'BRIEN:** I think the point has now made that we are not getting answers.

**Clause put and passed.**

**Clause 3: The Act amended -**

**Hon SIMON O'BRIEN:** I want to refer to something that was raised during the second reading debate. The question arises of why there is a need to make this particular change. I understand that it relates to other definitions in the bill that relate to the percentages of plates to be issued in different classes. I cannot see why this change has been made or what material benefit there is to doing this. I do not know whether the government wants to address that question now or whether it would prefer to wait until we get to proposed section 16, which puts the definition into practice in its proposed context. As I said, we will not oppose the provision but I wanted to get on the record a detailed discussion of why we are now changing this definition and what the benefit might be.

**The CHAIRMAN:** Are we dealing with clause 3?

**Hon SIMON O'BRIEN:** We are. The specific amendment we are dealing with inserts the new definition of conventional taxi plates -

**The CHAIRMAN:** I called for debate on clause 3. You are dealing with clause 4, which deals with section 3 of the act. Clause 3 is a reference to the fact that the amendments in this bill are to the Taxi Act.

**Hon SIMON O'BRIEN:** I beg your pardon, Mr Chairman. I thought we had already done that.

**The CHAIRMAN:** Members want me to take it slowly and deal with the bill clause by clause. We are dealing with clause 3. The question is that clause 3 stand as printed.

**Clause put and passed.**

**Clause 4: Section 3 amended -**

**Hon SIMON O'BRIEN:** Without any sense of *deja vu*, this new definition of conventional taxi plates is wrapped up in clause 5, which then in turn amends section 16 of the principal act by deleting the word "taxi" and then using this new definition "conventional taxi". There are other ramifications beyond that. What is the specific benefit of doing that? I heard the government response in the second reading debate, which asserted that this was a better way to do it. What is the effect of this change? When we can work out the effect, we can examine what the potential benefit might be.

**Hon ADELE FARINA:** The amendment will insert a general definition that identifies taxi plates that are used in particular circumstances. The circumstances are those determined by particular sets of operating conditions imposed under section 21(1) of the act upon a number of taxi operators. Specifically, conventional taxi plates are to be plates that are not used in operations that are restricted as to time or area and are not used on multipurpose taxis. The defined term is to be used in the proposed recasting of section 16(3) of the act and in proposed new sections 30I(3), (4) and (5).

**Hon SIMON O'BRIEN:** In practical terms, what difference will that make? It comes down to numbers and percentages. The difference would seem to be relatively minor, unless the government has some other policy change in mind.

**Hon ADELE FARINA:** I am sorry to disappoint Hon Simon O'Brien. There is no hidden agenda here. The definition has the effect that is intended by the description in the definition.

**Hon SIMON O'BRIEN:** I wanted to know whether there was an agenda here. I would never presume to look for a hidden agenda in what the government is doing. It appears that the answer is that that is what we are going to do. Perhaps Mr Burke sent a letter to the minister that the minister is following. I do not know. That is what has happened in the past with the taxi industry. I was just wondering whether there may be some motive that could be shared with us, but apparently not - it is all very aboveboard, and I do not know why it was not done years ago.

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**Hon MURRAY CRIDDLE:** I want to pose a question about subclause 4(2), the end of which states “or 30I(2)(b)”, which is on page 5 of the bill and which we have not yet inserted. Do we have to wait to put that section in before we can include this reference in the bill?

**The CHAIRMAN:** Yes. Procedurally, Hon Murray Criddle raises an interesting point. However, it is not unusual for us to put the definition in its alphabetical order in the first instance. For example, if an issue arose and that was not carried, perhaps we would have to look at the next proposed amendment. The manner in which we are handling it is certainly the way it has been done for a very long period.

**Clause put and passed.**

**The CHAIRMAN:** I say to Hon Murray Criddle that it is not for the Chair to presume anything, but the Chair does get an understanding of whether something will potentially not be agreed to further down the track. The procedure is as we have always done.

**Clause 5: Section 16 amended -**

**Hon MURRAY CRIDDLE:** I move -

Page 3, line 12 - To delete “40%” and insert instead -

30%

In her second reading speech, the parliamentary secretary outlined it very well when she said that we are looking at 40 per cent of conventional plates but the multipurpose taxi plates and the peak-period plates - I think they are now called restricted-hours plates - will be unrestricted so they will fall outside the percentage that we have outlined in this clause. My concern with moving that 40 per cent be changed to 30 per cent was to protect the value of the plates or the owners in the longer term. Immediately we remove unlimited MPT and unlimited peak-period plates, the percentage itself is affected and so the impact will be greater. I understand that later on we will move peak-period plates into conventional plates as well, which adds a further 70 plates. That will allow for about 30 taxis to bring the whole thing back into balance if we are talking of our current numbers. I want an assurance from the parliamentary secretary that these people who have investments in their taxi plates, which is to do with their superannuation and so forth, will be protected in the longer term. The parliamentary secretary also said that a decision would be made as to the number of lease plates that will be released. How will that decision be reached and who will make that decision about the investment of these people over the longer term? I would like an outline of that and an explanation.

**The CHAIRMAN:** We will leave that until after we return, recognising that if Hon Simon O'Brien wants to move his amendment to delete “40%” and insert instead “35%”, the procedure will be that he will attempt to amend Hon Murray Criddle's amendment because once that amendment is settled, the figure is agreed to.

*Sitting suspended from 6.00 to 7.30 pm*

**Hon ADELE FARINA:** Just before the dinner break, Hon Murray Criddle was outlining the points he would like answered on this amendment. I would appreciate it if he could briefly recap the points to ensure that I cover them all.

**Hon MURRAY CRIDDLE:** The issue I raised earlier was that the 40 per cent requirement is for conventional taxis. That would leave the multipurpose taxis and peak-period taxis unlimited, and able to be extended to whatever amount of time was required by the minister. If that happens, there will be an imbalance. I understand also that further on in the bill, provision is made for the short-period taxis to also become conventional taxis, and that means there will be a larger number of conventional taxi operators. That will raise the opportunity for another 30 leased taxis to be made available as one option. A certain percentage is also currently available to allow further leased taxis to be put on to service the community. If more leased taxis are allowed to operate, that will cause the erosion of the plate value, and that concerns me.

**Hon ADELE FARINA:** The government's position is that 40 per cent will provide the government with the flexibility to meet increasing consumer demand for taxi services over the next two years. Over the past three years, the government has provided an additional 300 taxi plates, and they have all been taken up by the current market. In fact, many taxi customers will argue that demand still outstrips supply, even with the additional 300 plates that have been put on by the government over the past three years. The government is concerned that if we do not increase the relative percentage to 40 per cent, we will run into the same problem of limiting the government's capacity to ensure that we provide an efficient taxi service to meet consumer demand. It is now at an unprecedented high level in not only peak times, but also off-peak times. The conventional taxis will enable us to meet that demand during peak and off-peak times. The restricted taxis will enable us to provide additional services to meet demand only during restricted hours or in restricted areas, depending on the nature of the restriction. If the figure is at 35 per cent, it will provide the government with capacity for an additional 10 per cent of conventional leased taxis, and the government is concerned that that would not be sufficient to meet the

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consumer demand anticipated over the next couple of years. The length of time that it takes to progress legislative amendments - our experience to date with progressing an amendment to the regulation is that it took six months to finalise - does not provide for the government to be as responsive to changes in consumer demand as the government needs to be to provide an efficient taxi service. The government also appreciates the taxi plate owners' concern that any additional increase in leased taxi plates may impact on the value of their plates. However, the evidence that has been presented to me by the department indicates that the plate prices have increased by 10 per cent in the past three and a half years. That concern has not translated into reality. I appreciate the concern; the government recognises that concern, and the minister has indicated repeatedly that any assessment of the release of additional leased plates will be done on the basis of industry performance. We will ensure that we try to maintain the balance between meeting consumer demand while having an eye not to undermine the value of the plates that are owned.

**Hon MURRAY CRIDDLE:** I thank the parliamentary secretary for that explanation. I understand all that she said. However, I also want to know who makes the decision on the number of lease plates that will be put on the road and when they will be released. What sort of analysis has been done to back up the claim that the price of plates will not fall but will instead appreciate? The parliamentary secretary said that there has been a 10 per cent increase in the price of plates over the past three years, which is an interesting statement. A few years ago, the price of taxi plates was way over \$200 000 anyway. In fact, when I was minister, it was about \$230 000 a plate. I understand that the current value, which I was just given, is just over \$200 000. I wonder about those figures and also about the analysis that indicates that the price of the plates will go up.

**Hon ADELE FARINA:** The decision on the release of additional lease plates will be made by the minister. In making that assessment, the minister will consider three main factors - being consumer demand, taxi industry performance and taxi plate price. The figure that I have been provided with on the increase in the price of conventional taxi plates over the past three years was calculated using the average for each year. I have a table with me that indicates the movement in the price of conventional taxi plates over the past 10 years. I am happy to table that table, with the agreement of the Deputy Chairman. I am happy for the member to look at that.

**Hon Murray Criddle:** Does that figure go up and down and up again?

**Hon ADELE FARINA:** This information has been provided by the department, so I cannot personally verify it. I did not put the data together. The graph shows a slight decline between 1998 and 2001 and then an increase from 2001 to 2006. I seek leave to table the document.

Leave granted. [See paper 3093.]

**Hon PAUL LLEWELLYN:** I understand that it is proposed that the definition of "relevant percentage" in the principal act be amended from the current figure of 20 per cent. The government has proposed in the bill a figure of 40 per cent and Hon Murray Criddle's amendment proposes a figure of 30 per cent. I understand that the figure currently stands at 35 per cent, as provided under the relevant regulations. That figure is somewhat out of synch with the act. However, the act contains a power to prescribe another percentage by way of regulation, and that has been done. I cannot see why we would want to change the definition in the act to provide a figure of 30 per cent when the regulations already provide a figure of 35 per cent. However, the Greens (WA) support the proposal to amend the figure to 35 per cent, as proposed by Hon Simon O'Brien in a further amendment on the supplementary notice paper. We also support maintaining within that subsection the power to prescribe another percentage by way of regulation. It is a compromise position, which says that the government ought to be able to maintain some capacity to respond in a timely way to changes in the marketplace.

I noticed that the histogram shows that the price of taxi plates decreased over some time and is now on the rise. That no doubt relates directly to the activity in the economy. As the business of taxis increases, so the value of the taxi plates will increase, in spite of the fact that the government has been letting new plates onto the market. All things being equal, if no new plates had come onto the market, we would have expected the price of taxi plates to have gone off the Richter scale. That has not occurred because there has been a systematic release of new plates over time that has kept pace with the market. I assume that that was the logic behind the release of the plates.

The debate on this bill has been somewhat fractured. We started talking about this bill months ago and there have been several issues of the supplementary notice paper. Believe it or not, this is a quite complicated industry to regulate. That is why these issues have arisen. The Greens will not support the amendment moved by Hon Murray Criddle, primarily because the regulations have already overtaken that circumstance. However, we will support the change to 35 per cent while retaining the capacity to set that figure at a higher level by regulation.

I mentioned in my contribution to the second reading debate that this bill proposes a significant change in the way in which we organise the taxi industry. For instance, this new definition is required because, under the current act and regulations, up to 35 per cent of all taxi plates can be government plates, and this figure can be

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further increased by regulation. However, I understand that the government is calling for up to 40 per cent of all conventional plates to be government plates, and this figure could also be further increased by regulation. That is a significant change in the structure of the business. I am a young member of this Parliament in many senses; in fact, in almost every sense.

**Hon Simon O'Brien:** You are new; let's put it that way.

**Hon PAUL LLEWELLYN:** I am only two-years-old.

**Hon Graham Giffard:** You're green.

**Hon PAUL LLEWELLYN:** I am very green. Not having had the privilege of hearing previous debates or being a part of previous committee hearings on the taxi industry, I am trying to make sense of this bill. The bill proposes a fundamental structural change in the way in which the industry will be organised. The Greens accept the logic of that. However, we also accept that we need to make this change with our eyes open.

**Hon SIMON O'BRIEN:** I understand that the question before the chamber is that the words proposed to be deleted be deleted. By that we mean the figure of 40 per cent, which presumably will be replaced by something else. Hon Murray Criddle has moved that that something else be 30 per cent. As you have already observed, Mr Deputy Chairman (Hon Ray Halligan), I also have an amendment on the supplementary notice paper, which I think procedurally will have to be an amendment to the amendment. We have to get a whole lot of things in place before we can attack, to use the term not unkindly, the principal clause in the bill. I will move along those lines in just a moment. I wanted to refrain from doing that for a moment so that we could hear the argument for Hon Murray Criddle's proposal to make the figure 30 per cent. I think that has now been done. I will now offer some observations on behalf of the opposition. Firstly, the value of plates was discussed and a graph was tabled by the parliamentary secretary. It has been pointed out that there has been an increase in the value of plates even under the regime that allowed a significant number of government-owned or leased plates to come into the marketplace. This is not a question that we have to decide. Given that others have raised the point for discussion, I put to members that they need to consider what else has happened in the economy during this time. There has been a colossal capital appreciation in so many things; for example, the price of houses and land and a range of other tradeable goods and commodities. Taxi plates are tradeable commodities. I beg members to consider the possibility that, if it were not for the government's policy of issuing cheaper lease plates, the value of conventional owner plates would have increased substantially more than it has. That is a highly supportable proposition. It is convenient for the government to say that there has not been a depression in the value of these plates, but in real terms there probably has been. I do not wish to labour the point; I have made the point, and members here, particularly those who have been actively involved in the debate, will digest it and agree or not as they see fit. The point needs to be made as a counterpoint to the proposition put a little while ago.

To return specifically to these figures, it is important that we consider the other proposals contained in clause 5 that affect section 16 of the act. Another Taxi Amendment Bill went through this place in 2003. There was considerable debate about that point, and I suspect we are about to revisit that debate. If members wish, I can refer them to the entire debate of Hon Peter Foss. I have it here, and if members want me to read into the record I can do so - all six inches of it. However, I think we will be referring to that debate a little more briefly this time, since it has been had once, and seeing that Hon Paul Llewellyn and his colleague, who occupy the crossbench, have indicated support for the thrust of what the government is doing. I am a little dismayed by that, but I know that Hon Paul Llewellyn will listen attentively while I put to him the consequences of going along with that.

Firstly, in relation to the proposal to insert a new percentage as a relevant percentage, I make the following observations. Back in 2003, this relevant percentage concept was incorporated into the act. At that time it was set at 20 per cent; that is, 20 per cent of taxi plates could be leased plates. I am paraphrasing a bit here to try to put it into plain English, so that those following the debate will know exactly what we are talking about. The Taxi Council - a representative group of the taxi industry, although by no means the only representative group at the time - was prominent, as I understand it, in discussions with the government about striking that figure. Generally the figure of 20 per cent was agreed as the start point, and in 2003 that figure was incorporated into the Taxi Act 1994. That 20 per cent was intended to be a proportion of the total number of taxi plates. However, another provision was inserted, and this is the one that was hotly debated by Hon Peter Foss. You, Mr Deputy Chairman (Hon Ray Halligan), I, Hon Murray Criddle and others were here to witness that debate. The government, through this provision, had a choice of the relevant percentage being either 20 per cent or such other percentage as was determined. I will read the precise definition as it stands at this day -

“relevant percentage” means -

- (a) 20%; or
- (b) if another percentage is prescribed by regulation, that other percentage.

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That was what came in a few years ago, and that is the law as it is now. To some people's minds, there is an absurdity in that provision. On the one hand, there is a clear figure of 20 per cent, and then in the next gasp, it states that the government, by regulation, can put in some other percentage. What is the point? The argument in 2003, as it will be now, if I have anything to do with it, was that it really should be one or the other. Either the Parliament legislates the relevant percentage through an act, or that power is delegated as a form of subsidiary legislation to the executive government, through the Governor, to make regulations stating what the relevant percentage will be. As you know very well, Mr Deputy Chairman, such an instrument, being subsidiary legislation, is subject to disallowance by either house of the Parliament, if either house is of a mind to do so. In recognition of that, Hon Peter Foss successfully moved for an additional provision to be inserted in the act at that time. I will come back to that in just a moment. At that time, Hon Peter Foss offered the view, which I agreed with then and which I still hold now, that it is more than just an anomaly and a curiosity; it is an absurdity to have the Parliament prescribe a figure in an act, and then in the same paragraph grant a power for the government to make it any figure it likes. The additional provision Hon Peter Foss caused to be inserted was section 16(11), which states -

A regulation prescribing the relevant percentage shall not come into effect until such time as the regulation is no longer capable of being disallowed pursuant to section 42 of the *Interpretation Act 1984*.

That made a lot of sense, because otherwise the situation could have arisen in which Parliament has set a figure for the relevant percentage at 20 per cent, the government comes along and regulates by notice in the *Government Gazette* for 25 or 30 per cent and, as soon as gazettal happens, that regulation comes into force and the government decides that it can begin issuing lease plates up to the level of 25 or 30 per cent, or whatever percentage has been regulated. Subsequently, this chamber, if it had a desire to disallow that regulation, would be confronted with the hopeless position that the figure in the real world was up to 29 or 30 per cent, and this chamber wanted to disallow the regulations so that the figure remained at 20 per cent. Clearly that is an untenable position. The chamber's hands would be tied; it would not be possible to simply wipe out those leases and the small businesses being run by those extra taxi drivers. Hon Peter Foss caused subsection (11) to be inserted so that the regulation for another higher figure would not come into effect until the time for disallowance had passed. That was the only sane thing about the whole exercise. I do not know whether Hon Murray Criddle would agree.

**Hon Murray Criddle:** I agree that it was very sane.

**Hon SIMON O'BRIEN:** I thank the member very much.

**Hon Paul Llewellyn:** The sanest thing I have heard all week.

**Hon SIMON O'BRIEN:** I will try not to make too much of a habit of it!

That is the background, and it brings us to where we are today. Now Hon Murray Criddle has moved, for all the reasons he has outlined - they are good reasons - to delete the proposed 40 per cent and make it 30 per cent. Hon Paul Llewellyn has indicated that he and his Greens (WA) colleague will not support that move. The question now is to delete the figure of 40 per cent, but we all know that we have to think ahead and take all these things together. I think I am correct in my assumption that the Greens (WA) will not support the amendment for the reasons that Hon Paul Llewellyn gave.

This brings us to an interesting time in the history of the chamber. My good friend Hon Murray Criddle is about to attain the distinction of being only the second person I know of to be defeated 32 votes to one. The only other occasion that I know of in living memory when this happened was when Hon Bruce Donaldson proposed that the afternoon tea break on Thursdays be done away with. I understand that he was left like a shag on a rock. I hope he will not interject to correct me, because it is such a good story that I would hate any unnecessary facts to get in its way!

**Hon Bruce Donaldson:** It was 33-1 if you want to know the facts, and I was the one.

**Hon SIMON O'BRIEN:** Someone must have voted twice, because the Constitution Act has not yet been amended to give the President a vote. Unless someone voted twice, it probably would have been 32-1, but it does not matter.

What I am saying is that the Liberal Party will not support the proposal to change the figure to 30 per cent. We thought long and hard about this proposal and we also thought of the lesson that Hon Peter Foss gave us about the particular article of law that I have been reminding the chamber about. Those words are contained in section 16(10) and (11) of the act. At this stage we are also contemplating deleting the definition of "taxi" and inserting a new definition of "conventional taxi" in the relevant place in the bill. We have already passed a provision to replace the word "taxi" with the words "conventional taxi" in some material areas, and that introduces a new

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definition of "conventional taxi". That also works in with the section of the act that we are dealing with now, because the relevant percentage of leased plates will now be a relevant percentage of the total number of conventional taxi plates, as will be prescribed by law. There has been a bit of a change there. That is why I was trying earlier to get a feel for the exact numbers that will apply and how much of a change that will be, because there are a few things that will attend upon it.

First, later in the bill there is a proposal, for example, to offer 70 peak-period plate holders the opportunity to convert their plates to conventional plates. I have already indicated that the opposition will support the government in that. If the bill is progressed by the government, that provision will pass. Of course, the injection of however many of those 70 peak plates to the number of conventional plates will change the equation a bit. In any case, there is the reality of the current law. In 2003, 20 per cent was the relevant percentage and that 20 per cent is prescribed in the act. It is still in the act. It is another absurdity, because anyone reading the act would then have to read the regulations. In due course, the government regulated for the relevant percentage to be 30 per cent, not the 20 per cent that is in the act. There is a big difference between 30 per cent and 20 per cent. More recently, the government has again regulated to change the relevant percentage. As Hon Paul Llewellyn has just told us, the relevant percentage is 35 per cent. That was contained in *Government Gazette* 231 published on Friday, 22 December 2006, with which I am sure you are familiar, Mr Deputy Chairman (Hon Ray Halligan). At page 5823 of the *Government Gazette* the regulation was amended to delete 30 per cent and insert instead 35 per cent. It is subsidiary legislation, but the time for disallowance has well and truly passed. That law says 35 per cent. If we were to do nothing with this relevant percentage and left it at 20 per cent, do members know what the relevant percentage would be? It would be 35 per cent. We have changed the definition of "taxi" to "conventional taxi", but that does not make any difference either; the law still says 35 per cent. For those reasons, and with the greatest respect to my colleague, I submit that if we were to make it 30 per cent or such other amount as may be prescribed by regulation, it would be a very hollow gesture when the regulations provide that it is 35 per cent. That is valid today, it was valid yesterday and it will be valid tomorrow. The Taxi Council said to me, as I am sure it did to other members, that it would like this figure to be stopped at 30 per cent because the total number of taxis is between 27 per cent and 29 per cent, depending on to whom we talk. The Taxi Council would like it to be 30 per cent, but in all good conscience the opposition could not support that. We could have said to the Taxi Council, "No worries; we'll have a go at that", but it would have been a hollow gesture. Even if we succeeded, it would be a hollow gesture because there is already a regulation that provides that it be 35 per cent. It would be a waste of time. In that sense, we do not believe that 30 per cent is the right figure. However, I have proposed that it be 35 per cent. That respects the status quo, and it does so in two ways. First, I have already pointed out by reference to the regulations the fact that a regulated relevant percentage of 35 per cent is available to the government now. It is not a realistic option to suddenly restrict that to less than 35 per cent. I mentioned earlier the effect of disallowing something after an industry has built up to a new figure and how absurd that would be. However, I understand that under the current arrangements, if my memory serves me correctly from the last briefing I had with the department, which was not that recently, the figure is probably getting up around the 30 per cent mark.

**Hon Adele Farina:** It is 34.8 per cent.

**Hon SIMON O'BRIEN:** It is now 34.8 per cent. The government has been issuing a lot of -

**Hon Adele Farina:** That is the advice that I have. It is of all plates.

**Hon SIMON O'BRIEN:** That is a change.

**Hon Adele Farina:** And 25 per cent of conventional plates.

**Hon SIMON O'BRIEN:** Under the current definition, it is 34.5 per cent -

**Hon Adele Farina:** I have been advised that the figure is 34.8 per cent.

**Hon SIMON O'BRIEN:** It is very close to 35 per cent. However, we will now see a change in the definition to conventional taxi plates. What will be the effect on the figure if we use the definition of "conventional taxi"?

**Hon Adele Farina:** My advice is that it is 25 per cent of conventional plates that have been leased.

**Hon SIMON O'BRIEN:** That is a dramatic difference. That is what I was getting at earlier.

**Hon Murray Criddle** interjected.

**Hon SIMON O'BRIEN:** It means that the figure of 35 per cent still leaves room for the government to do that which it says it will do. It also recognises the reality that it has already been gazetted by regulation at 35 per cent. The government is not planning to change that - not downwards, anyway.

**Hon Murray Criddle:** It is 35 per cent if you have all the taxis involved. It is 25 per cent if you have conventional taxis, which makes the argument of 30 per cent a reasonable one.

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**Hon SIMON O'BRIEN:** I appreciate that. However, we must also factor in that this bill contemplates creating, in effect, up to 70 new conventional plates.

**Hon Murray Criddle:** I understand that. I said that in my speech.

**Hon SIMON O'BRIEN:** Yes. Our position is that 35 per cent is a more realistic figure, although others may disagree. However, there is another proviso that we must understand. I am also proposing to move an amendment, Hon Murray Criddle, that addresses specifically the key difference between our positions and will move them closer together. I am proposing to delete section 16(10)(b) of the Taxi Act. That is the power of the government to prescribe by regulation another percentage. That is why we have chosen the figure of 35 per cent. It is consistent with the current regulation, it provides plenty of room for the government to issue more plates, and it does away with the anomaly that we vociferously but unsuccessfully opposed back in 2003. We could have gotten rid of the relevant percentage itself and simply left a regulation-making power available to the government of the day. For the life of me, I cannot understand why the government has not simply gotten rid of the fixed percentage and kept the power to prescribe by regulation some other relevant percentage. However, it has not gone down that path. As I said, I am at a loss to understand why it does not do that. There are ways the government can issue plates to get more taxis on the road anyway. From the parliamentary secretary's comments, it now seems clear to me that the government does have a policy, which is to not issue plates that can be bought. The government is against the private ownership of plates. If that is the government's policy, that is its policy. It seems that that is the way the government is moving.

**Hon MURRAY CRIDDLE:** I seek the leave of the house to withdraw my amendment. That would allow the debate to be channelled in another direction.

**Amendment, by leave, withdrawn.**

**Hon SIMON O'BRIEN:** I move -

Page 3, line 12 - To delete "40%" and insert instead -

35%

I have already discussed this at length. The only comment I have to make is that I am now devastated that Hon Bruce Donaldson stands alone as the only member to be defeated 32-1 on the floor of the house, which is a fate that will not befall Hon Murray Criddle today!

**Hon MURRAY CRIDDLE:** I withdrew my amendment because it was obvious that I did not have the numbers for it to succeed. Having listened to Hon Simon O'Brien for quite some time, I came to the conclusion that my amendment would not pass. Hon Simon O'Brien mentioned that he would seek to amend section 16(10)(b) of the principal act, which would remove the opportunity for regulations to be put forward. He was talking about 35 per cent. My understanding of the current situation is that the lease plates will represent 25 per cent of the current conventional plates. Given that we are going to move the peak-period plates into this conventional area, what difference would that make to the percentage as it stands currently?

**Hon ADELE FARINA:** I thank the chamber for its indulgence as we worked out the figure. In response to Hon Murray Criddle, the conversion of the 70 leased peak-period plates to full convention plates would result in the figure of the leased conventional plates being reduced from 25 per cent to 23.9 per cent. The government strongly opposes the reduction of the relevant percentage from 40 per cent to 35 per cent. On numerous occasions members have raised in this place their constituents' concerns about their inability to get a taxi when they require one. A lot of media coverage on this issue has compared Western Australian figures to eastern state figures. Despite the fact that we have brought on a significant number of taxi plates over the past three years, the reality is that that measure has not met the unprecedented demand in the market. A reduction in the proposed relevant percentage from 40 per cent to 35 per cent will provide a growth of between 10 per cent and 12 per cent. The government predicts that the growth in demand over the next two years will be much greater than that. The member wants to achieve a result that will require us to come back to this place well before the two years is up if we want to meet the demand in the market. If we go by a way of a change in the regulations, as I indicated in my reply to the second reading debate, the government's last amendment took six months to finalise. There was a six-month lag time before the government responded to the peak in consumer demand. Members will appreciate that they have frequently stated in this place that the government is not responding quickly and adequately to meet consumer demand and that it is unacceptable, particularly during peak periods, for consumers to be waiting for a taxi for a number of hours. They have also highlighted the problems that such delays cause, particularly on Friday and Saturday nights.

I urge members to give careful consideration to the representations that they have made to this Parliament about the lack of availability of taxis and the need for the government to respond quickly during peak periods. The current predictions indicate that there will be a greater than 10 per cent growth in the next two years. If we set the relevant percentage at 35 per cent, we will need to come back to this place well before the two-year period is



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up to have this discussion again. I do not think that that is an efficient use of our time. It will not provide a good response and a good position to the community that we are supposed to represent in terms of enabling the government to provide an efficient taxi service to consumers.

**Hon SIMON O'BRIEN:** Members are supportive of the notion that sufficient taxis be available to service the public. I do not think that that is a matter of contention. What I am having difficulty with is what should be a comparatively simple mathematical exercise. The information provided to me most recently is dated 8 March 2007; therefore, it is a few months old. The numbers of plates can change on almost a daily basis as they are traded and returned. Perhaps after seeking advice from her advisers the parliamentary secretary will concur with my understanding of the number of plates in circulation as at 8 March 2007. At that stage, there were a total of 1 100 conventional plates, 923 conventional plates and 177 conventional leased plates. That adds up to 1 100 plates.

**Hon Murray Criddle** interjected.

**Hon SIMON O'BRIEN:** I am trying to see whether we can get it right. The parliamentary secretary might want to take some time to respond. To summarise the advice I received on 8 March, there were a total of 1 100 conventional taxi plates and a total of 299 other plates, giving a grand total of 1 399 taxi plates of all types. The others were 22 restricted area taxis, 194 peak-period taxis of various categories and 83 multipurpose taxis of several categories. How have those figures changed?

**Hon ADELE FARINA:** I can only go by the figures that I have been provided with. As I understand it, the total number of conventional plates owned and leased as at 7 August 2007 was 1 235. Of those, 923 were owned conventional plates and 312 were leased approved plates.

**Hon Simon O'Brien:** That is 1 235.

**Hon ADELE FARINA:** Yes. In terms of peak-period plates, there are 253 total owned and leased plates, of which 86 are owned peak-period plates and 167 are leased peak-period plates approved. There are 28 total owned and leased area-restricted plates. Of those, 15 are owned plates and 13 are leased area-restricted approved plates. In relation to the MPT figures, there are 98 total plates owned and leased, of which 29 are owned plates and 69 are leased approved plates. I hope that answers the member's question.

**Hon Paul Llewellyn:** Did the parliamentary secretary table that document?

**Hon Simon O'Brien:** Could a copy be made available?

**The DEPUTY CHAIRMAN (Hon Ray Halligan):** Members are making it a little difficult for Hansard.

**Hon ADELE FARINA:** A number of copies of this document could be made by the attendant to be distributed around the chamber so members may refer to it.

**HON SIMON O'BRIEN:** I thank the parliamentary secretary for providing those updated figures.

I followed the figures as she read them out. The difference is that since March the numbers of leased plates have gone up. The numbers of owned plates have not increased because, as I said earlier, it is apparent that this government has a policy against the private ownership of taxi plates. It is as simple as that. That is reflected in these figures. I read out the numbers. For example, just to remind members, there were 1 100 total - that is, 923 owned and 177 leased or government owned - in the category of conventional plates back in March 2007. Now there are 1 235 plates in total with 923 owned, which is exactly the same figure as before, but with 312 leased. This government is pursuing its policy of issuing lease plates but not issuing owned plates.

**HON ADELE FARINA:** I apologise, but I intervene in order to aid discussion of this matter. The difference between the member's figures and our figures is that the figures that I present are the approved lease plates, and the figures that the member was referring to were the actual lease plates on the road at that date. That may explain the difference in the figures.

**HON SIMON O'BRIEN:** The parliamentary secretary's figures are dated August; mine were from March, when I was briefed, so it is probably a bit of both. I thank the parliamentary secretary for doing that, but the point has been made. Now that we have some figures we can work with, those figures will tell us the actual percentage. We can see how it has changed, and it has changed because of the issuing of lots and lots of lease plates. The government claims it would be stymied unless it has the power to continue issuing lots of lease plates, but the government could also issue conventional plates. I know of nothing that stops the government from issuing for sale more conventional plates to people who are in a position to buy them. The parliamentary secretary can correct me if I am wrong, but it is simply government policy that the government does not issue conventional owned plates - it only issues conventional, and other types, of leased plates. Is that the case?

**HON ADELE FARINA:** It is a matter of not only government policy, but also the fact that ownership of privately-owned plates requires a huge investment. In terms of meeting demand, not having that impost ensures

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a greater uptake in dealing with the need to address demand during peak periods. Without private investment in plates, we also find that the returns to drivers are improved. Government policy is based not on opposition to conventional owned plates, but rather trying to facilitate a good outcome for both the drivers' returns and being able to respond quickly to consumer demand when it peaks.

**HON SIMON O'BRIEN:** Regardless of whether the government's policy is motivated by opposition to the principle of private ownership or other considerations like offering cheaper rates, that activity could be interpreted in different ways, particularly by those who own plates. Regardless, the fact remains that the government is only issuing lease plates - that is, government-owned plates - and is not releasing any for private ownership. However, it is within the government's power, if it wished, to issue conventional plates, as it is releasing lease plates. It is releasing them with gay abandon, as these figures show. There is no reason why the government cannot do that. Plenty of people would like to buy plates, so it is not as though there is no market. I challenge the parliamentary secretary: if one set of conventional plates were released for sale, she would be killed in the rush. It would be like a lot of seagulls down at Cicerello's fighting over a chip. There is a market out there for plates. What is the point of all this in relation to this clause? It is within the government's power to use the 35 per cent that the Liberal opposition is providing in this amendment. We think it is a very generous figure because it enables stacks of scope to be able to issue plates, whether they are owned or leased. The government would still have a lot of leeway that could be exercised to further issue leased plates or government-owned plates, in line with the government's policy, but it is still available to the government to issue more conventional owned plates as well, providing a lot more room under the umbrella that its own legislation is setting.

**Hon Adele Farina:** Although it is the case that traditionally the owners of conventional plates have opposed the additional release of conventional plates, making the same argument - that that impacts on the value of their plates.

**Hon SIMON O'BRIEN:** They oppose just about anything. Some of them would probably oppose the sun coming up in the morning, for all I know. Those owners will oppose the release of conventional plates, and we saw 14 years pass without a conventional plate being issued in this state. I previously commented on this matter in other debates. It is ridiculous. The owners of conventional plates will not only oppose conventional plates being issued, as the parliamentary secretary correctly stated, but also oppose leased plates being put out because they are cheaper. They will oppose peak-period plates being put out because those plates allegedly will take the cream out of it. All these different factions in the taxi industry represent themselves from their own personal pecuniary point of view. It is understandable that they do so. I mentioned that before in relation to the inquiry chaired by Hon Graham Giffard some years ago. The results of a survey at the time indicated that most conventional plate owners did not want to see the market flooded with plates. I pointed out then that there are probably nomadic Australians out in the Simpson Desert who have never clapped eyes on a taxi in their life who could have told him that for nothing. He did not have to hold an inquiry, so the parliamentary secretary is right, but none of that is the question. The question is: does the government have the capacity to issue all the plates it wants? The answer is yes. If the government finds that it is issuing hundreds more leased plates than it needs to because it will not issue one owner plate because it does not want to give two people the advantage of being able to own their own business, it has nobody to blame but itself. It is not right to then turn around and say that the opposition would not let the government have all the lease plates it wants; therefore, people cannot get a taxi. The government can release owner plates any time it wants. It can release bought plates any time it wants, and the market will snap them up. That will free it up for the government to rise up to meet the new relevant percentage figure with its leased plates. The government has the best of both worlds. However, I dare say it will not release owner plates, and the minister will continue to blame the opposition as though it is somehow calling the shots on this. The rate of 35 per cent is a good compromise figure. It is consistent with what the government has currently regulated and which no-one in this place moved to disallow. It is a figure that I think representative groups, such as the Taxi Council, can realistically live with, and it is not some sort of hollow gesture on our part, even though it is an attempt to impose some discipline on the unrestrained situation of purely leased plates. We should put this amendment to the vote, Mr Deputy Chairman (Hon Ray Halligan), and after it has been voted on, regardless of the outcome, I intend to move to delete the capacity to make further changes to the percentage by regulation.

Amendment (deletion of words) put and a division taken with the following result -

Ayes (14)

Hon George Cash  
Hon Peter Collier  
Hon Murray Criddle  
Hon Brian Ellis

Hon Donna Faragher  
Hon Anthony Fels  
Hon Nigel Hallett  
Hon Ray Halligan

Hon Paul Llewellyn  
Hon Robyn McSweeney  
Hon Norman Moore  
Hon Simon O'Brien

Hon Giz Watson  
Hon Bruce Donaldson (*Teller*)

**Extract from *Hansard***  
[COUNCIL - Tuesday, 4 September 2007]  
p4677c-4695a

Hon Simon O'Brien; Chairman; Hon Adele Farina; Hon Murray Criddle; Hon Paul Llewellyn; Deputy Chairman

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Noes (11)

Hon Matt Benson-Lidholm  
Hon Vincent Catania  
Hon Kate Doust

Hon Sue Ellery  
Hon Adele Farina  
Hon Jon Ford

Hon Sheila Mills  
Hon Louise Pratt  
Hon Ljiljana Ravlich

Hon Sally Talbot  
Hon Ed Dermer (*Teller*)

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Pairs

Hon Barbara Scott  
Hon Ken Baston  
Hon Helen Morton  
Hon Barry House

Hon Kim Chance  
Hon Graham Giffard  
Hon Ken Travers  
Hon Shelley Archer

**Amendment thus passed.**

**Hon MURRAY CRIDDLE:** I have listened to this debate for quite a period, and I get the feeling that we are getting ourselves into trouble. There are a number of loose ends in the bill that I would like to see addressed. Regarding the question I asked earlier about adding 70 to the figure of 923 for conventional plates, I am concerned about the number. We are seeking to include in the act the number of taxis and, on top of that, we are looking at a regulation. To my way of thinking, that will result in legislation that is not good. I will vote for 35 per cent, although, as I have indicated, I did not want to go above 30 per cent. I say to the parliamentary secretary that I have concerns about the standard of legislation that will be passed. It might be useful to communicate that to the minister so that we can get a clear understanding of what she wants and what might be the best outcome for legislation as we go forward.

**Hon ADELE FARINA:** I am unclear about what Hon Murray Criddle is asking. Is it in relation to the regulation-making power to amend the relevant percentage as well as the head of power in the act?

**Hon MURRAY CRIDDLE:** That is one of the issues. One of the issues is that the number of taxis and the percentage we will end up with has changed substantially. If we put the number of restricted-hour or peak-period taxis with the number of conventional taxis, the variation in percentage will be far greater than the one per cent or whatever we were talking about a while ago. It seems to me that there is a discrepancy there that is not fully covered in the calculation. I want reassurance that that figure is right.

**Hon Adele Farina:** I can only give you reassurance based on the figures that we have. We used a calculator to work it out.

**Hon MURRAY CRIDDLE:** What I am trying to say is that we are now rushing legislation that I think has a few flaws in it. Members can make up their own minds about that. The other issue concerns the business of regulation. We need to sort out whether we want the figure to be determined by regulation or whether we want the act to prescribe the percentage, because it can easily be dealt with in the regulations. This is an unusual set of circumstances in which there is a figure in both the regulations and the act. The figure in the act can be overridden by the figure in the regulations. That does not seem to be a useful way to end up.

**Hon PAUL LLEWELLYN:** I have been trying to keep track of this debate. We can either be distracted by the details and the numbers or we can look at two things, the first of which is industry trends. The taxi industry is basically a regulated transport service industry that is regulated and managed by trends rather than by minutiae. The other thing that I think is in dispute is the general model for the way in which the taxi industry should be set up. There are competing models - the private ownership of plates versus leased plates. We have clearly chosen a hybrid model, under which there is a certain number of leased plates and privately owned plates. Having chosen a hybrid model, there is no clearly right or wrong answer that is not loaded with ideology. We need to provide a regulated transport service, we need the capacity to regulate and we need to be able to respond in good time. We also need to consider whose interests we are looking after. We are looking after the interests of customers - the users of the service - and also the interests of the various ownership categories. I mentioned during my contribution to the second reading debate that this is a very complex industry. A part of me is saying that, having deleted the figure of 40 per cent, we should leave it at that; that is, we should forget the idea that we have to prescribe a particular percentage in the legislation and should instead just leave it to the regulations to set that level. Hon Simon O'Brien has an amendment on the supplementary notice paper that proposes to delete the regulation-making power under section 16(10)(b). Hon Simon O'Brien is not paying attention at the moment, but if he does that, he will also have to delete section 16(11).

**Hon Simon O'Brien:** Correct.

**Hon PAUL LLEWELLYN:** That was the Foss masterstroke that was required if there was to be a regulation-making power to set a specific number. I would like some discussion in the chamber about whether we should

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walk away from setting a percentage in the legislation in the first place and should instead go straight to the regulations, if we want an open-ended arrangement.

**Hon SIMON O'BRIEN:** That is precisely what I was referring to. It was open to the government to go down that path in 2003, but it chose not to. I cannot work out why. The government was supported by the Greens (WA) at that time, and for reasons that still escape me, even though I have read the debate. I can re-read it for the member if he likes. That is one possible option. I am surprised that the government has not gone down that path, but it has not. It is the government. It can make its own mess and it can work with it. If the proportion of leased plates versus owned plates is a mess, it is a mess of the government's own making. It is up to the government. There is no way that this puts some artificial restriction on the government from issuing plates of all sorts. It does not.

**Hon ADELE FARINA:** As I stated in my response to the second reading debate, it is an unusual situation to have a power that enables the relevant percentage to be determined in both the legislation and the regulations. I will not go as far as my friend Hon Simon O'Brien by reflecting on the Parliament by calling it absurd. However, I acknowledge that it is unusual. I also acknowledge that just because it is unusual, that does not make it wrong or bad. In fact, it has worked well for us to date. By prescribing the figure within the act, industry is provided with some comfort, particularly those in the industry who are concerned about the market being flooded with lease plates and a subsequent devaluation of their own plates. At the same time, the regulation-making power ensures some reasonable capacity for the government to respond to peaks in demand. The government position is very strongly that we should retain both provisions. The government would not like any amendment to that. The government's preferred position is for the figure in the legislation to be 40 per cent, but that figure has been considered by the chamber and has been knocked back. We acknowledge that and urge members to at least retain the dual provisions in the act to enable the government to respond to consumer demand. Otherwise, I am sure that there will be many more instances in which consumer calls will not be responded to. In the first half of 2007, 80 000 customer calls for taxi services were not responded to.

**Hon Simon O'Brien:** That's terrible.

**Hon ADELE FARINA:** I was one of those customers on Saturday night. I can vouch for the reality that demand way outstrips current supply. We need to be able to respond to that if we are to provide the community with an efficient and reliable taxi service. I strongly urge members to retain the dual provisions in the legislation.

**Hon PAUL LLEWELLYN:** As a regular taxi user, I have spent many hours waiting for taxis. I understand the polemic about whether we should lease plates or issue privately owned plates. This matter could be resolved by a policy that allowed that for every plate that was leased, a private, conventional plate would be put onto the market. That would cut the cake both ways. In fact it does not really matter, because we are after a clear service delivery model. It does not really matter whether they are conventional plates or lease plates, because to some extent the impact on the market value of plates relates to the relationship between the volume of work available and the total number of working plates. Ideally, if this is bad legislation - how would I know, being a member of only two years' standing -

**Hon Ljiljana Ravlich:** And a Greens member.

**Hon PAUL LLEWELLYN:** I would have a deeper understanding, being a Greens member, but since this is only my third year as a member, how would I know? I can see the lack of logic of having these two provisions - one the regulating power and the other a prescribed number in the act. Ideally, we would stop right now and just leave the regulation-making powers, and forget this almost artificial number that has been created, because at the moment the current act says 20 per cent, the regulations state 25 per cent or 35 per cent and the real number is somewhere in between. In actual fact, this is an artificial construct. We can perpetuate poor drafting and poor legislation, or we can decide right here that we will use only the regulation-making power.

**Amendment (insertion of words) put and passed.**

**Hon SIMON O'BRIEN:** I move -

Page 3, lines 13 to 16 - To delete the lines and insert instead -

(b) by deleting paragraph (b).

The effect of this amendment is to remove the regulation-making power. If this amendment is successful, it would make section 16(11) of the principal act redundant, and that is another matter we would have to attend to, or the government may wish to attend to, if this amendment is successful.

**Hon PAUL LLEWELLYN:** As much as I can see the lack of consistency in what I was saying before, I think the regulation-making power in this case is still relevant; it keeps some sort of flexibility. In any case, my understanding is that if section 16(10)(b) of the principal act were deleted, section 16(11) would need to be

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[COUNCIL - Tuesday, 4 September 2007]  
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Hon Simon O'Brien; Chairman; Hon Adele Farina; Hon Murray Criddle; Hon Paul Llewellyn; Deputy Chairman

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deleted, because it would no longer be relevant. I think that is right. We should live with this hybrid model and this compromise, given that we have not had the will to remove the principal percentage in the first place.

Amendment put and a division taken with the following result -

Ayes (11)

Hon Ken Baston  
Hon George Cash  
Hon Peter Collier

Hon Brian Ellis  
Hon Anthony Fels  
Hon Nigel Hallett

Hon Ray Halligan  
Hon Barry House  
Hon Norman Moore

Hon Simon O'Brien  
Hon Bruce Donaldson (*Teller*)

Noes (14)

Hon Matt Benson-Lidholm  
Hon Vincent Catania  
Hon Murray Criddle  
Hon Kate Doust

Hon Sue Ellery  
Hon Adele Farina  
Hon Jon Ford  
Hon Paul Llewellyn

Hon Sheila Mills  
Hon Louise Pratt  
Hon Ljiljana Ravlich  
Hon Sally Talbot

Hon Giz Watson  
Hon Ed Dermer (*Teller*)

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Pairs

Hon Barbara Scott  
Hon Donna Faragher  
Hon Helen Morton  
Hon Robyn McSweeney

Hon Kim Chance  
Hon Graham Giffard  
Hon Ken Travers  
Hon Shelley Archer

**Amendment thus negated.**

**Clause, as amended, put and passed.**

**Clause 6 put and passed.**

**Clause 7: Section 21 amended -**

**Hon ADELE FARINA:** I move -

Page 3, line 21 to page 4, line 11 - To oppose the clause.

**Hon SIMON O'BRIEN:** Can the parliamentary secretary indicate, for the record, why this clause is being opposed? We never know - the opposition might want to support it just to be contrary!

**Hon ADELE FARINA:** Clause 7 requires that a plate holder attach a taxi plate to a vehicle operating as a taxi within 14 days. During discussions on the bill, it was made clear to the government that this time period could, in certain circumstances, be insufficient. The government has given the matter further consideration and has agreed that, given the severity of the penalty for noncompliance with the requirement to attach a taxi plate to a vehicle operating as a taxi - actual forfeiture of the taxi plate - it would be more appropriate to allow a period of 60 days within which the plate should be attached to a vehicle operating as a taxi. The government is of the view that 60 days is more than ample to undertake all the measures required to bring a vehicle into compliance with the requirements for operation as a taxi. The government will propose a new clause 7, which will provide for a 60-day period in such cases. It will also deal with the issue of divestiture in the event that the director general makes a decision that a plate has not been appropriately attached to a vehicle as required. It will allow the owner of the taxi plate 45 days to divest himself or herself of any interest in the ownership of the taxi plate. The new clause will create forfeiture provisions that are consistent with other forfeiture provisions that appear in the act in relation to other matters. New clause 7 provides for a right of appeal to the State Administrative Tribunal for a review of the director general's decision in the event that the director general finds that the plate owner has not attached taxi plates to a vehicle in the manner required by the legislation within a period of 60 days.

**Hon MURRAY CRIDDLE:** Madam Deputy Chair, it can be seen from the supplementary notice paper that I was to move to delete "14" and insert instead "28" days. Since giving notice of that amendment, I have spoken to the minister's advisers, and I am satisfied with proposed new clause 7. I will not be moving the amendments in my name with regard to this clause.

**The DEPUTY CHAIRMAN (Hon Louise Pratt):** I remind members that to be able to support new clause 7, members will need to vote against the clause as I put it.

**Clause put and negated.**

**Clause 8: Section 23 amended -**

Hon Simon O'Brien; Chairman; Hon Adele Farina; Hon Murray Criddle; Hon Paul Llewellyn; Deputy Chairman

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**Hon ADELE FARINA:** I intend to oppose the clause.

**Hon MURRAY CRIDDLE:** I ask the parliamentary secretary to explain why she is deleting the clause.

**Hon ADELE FARINA:** The reason for deleting clause 8 is that it relates to the forfeiture and divesting provision, which will now be dealt with in proposed new clause 7.

**Clause put and negatived.**

**Clause 9 put and passed.**

**Clause 10: Part 3 Division 4 inserted -**

**Hon ADELE FARINA:** I move -

Page 5, line 12 - To delete "in relation to" and insert instead -  
restricting

**Hon PAUL LLEWELLYN:** I need to check the reasoning here. I am sorry; I have lost my way a bit. I am not disputing it, I just want to check the reasoning.

**Hon ADELE FARINA:** This amendment needs to be read jointly with the following amendment. It relates to plate types that will be party to the exchange of peak-period plates for conventional plates. The initial amendment was deemed too general and did not sufficiently ring in the exchange only to plate owners of transferable and three-year restricted peak-period plates. Therefore, the amendment provides some clarity.

The rationale for explicitly ring-fencing the exchange only to owners of transferable plates, which includes three-year, transfer-restricted peak-period plates, lies in the fact that the minister received a proposal for the plate exchange from only transferable plate owners. As non-transferable plate owners paid a minimal amount for their peak-period plate, they would essentially be required to pay the market rate, or very close to the market rate, for a converted conventional plate, thereby negating any incentive to be party to the plate exchange. Issuing owned conventional plates to non-transferable peak-plate owners would be the equivalent of supplying conventional plates to the market from scratch. It is the government's policy to release lease plates and not to increase the proportion of owned plates.

**Hon SIMON O'BRIEN:** Madam Deputy Chair, I was right - of course! It is the government's policy. Sometimes, late at night, members read a bit more than they mean to when responding to a question. The parliamentary secretary has pointed out that the amendment before the Chair has to be read in conjunction with the next one on the supplementary notice paper. Given the explanation we have just received, I would like to try to distil it to plain English.

For the purposes of the clause we are considering, a "restricted-hours taxi" simply means a taxi which is subject to working restricted hours and is known in the vernacular as a "peak-period taxi", and for which, by virtue of the two amendments to clause 10, the right to trade peak-period plates to full conventional plates cannot be exercised unless the owner has had peak-period plates for a minimum of three years. Is that the gist of it?

**Hon ADELE FARINA:** There are three different types of peak-period plates. The first are transferable peak-period plates; the second are three-year non-transferable peak-period plates, which means that they cannot be transferred to another peak-period owner within a three-year period; and the third are non-transferable peak-period plates. Under this provision, non-transferable peak-period plates cannot be transferred to conventional owned plates. However, the three-year non-transferable peak-period plates and the transferable peak-period plates will be able to be converted to conventional owned plates.

**Hon Simon O'Brien:** Will the non-transferable peak-period plates be eligible to be conventional plates?

**Hon ADELE FARINA:** No, they are non-transferable. They are life plates. This provision does not apply to non-transferable peak-period plates.

**Hon SIMON O'BRIEN:** This is a key point that we need to make sure we get absolutely clear. First, we know what peak-period plates are. They are restricted-hours plates. However, within that group, which I colloquially call peak-period plates, there are three categories. Under proposed new division 4, the owner may, if he or she wishes, upgrade - for want of a better word - those plates to full conventional plates that are owner-owned, unrestricted transferable plates. Peak-period plates that are peak-period owned plates and are transferable can be upgraded. That is right, is it not?

**Hon Adele Farina:** Yes.

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**Hon SIMON O'BRIEN:** Are there any other categories of peak-period plates that will be eligible to be turned into conventional plates?

**Hon Adele Farina:** Yes, the three-year restricted transferable peak-period plates. That's a mouthful, isn't it?

**Hon SIMON O'BRIEN:** Yes, it is rather. I thank the parliamentary secretary for clarifying that. What is the total number of those plates?

**Hon Adele Farina:** Seventy.

**Hon SIMON O'BRIEN:** That is 70 combined; that is what we were led to believe.

**Hon PAUL LLEWELLYN:** I understand this clause clearly now. How many non-transferable peak-period plates are there, because we have, in effect, created a new language with the restricted-hours taxis, which seem to be the taxis that have transferable rights.

**Hon ADELE FARINA:** The number of non-transferable peak-period plates is 16. At the time that they were issued, a very nominal rate was paid for the plates, which I understand from the advice that I have been provided with was in the vicinity of \$1 000 to \$5 000 for the plates. Therefore, they have no market value because they cannot be transferred. To enable those non-transferable plates to be converted to conventional plates would result in a huge windfall to those plate owners, which is why they have not been provided for in this provision.

**Hon SIMON O'BRIEN:** I want to clarify this particular point because this is one of the sticking points that people have spoken about. I do not know that there is any great opposition to peak-period plate owners having the opportunity to transfer up. We do not oppose that. However, were the three-year restricted transferable plates released for a very low payment?

**Hon Adele Farina:** No, it was the non-transferable plates.

**Hon SIMON O'BRIEN:** Now that we have clarified that point, I think that probably deals with the matter and we will support the amendment.

**Hon ADELE FARINA:** I also add that the buy-in for the non-transferable peak-period plates, if owners were to be offered the ability to upgrade to conventional plates, would effectively be at market price. Owners could buy them freely within the market. There is no incentive for them to go through that process. That is why the plates have not been included. I hope that helps explain the matter.

**Amendment put and passed.**

**Hon ADELE FARINA:** I think I have already addressed this issue, so to save time I will not repeat it. I move -

Page 5, line 13 - To insert after "plates" -

, except a condition restricting the transfer of those plates within 3 years after they were acquired

**Amendment put and passed.**

**The DEPUTY CHAIRMAN (Hon Louise Pratt):** Does Hon Murray Criddle want to move his amendments to this clause?

**Hon MURRAY CRIDDLE:** No. I was not going to move my amendments, as the parliamentary secretary will deal with the issue a little later.

**Clause, as amended, put and passed.**

**Clause 11 put and passed.**

**New clause 7 -**

**Hon ADELE FARINA:** I move -

Page 3, after line 20 - To insert the following new clause -

**7. Section 21 amended**

After section 21(2) the following subsections are inserted -

“

(3) Where the Director General decides that a plate holder has not, for a period of at least 60 days, used taxi plates owned or leased by him or her on a

vehicle being operated as a taxi in accordance with this Act, the Director General may serve notice on that person -

- (a) stating the reason the Director General made that decision; and
  - (b) requiring the plate holder -
    - (i) in the case of an owner of taxi plates - to divest himself or herself of any interest in the ownership of the taxi plates within 45 days after the day of service of the notice (the “divestment period”); or
    - (ii) in the case of a lessee of taxi plates - advising him or her of the effect of the relevant provisions of subsections (4) and (5).
- (4) Where a person fails to divest himself or herself of his or her interest in the ownership of taxi plates within the divestment period or a person is served with a notice under subsection (3)(b)(ii) in relation to the leasing of taxi plates -
- (a) his or her right to the plates is forfeited to the Director General -
    - (i) if he or she has applied under subsection (5) for a review - on the making of a decision that confirms the Director General’s decision or that otherwise results in the forfeiture of that right; or
    - (ii) otherwise on the expiry of -
      - (I) in the case of an owner of taxi plates - the divestment period; or
      - (II) in the case of a lessee of taxi plates - the period specified in subsection (5);
- and
- (b) the plates may then be offered for sale or lease, as the case requires, in accordance with section 16.
- (5) Where the Director General serves notice on a person under subsection (3), the person may within 14 days after the day of service of that notice apply to the State Administrative Tribunal for a review of the Director General’s decision that he or she has not, for a period of at least 60 days, used taxi plates owned or leased by him or her on a vehicle being operated as a taxi in accordance with this Act.
- (6) In this section -
- “plate holder”, in relation to a plate holder that is a partnership, means each member of the partnership.

”.

I spoke about this issue earlier this evening, and to save time I do not intend to repeat it, but I am happy to answer any questions.

**Hon SIMON O’BRIEN:** I have a couple of comments on the new clause because it is a significant issue. As I said during the second reading debate, the opposition cannot really understand what this provision is for. We are not satisfied that the provisions contemplated via the amendments to clause 7 that were not proceeded with are necessary, and we do not think this is necessary either. We do not think this is the right remedy for whatever it is that the government perceives to be the ill that must be fixed. Having said that - I said this during the second reading debate - we do not propose to oppose the clause or to defeat it. If the government wants to go down this path, that is fine. This matter grew out of a problem that was identified during an unsuccessful prosecution or two because someone had kept taxi plates in the proverbial bedroom drawer. I cannot understand why people would take a valuable, income-earning asset that had cost them money and just hold it in their hands or keep it in their bedroom drawer. However, someone did do that.

**Hon Ljiljana Ravlich:** They appreciate. It is like the cost of land. However, I don’t want to slow you down. Pretend I didn’t say it.



Hon Simon O'Brien; Chairman; Hon Adele Farina; Hon Murray Criddle; Hon Paul Llewellyn; Deputy Chairman

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**Hon SIMON O'BRIEN:** The minister is obviously keen to distract me. Just when members thought that there could not be a worse Minister for Planning and Infrastructure, someone else comes to mind!

**The DEPUTY CHAIRMAN (Hon Louise Pratt):** Hon Simon O'Brien will confine his remarks to the new clause.

**Hon SIMON O'BRIEN:** I am trying to educate the honourable minister. Taxi plates cost a lot of money to acquire. People must either take out finance or commit their own funds to acquire them. There is a cost to holding taxi plates minute by minute and day by day. I cannot see why, having done that, a person would stick them in a drawer when that person would be paying them off like a mortgage and when an income could be made off those plates. The reality is that someone did just that.

**Hon Paul Llewellyn:** That is because economics is not nearly as rational as you think it is.

**Hon SIMON O'BRIEN:** Commonsense is not as common as I would like it to be either, but that is another issue. As I understand it, the government was frustrated in its prosecution because the trouble was not so much that the plates were not being used but that the plates had not been physically attached to a vehicle. When a vehicle has taxi plates attached to it, the vehicle must be used as a taxi. That right to taxi plates must be exercised and the person must make money, whether or not he wants to. A service is provided to the public by having the taxi on the road. As I understand it, the prosecution floundered on the basis that the plates were not physically attached to a taxi. In any case, I do not know whether this provision is the answer to the problem. However, I will not try to solve the government's problem for it on the run. That will be something to do later next year when we are in government and must fix the problem. Since the government proposed its initial amendments to section 21, people have been on at the government to say that it is unreasonable that people who have taxi plates must fix them to a working taxi within 14 days. I raised that issue during the second reading debate. A taxi must be set up, with meters and camera equipment installed and the vehicle converted to liquefied petroleum gas. A time frame of 14 days would catch out a lot of innocent people who could not do those things within that time. Therefore, a compromise of 60 days was reached. I think that is the wrong solution for whatever the problem may have been. However, I have made that point. Having said that, if this is how the government wants to run it, we will not oppose it. Good luck to it. I do not think it will fix the problem in the way the government wants it to be fixed. The government might find that people who, for whatever reason, want to put taxi plates in a drawer will put them in a drawer for 60 days rather than for 14 days. However, the government is managing the industry at the moment.

**New clause put and passed.**

**New clause 8 -**

**Hon ADELE FARINA:** I move -

Page 4, after line 11 - To insert the following new clause -

**8. Section 24 amended**

- (1) Section 24(2) is amended by inserting after "divest under section" -  
" 21(3) or ".
- (2) After section 24(5) the following subsection is inserted -  
"
  - (6) Taxi plates issued under section 30I(2)(b) are not transferable for a period of one year after the day on which they are issued."

This new clause ties the divestiture provisions contained in new clause 7 into section 24(2) and pertains to an application for an approval of a plate transfer following plate divestiture. The new clause also regards the time restrictions to be imposed on the future transfer of the peak-period plates that were converted to conventional plates and inserts a new section 24(6) that restricts the new conventional plates from being transferred or sold within one year after the day on which they were issued. During the second reading debate, members suggested that there should be a period of indenture to prevent plate owners from selling their new conventional plate for a capital gain, thereby potentially devaluing the value of the plates should they be all sold at once. This new clause seeks to deal with those issues that were raised during the second reading debate.

**Hon MURRAY CRIDDLE:** Is it one year and not two? I have two lots of amendments.

**Hon ADELE FARINA:** It is one year. The government initially looked at two years, but upon further consideration the amendment that has been moved provides for one year.

Hon Simon O'Brien; Chairman; Hon Adele Farina; Hon Murray Criddle; Hon Paul Llewellyn; Deputy Chairman

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**Hon SIMON O'BRIEN:** During the second reading debate, I was not one of those members who said that this had to happen. I raised the issue and asked the government what it thought about it. We now know what the government thinks about it, and the parliamentary secretary has noted the contribution by Hon Murray Criddle. One or two representations have been made to the opposition by peak-period owners who want to sell their plates. Frankly, I am not very sympathetic to that. I do not think that people should get a windfall for the sake of getting a windfall. If people want to aspire to a higher level of involvement in the taxi industry by taking out full-time conventional plates, that needs to be encouraged. It is not a matter of a select few getting a windfall and others moving out of the industry. At this stage, the opposition will support the government's proposed amendment, which will be passed anyway. However, I have one question for the record and because I wish to provide comfort to peak-period owners who might wish to convert to conventional plates. What happens if, in the course of the year, a person becomes ill or one-half of the partnership that is holding the plates dies? Under those circumstances, it would be reasonable for the plate to be transferred within the year. Will a sick former driver or a widowed partner be able to transfer the plates before the 12 months is up?

**Hon MURRAY CRIDDLE:** I moved my initial amendment to allow for that sort of thing. The minister has come back with the new clause that is before us. I spoke to industry representatives today and, as Hon Simon O'Brien said, they are saying 12 months. I think there could be some anomalies in that system. However, having spoken to industry representatives, I am prepared to go along with the government's view.

**Hon ADELE FARINA:** In the event that an owner of peak-period plates falls ill during the course of the one-year period, this provision will prevent that owner from transferring those plates during that one-year restriction period. However, the owner would have the option of finding another driver for the period that he is ill or of leasing the plates to another person for operation during that period, which would be consistent with the provisions that would apply if we were not dealing with a conversion arrangement.

**Hon SIMON O'BRIEN:** I think it is useful to get those thoughts on the record so that observers will know, if this is revisited, what the chamber considered at the time. The opposition supports what the government is saying. We think that it has offered a reasonable measure to address the various considerations. We support this clause.

**Hon MURRAY CRIDDLE:** I want reassurance from the parliamentary secretary that the clause that deals with 60 days and 45 days for divestiture will not be impeded by the one-year period. Could there be a conflict in this area? If there is a need for somebody to get out of the industry immediately, we do not want that person to lose his plates because of the 60-day clause and the 45 days to get rid of them.

**Hon ADELE FARINA:** They are quite separate issues. I am not quite sure how the two provisions would relate to create a problem.

**Hon Murray Criddle:** I just wanted a guarantee.

**New clause put and passed.**

**New clause 9 -**

**Hon ADELE FARINA:** I move -

Page 4, before line 20 - To insert the following new clause -

**9. Section 25 amended**

Section 25(1)(c) is amended by inserting after "forfeiture under" -

" subsection (4) of section 21 or ".

New clause 9 relates to the forfeiture of taxi plates and amends section 25(1)(c) of the act. The amendment addresses the return of taxi plates by compelling a plate owner to return the plates to the director general within the period specified in the case of forfeiture, which also comes under the provisions in proposed section 21(4). That is in addition to the forfeiture provisions that already exist in section 23(3). It makes the new forfeiture provisions consistent with the existing forfeiture provisions in the act.

**New clause put and passed.**

**Title put and passed.**

*Report*

Bill reported with amendments.