

TAXI AMENDMENT BILL 2003

Committee

Resumed from 20 November. The Chairman of Committees (Hon George Cash) in the Chair; Hon Ken Travers (Parliamentary Secretary) in charge of the Bill.

Clause 5: Section 16 amended -

Progress was reported after Hon Ken Travers (Parliamentary Secretary) had moved the following amendment -

Page 3, after line 14 - To insert -

- (3) Taxi plates may be offered for lease under subsection (2) only if the issue of those plates under section 18 would not result in the total number of leased taxi plates issued under that section exceeding the relevant percentage of the total number of taxi plates (whether owned or leased) issued under that section.

Amendment put and passed.

Hon KEN TRAVERS: I move -

Page 5, line 4 - To delete "in accordance with criteria to be set" and insert instead -

by the Director General having regard to -

- (a) the extent of an applicant's experience as a taxi driver;
- (b) any conviction of an applicant of an offence under this Act or the *Road Traffic Act 1974* or an Act of another State or a Territory corresponding to either of those Acts;
- (c) any infringement notice given to an applicant (and not later withdrawn) under this Act or an Act of another State or a Territory corresponding to this Act; and
- (d) any other matter relating to an applicant's character or experience that is relevant to the operation of a taxi.

I clarify some of the matters raised yesterday by Hon Alan Cadby about the criteria. This clause amends section 16 of the Act. This amendment will insert the words into proposed subsection (6) of section 16, and relates to proposed subsection (2), which prescribes sale by public tender. The criteria to be met by the successful tenderer will be replaced with the criteria to be met by the successful applicant. It will be the minimum criteria and may include taxi drivers licences or the like. If only 32 plates are on offer and 32 people apply who meet the minimum criteria, they will be issued with them. If more people who meet the criteria apply than numbers of plates available, then the amendment to proposed subsection (6) will provide the mechanism by which people who are to be given the plates are selected. The director general will go through an assessment having regard for the items contained in this amendment; the extent of the applicant's experience as a taxi driver, whether they have road traffic convictions, whether they have infringement notices in another State and other matters relating to the applicant's character or experience that is relevant to the operation of a taxi. After that process, if there are still more applicants than plates available, the next amendment that I will move will provide for a ballot process. I hope that explains to members adequately the process that will be followed.

Hon ALAN CADBY: What was the motivation behind the change in the criteria set? It is interesting that the parliamentary secretary said that all things being equal, the selection process will go to a ballot. Proposed paragraph(d) of the amendment states -

any other matter relating to an applicant's character or experience . . .

An assessment of someone's character is fairly subjective. Therefore, I do not believe that all things can be equal.

Hon Ken Travers: It is relevant to the operation of a taxi.

Hon ALAN CADBY: Perhaps the parliamentary secretary can expand on what he means by "character" in proposed paragraph (d) of the amendment. I suppose an applicant's experience is fairly easy to measure. However, I do not know how a person's character can be measured unless I know what is meant by the term "character". There are many definitions of the term "character". Perhaps the parliamentary secretary can expand on that for me.

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Hon KEN TRAVERS: The member asked why there has been a change. It is all about transparency. In terms of the history of the amendment, in accordance with the criteria to be set, an amendment was made in the lower House. Then the view was that we needed to be more specific in how that would occur and allow for a more transparent process. Therefore, we are now moving this amendment in the upper House so that it is clearer to everyone what the criteria will be on which the assessment is based.

In terms of proposed paragraph (d) in the amendment, the advice I have received is that we are giving more consideration to the positive than the negative attributes of an applicant. Any negative attributes are dealt with in proposed paragraphs (b) and (c). For instance, under proposed paragraph (d), if a person is applying for a multipurpose taxi plate and has a vast experience in dealing with people with disabilities - he has an understanding of their needs and the like - then he can put that forward in his application. Part of the assessment process will include criteria -

Hon Alan Cadby: Would that not come under proposed paragraph (a) -

Hon KEN TRAVERS: No, because that deals with the extent of an applicant's experience as a taxi driver. He may never have driven a taxi before but he is applying for a multipurpose taxi plate. It is a formal selection criteria process as with a tendering process or anything else in which an assessment is made of each applicant. If, for instance, an applicant has never driven a taxi before but has been a carer and worked extensively in the disability field, he can demonstrate that he has skills that are particularly relevant to be granted a multipurpose taxi plate. Likewise, if a person has a degree of experience in handling customers or, for that matter, he has been a bus driver, he can demonstrate that he has the capacity to deal with situations of a similar nature that may arise if he were a taxi driver. Proposed paragraph (d) provides an assessment that considers more the positives than the negatives of what experience a person may have that is relevant to being a taxi driver.

Hon ALAN CADBY: If that is the case - the parliamentary secretary said earlier that the Government is looking for transparency in this process - will a list of the attributes sought be posted somewhere so that people can see whether they are likely to be selected?

Hon KEN TRAVERS: When applications are sought, it is the intention of the department to give an indication of the sorts of things that it is looking for. However, it is not intended that the process be exhaustive. It will be a process by which an applicant can put forward those elements in the same way that a person addresses job selection criteria. An applicant can put forward other elements of his experience that he thinks are relevant to the position, such as something that might have been missed in the criteria. I have referred to bus drivers, carers and the like. However, a person might say that he was the chauffeur to the Governor General for 10 years or that he has some experience in an area that might not have necessarily been thought about. During the selection process he can put forward an argument that clearly identifies his experience and why it is relevant to being a taxi driver, which is what a person does in an assessment for any other job application. There will be questions and assessments, but it is incumbent upon the applicants to outline their experience and how that would apply to that job. It is no different in this circumstance.

Hon ALAN CADBY: I do not object to what was said. However, if a person is applying for a job, then normally the criteria outlining what the employer is looking for is clearly stated. When a person makes an application, it is based on the criteria. If people have an interview, I thought that somewhere there would be a set of criteria relating to their character or non-taxi driving experience, otherwise their character could not be judged. If they are not interviewed, they would have to write an application -

Hon Ken Travers: An indication will be given in the application pack of the sorts of things the department is looking for. However, it is then open for people to put forward other experiences that they believe are -

Hon ALAN CADBY: Therefore, the parliamentary secretary is saying that when people apply for a lease, the criteria for determining whether a person is the right person to have a lease, including character and the sorts of things that are being sought or that the applicant can offer the Government - the points listed in the amendment - will be found somewhere in the information supplied.

Hon Ken Travers: The director general is the person who would be doing that.

Hon PETER FOSS: We are now getting closer and closer to why, because of the issues that both Hon Jim Scott and I have raised, we need to amend this clause. I do not accept - and I will be moving an amendment if the parliamentary secretary does not - that the parliamentary secretary can proceed in the manner that he has outlined. I do not accept that for two reasons. First, I do not believe it is right in law. Second, I do not believe it is practical. Proposed subsection (2) states -

Taxi plates shall also be offered for lease, with the invitation to apply to lease taxi plates specifying -

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- (a) the criteria to be met by the successful applicant;

Therefore, people will be invited to apply, and they will then be required to meet certain criteria that have been set. Having set the criteria, the Government is then obliged to follow them. Proposed subsection (3) commences with the words, "Without limiting subsection (2)(a)". Therefore, proposed subsection (3) is plainly dealing with proposed subsection (2)(a). It is setting specific criteria. The reason that it commences with the words "Without limiting subsection (2)(a)" is that it does not seek to limit the general range of criteria that are set; however, it says the Government must set these criteria. That is why it is there. These criteria are set out in proposed section (3)(a), (b) and (c). Therefore, three of the criteria that the Government must set, irrespective of whatever other criteria it must set, are those set out in proposed section (3)(a), (b) and (c). Having set those criteria, the Government, as much as anyone else, is obliged to observe them. If the Government is obliged to observe them, it must immediately disqualify a person who does not meet the criteria. Ergo, the Government cannot do what it says it is going to do. Therefore, the parliamentary secretary will have to amend the clause, like it or not, because if he does not amend it, he will be caught by his own criteria. The reason this has happened is that the Government has specified a process. As soon as the Government specifies a process, it is bound by it; and, once it is bound by it, it does not have the freedom of process that it says the director general intends to observe. I am sorry, but the more the Government does, the more it convinces me that it will need a clause permitting it to even consider these people, first of all, because, if it does not do that, someone who is aggrieved will be able to say that the Government has failed to observe due process, because it has not observed not only the criteria that it has set but also the criteria that the Act has specified must be set.

I do not think it is satisfactory for me to propose an amendment. It should not be up to me to fix the Government's process. Until we started this debate, I did not even know what the Government's process would be. However, I do not think it should be up to me to fix it. I think the Government will have to enable the director general to ignore the criteria set out in proposed subsection (3), provided that a person gives an undertaking that he intends to become compliant within a period of time after having become a successful applicant. I believe the person can then be notified that he is a successful applicant, but he cannot take it up until such time as he has complied, and he must do that within six months, or such extra time as the director general may allow. I do not think it is my job to suggest the process. I am suggesting it purely to try to move the Bill along. I am reluctant to start writing the Government's processes.

Hon KEN TRAVERS: I take the member's point. I have sought further advice overnight on the issues raised by Hon Peter Foss. I am waiting for parliamentary counsel to draft some wording for a procedure that will allow people to apply who are currently holders of peak plates, which is the issue that we are dealing with. It is my view and the view of parliamentary counsel that such an amendment will need to be inserted in clause 7 of the Bill, which deals with section 18 of the Act. As I mentioned yesterday, it is certainly the view of the Government that nothing will prevent a person from applying. That is still our view. This is all about the process of getting to the point of issuing the licence, and the successful completion of the process, which is dealt with in section 18 of the Act. The director general will need to be in a position to go through that process and to determine that a person would be a successful applicant but for the ownership of peak plates; and the person will then be given the option of divesting himself of those peak plates prior to the actual issue of the plates. I am happy to try to accommodate the point that Hon Peter Foss has made. However, my view, and the advice that I have received, is that we need to accommodate that in clause 7 of the Bill, not clause 5.

Hon PETER FOSS: Although I am not completely convinced that clause 7 is the appropriate place for such an amendment, it is a little difficult to make that decision in the absence of the amendment. Have we finally dealt with clause 4?

Hon Ken Travers: No. We have postponed that clause.

Hon PETER FOSS: Then I suggest that we deal with the remainder of this clause, and that we then postpone this clause until we have seen the amendment. If we are satisfied that the amendment should go where the parliamentary secretary has suggested it should go, fine, but if we think it should go somewhere else, we can deal with that at that time.

Hon KEN TRAVERS: I am happy to adopt the approach that we continue to deal with clause 5 and the foreshadowed amendments, but that we then postpone the clause and move through the other clauses. Obviously when we get to clause 7, we will need to postpone that as well if we do not yet have the amendment in front of us.

Amendment put and passed.

Hon KEN TRAVERS: I move -

Page 5, after line 4 - To insert -

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- (7) If the operation of subsection (6) does not enable a number of applicants to be distinguished from each other for the purpose of selecting a lesser number of successful applicants, the successful applicants are to be selected from the first-mentioned applicants by ballot.

This amendment provides for a ballot to be conducted if there is no other way of choosing between the applicants.

Hon ALAN CADBY: The Opposition has made contact with the taxi industry, and it supports the amendment, so we will also be supporting the amendment.

Hon MURRAY CRIDDLE: This amendment deals with the point that I raised yesterday. I am happy there has been some clarification. Can the parliamentary secretary indicate what process will be gone through before we get to a ballot? I take it that the director general will actually make some determination about who will get the plates before the matter goes to a ballot. Is that correct?

Hon KEN TRAVERS: I do not know whether the member was in the Chamber for the previous debate.

Hon Murray Criddle: I have been here all the time and I have listened to every single word.

Hon KEN TRAVERS: There would be absolute minimum criteria, such as the taxi driver's licence and those sorts of issues. The director general will then assess all the applications that have been received, having regard to the matters we dealt with in a previous amendment. He would assess all those issues. If 50 people applied for 32 plates and only 40 had the necessary licence to meet those minimum criteria - and an assessment of them resulted in exactly 32 meeting the criteria - those 32 would get the plates and there would be no need for a ballot.

Hon Murray Criddle: If 50 apply and there are 32 plates -

Hon KEN TRAVERS: In the first instance they must meet the criteria as part of the assessment process. Hon Alan Cadby raised the issue of interviews. Multipurpose taxi drivers will be interviewed because of specific issues relating to the role they fulfil.

Amendment put and passed.

Hon KEN TRAVERS: I move -

Page 5, line 5 - To delete "subsections (4) and (5)" and insert instead -
"this section".

Amendment put and passed.

Hon KEN TRAVERS: I move -

Page 5, after line 10 - To insert -
"relevant percentage" means -
(a) 20%; or
(b) if another percentage is prescribed by regulation, that other percentage.

This amendment follows the amendment I moved earlier, which provides for a cap not exceeding the relevant percentage. This amendment defines the relevant percentage. This issue has been covered during earlier debate, but I will recap. Following discussions with Hon Jim Scott, the Government decided to set this percentage at 20 per cent initially, but proposed paragraph (b) provides for another percentage to be prescribed by regulation. If concerns are expressed because it is getting close to 20 per cent, I am sure there will be open debate in the community and the like about whether an increase is needed. Those concerns have not been expressed in Melbourne. Following the issuing of lease plates, the conventional plates on the market have continued to increase in value.

Hon MURRAY CRIDDLE: I move -

Page 5, line 13 - To delete subclause (b).

Those in the taxi industry have some concerns about this legislation and the number of plates that would be reflected by a 20 per cent limit. It has been made clear to me that that is the absolute maximum that they would like released. If the legislation were to be changed and another percentage prescribed, the Government should come back and present it in the form of a Bill. This particular Bill has made a considerable change to the industry, which could have major ramifications for the value of plates. Those in the industry believe that 20 per cent gives certainty to the industry and the community.

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Hon ALAN CADBY: The Opposition supports Hon Murray Criddle's amendment to the amendment. It is important that current plate owners have some certainty that the market will not be flooded with extra plates. Very few people trust politicians and it is important that we define a percentage in this legislation by which the number of lease plates will be expanded. As I said earlier, 20 per cent relates to an extra 225 plates, and that is more than sufficient for the next five or 10 years. I also have a concern about comparing the experience in Melbourne with that in Perth. Melbourne is a completely different city; I have lived there twice for about five years. The transport system in Perth cannot be compared with that of Melbourne; it is bigger and has a larger population; it has trams and Perth does not. It is sheer folly for the Government to say that because it has worked in Melbourne, it will work in Perth.

The Opposition supports the amendment put forward by Hon Murray Criddle because it wants certainty, and so do the taxi owners. I think 20 per cent is a high enough figure. We heard before from the Joint Standing Committee on Delegated Legislation that it all happens after the case, so I do not think that is a safeguard. I would rather see paragraph (b) disappear completely.

Hon PETER FOSS: I support the amendment moved by Hon Murray Criddle. It is essential. I am concerned that the Government wants to die in the ditch over this issue. The first point made by the parliamentary secretary was that plates are being bought on the same basis. The parliamentary secretary has failed to recognise that, with the introduction of lease plates, the Government becomes a player in owning plates. If the Government leases a plate, it takes the place of the owner; many owners of plates make good money out of them. The big difference between the Government and other owners is that the Government has not put up any capital to acquire the plates. The plates cost the Government nothing and it matters little what they are leased for or how many the Government leases. As far as the Government is concerned it is not in any way depreciating the value of its asset. I will put one particular instance: supposing a future Government decided to get rid of the value of plates, which it could easily do by leasing a large number of plates at a very low cost, which would totally devastate the value of plates, what would it lose? It would lose nothing. It would enable it to change the industry without it costing it anything.

On the basis of the Government's statements at the moment, this regime should last for at least four years. It is a new move for Western Australia, and four years is about the time when one would expect a review to take place and for the matter to come back before the Parliament for the Parliament to have another opportunity to look at it. The disallowance of a regulation is not such an opportunity. If we want that sort of opportunity, we really need an Act. It need not be a complicated Act but a one-liner that says to delete "20" and substitute "25". An Act would provide an opportunity for the Parliament to question how the regime has gone under the usual processes in an Act of Parliament. It would give us an opportunity to find out how it went and, if we were so minded, to deal with it. To say that we can disallow a regulation provides us with neither that opportunity nor with much in the way of security, especially now that the Government is no longer proroguing Parliament. Even if a regulation were to be brought in shortly before the end of Parliament and a member moved a disallowance, it would not get automatically disallowed. Unless it came under the 10-day rule, there would not be an opportunity to vote on it, and months could pass and Parliaments could pass. Any licence that had been issued in the meantime would be valid. If we brought in a regulation that referred to 30 per cent, and Parliament were dissolved for an election, by the time Parliament came back again it could be 30 per cent. Disallowing it would not do the slightest bit of good.

There are two ways to deal with this. One is to provide that the regulation does not come into effect until the time for disallowance has expired. That at least deals with the second of my points. That is not my preference. My preference is to delete these words because it still does not really give the Parliament an opportunity to discuss the matter properly. I suggest it, not because I wish Hon Jim Scott to leap on it as a good alternative idea. I would prefer that he did not; I would prefer that he supported us in the deletion of these words. However, if we were not successful in this, I foreshadow that I would move another amendment to say that the regulations shall not come into effect until such time as the time for disallowance has expired. That at least would mean that we were not faced with a *fait accompli*.

Hon Murray Criddle interjected.

Hon PETER FOSS: It is slightly faster. I would prefer a Bill because it gives the opportunity to discuss the matter. The problem I have with disallowing regulations, and we have all sat here when regulations have been discussed, is that we do not get the opportunity to go through the matter in detail. We cannot send it to a committee and ask it to find out what is really happening. Sending it to a committee would give an opportunity to hear what taxi drivers, the industry, consumers and economists think of the regime. No such opportunities are presented with disallowance. It is all a hothouse. Even if we did try to send the matter to a committee, it would not be dealt with before it had to be voted on. That is why I do not think it is the preferred way. I would prefer that we delete the amendment. In four years the amendment could be brought back and we may be more

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inclined towards it because we would have an opportunity to see how it worked and we might be feeling a bit more trusting. At the moment I do not feel happy about it, so I will be supporting Hon Murray Criddle's amendment.

The CHAIRMAN: I indicate for the benefit of the parliamentary secretary and members that I am listening to the debate and if they want to add additional words to proposed paragraph (b) - that is, some form of words that would require it to come into effect only after a period - once these words are deleted, which is what we are talking about now, we cannot reinsert the same words. All I am saying is that if members want to include additional words, it may be convenient for me to leave the Chair at some stage before I put the question.

Hon PETER FOSS: I do not want to put the words in at all if I can get them deleted. If they are not deleted, I will want to put additional words in. In fact, after having a quick look at it, I think a better way to deal with it would be not to have it put in the same clause.

Hon Murray Criddle: You could put it in proposed paragraph (c).

Hon PETER FOSS: I do not think I would put it in proposed paragraph (c). We could add a proposed subsection (8). That would be the better way to do it because otherwise it would start to get a bit strange.

The CHAIRMAN: I raise those issues as a matter of procedure to ensure that we do not find ourselves caught out at some stage.

Hon PETER FOSS: I take it that if the words are not deleted, I could add words.

The CHAIRMAN: Yes.

Hon JIM SCOTT: I favour the second of Hon Peter Foss's proposals rather than the deletion of this amendment. The reason is that on the one hand the clause says that we are setting a limit of 20 per cent and on the other hand it says that we are not and that another percentage may be prescribed by regulation. It is true that that would have to go through a process, but it is also true, as Hon Peter Foss says, that given certain timings, that could be problematic. The reason I do not want the amendment deleted is that there may be circumstances like the collapse of Ansett when there may be a big decrease in a particular year and people might not want to put out the full 20 per cent.

Hon Peter Foss: They do not have to because it is not compulsory.

Hon JIM SCOTT: Okay, but there may be good reasons that it may be the case in a particular year and people might want to change it. The taxi industry might be quite happy to do that. Unless there is a proper process whereby it can be discussed and we have time to look at it and talk to the industry about it, if it passes through this place and comes into effect before we have an opportunity to debate it and have it disallowed, we will run into problems. Clearly the Government needs the opportunity to shift that but it needs to do it in a way that ensures there will be a proper process, it will be scrutinised and the industry will have an opportunity to have input. Rather than getting rid of the whole clause, I think the way to do it, as Hon Peter Foss said, is to amend it so that it must go through the full process and the disallowance period so that it may be looked at. From the time it would be gazetted, there would be 14 days and then another 12 sitting days after disallowance, which would give months of time in which to look at it whether in committee or whatever. It is not as though there would not be adequate time to look at it and assess whether it is appropriate.

The other question I must ask is that if another time were prescribed by regulation, would that become the permanent figure or would it go back to 20 per cent after the year in which more plates were perhaps needed?

Hon Murray Criddle interjected.

Hon JIM SCOTT: Yes, so the new regulation would have to be prescribed and would then go back again.

Hon KEN TRAVERS: I will focus on Hon Peter Foss's comments because they probably summarise the comments made by the other two members. This is one of those instances in which members on one side of the Chamber do not support the concept of leasing plates, which I understand, and want to keep it to a bare minimum, whereas members on this side of the Chamber are of the view that it is a good idea. The Government is prepared to accommodate those views and meet some common ground to give the industry some comfort by inserting this provision within the Bill. I do not think it is fair to say that the Government is dying in a ditch. The Government has entertained constructive dialogue with those who have sought it.

Hon Murray Criddle: That is because you knew you would be out in a couple of years and would not have to worry about it.

Hon KEN TRAVERS: That is Hon Murray Criddle's view. He has been wrong about things in the past and I am sure he will be wrong about things in the future.

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Hon Murray Criddle: And I admit I have been wrong.

Hon KEN TRAVERS: We will have this debate on the first day back after the next election and we will see who was right and who was wrong.

On the issue of depreciating the value of plates, the Government is a player in this industry and the way in which it operates. Once there is regulation, it creates the value of the plates. The Government could affect that value tomorrow by increasing the number of plates on issue by way of tender. It would cost the State nothing. That is no different from the sorts of concerns referred to by Hon Peter Foss. The system currently provides certainty to the industry by placing a cap on the number of plates that can be issued as a percentage of the population. That is currently done by regulation. No-one has a problem with that. I am not sure why it would be a problem when applying it to this case. There is a process for review and for it to come back to the Parliament.

The other thing we need to be clear about is that, as part of national competition policy, the Government is working with the industry to establish the process for determining the number of plates that will be released each year and how that will happen. That issue needs to be brought into the equation.

Having said all that, I am a realist. I know when the numbers are against me. I hope that members will support this amendment. I am sure, looking around the Chamber at the numbers, that Hon Peter Foss will be successful in his amendment for it to come into force only after the process has been completed. I will not be too fussed about that if that is the will of the Committee. Listening to the comments, I suspect that that is the will of the Committee. I am a realist and I will cop it.

Hon JIM SCOTT: The extra period we are talking about with some of the licensees involves people who will be looking at transferring from a peak-hour plate to a premium plate. Under the system, they will need time to divest themselves of the other plate anyway. People will be in limbo for a period. Having that extra time would assist in sorting that out, apart from anything else.

Hon MURRAY CRIDDLE: I am amazed that people do not want to listen to the industry. The industry said that 20 per cent is the way to go. That is clearly its view. The industry needs some comfort. We are just playing with words and going around in circles. If we delete this proposed paragraph, we will be able to bring a Bill back to the Parliament. That is a clean process. There will obviously be plenty of consultation with the various players if a Bill is brought back to the Parliament. If we start talking about delaying the issue until such time as the debate on regulations is had in the House, it will just be another complication to the way in which we debate things. People have trouble understanding what we do anyway. The deletion of proposed paragraph (b) is the way to go to clean it all up. I cannot quite understand what Hon Jim Scott is getting at. It is the clear way to do it, and it is what the industry wants.

Amendment on the amendment put and a division taken with the following result -

Ayes (13)

Hon Alan Cadby	Hon John Fischer	Hon Barry House	Hon Bruce Donaldson (<i>Teller</i>)
Hon George Cash	Hon Peter Foss	Hon Norman Moore	
Hon Murray Criddle	Hon Ray Halligan	Hon Simon O'Brien	
Hon Paddy Embry	Hon Frank Hough	Hon Barbara Scott	

Noes (13)

Hon Kim Chance	Hon Graham Giffard	Hon Jim Scott	Hon Ed Dermer (<i>Teller</i>)
Hon Robin Chapple	Hon Dee Margetts	Hon Tom Stephens	
Hon Kate Doust	Hon Louise Pratt	Hon Ken Travers	
Hon Jon Ford	Hon Ljiljana Ravlich	Hon Giz Watson	

Pairs

Hon Derrick Tomlinson	Hon Christine Sharp
Hon Bill Stretch	Hon Nick Griffiths
Hon Robyn McSweeney	Hon Sue Ellery

Amendment on the amendment thus negatived.

Amendment put and passed.

Hon PETER FOSS: I move -

Page 5, after line 10 - To insert -

- (8) 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.

The effect of this amendment is to overcome the second of my concerns; namely, that a regulation could be brought in, and all the work be done under it, but Parliament's efforts to disallow the regulation would be neutered because it would not cancel any licences already issued. This amendment mitigates many of my concerns.

Amendment put and passed.

Hon PETER FOSS: Before we move on, I outline all points that need to be clarified. Proposed subsection (3) reads -

Without limiting subsection (2)(a), taxi plates may be leased by an individual only if the Director General is satisfied that the individual -

- (a) will be the owner and principal driver of the vehicle operated as a taxi using the plates;
- (b) is not the owner, and has no interest in the ownership, of taxi plates; and
- (c) is not the lessee of taxi plates.

Proposed paragraph (a) requires the person to be the owner and driver. What if that person leases the vehicle? I am sure many people will not physically own the vehicle from a finance point of view. It suddenly occurred to me that the owner may not be the driver, but, no, this appears to have the ordinary meaning. Therefore, a person may not have sufficient money to own the car and decided that the most economic approach is to use a lease plan, which leases the vehicle to that person. There are good tax and other financial reasons for people without a huge amount of money to use this facility. How do we deal with them? There seems to be an awful lot of them. It is not mitigated by anything in the current Act. Is it intended that people must physically own the vehicle? Is it possible that a company like Leaseplan Australia would own it?

Hon KEN TRAVERS: Yes, the person will need to be the owner of the vehicle. This provision is to ensure that people who own and drive the vehicle operate as the lease plate holders.

Hon PETER FOSS: I understand that the parliamentary secretary does not want people with no interest in the vehicle as licencees, but, in reality, I do not know how many people can afford to fully pay for their vehicle through their own finances. Many people still use hire-purchase, do they not? I am not sure about that. Strictly speaking, they are not the owner of the vehicle, although they are regarded as the owner. Many people have some sort of financing arrangement by which ownership is with another company; nevertheless, everyone says the vehicle is owned by the driver. In many of these circumstances, people acquire what is called in common parlance "ownership", but not ownership in law. Therefore, the provision will exclude many people and allow only those with a lot of money to acquire the plates. Has any thought been given to the normal legal arrangements under which people acquire taxis? How do you normally treat them? People are considered to be the owners of financed vehicles under a provision of the Road Traffic Act. Under that Act, the person goes on the plate as the owner even though he or she is not strictly speaking the owner and has a hire-purchase arrangement. Parliamentary vehicles are registered in the name of the Department of the Premier and Cabinet - the lessee - and not the owner. A definition is needed that states that the owner is the legally registered person or the person registered as owner for the purposes of the Road Traffic Act. Would that meet the parliamentary secretary's requirements? I outline what seems to be another unintended obstacle in the Bill.

Hon RAY HALLIGAN: I agree with Hon Peter Foss that lease plan arrangements seem to be the way of the future. For smaller items such as computers, television sets and the like, people use a flexi-rent plan: people have the use of goods, but do not necessarily own them. Some of these facilities have been around for years, but it appears that more companies are encouraging people down this path in the last 12 months or so. As Hon Peter Foss said, if people accessing a vehicle to operate a business as a taxi proprietor must access funds to purchase the vehicle outright, quite a number of individuals, whom I expect the current Government wishes to assist, would be excluded.

Hon KEN TRAVERS: The intention is to postpone clause 5. I will check on the matter raised during the postponement. The amendment has been circulated to give members time to consider it. I suggest that we take the course of action that has been proposed and continue to move through the Bill. We can then come back to clause 5, and hopefully by that time I will have a more detailed answer to the issues raised by members.

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Hon PETER FOSS: While the parliamentary secretary is considering this, in an effort to assist I suggest he look at something along these lines: "owner includes the person who, for the purposes of the Road Traffic Act, is considered to be the owner of the vehicle".

Hon Ken Travers: We will try to get a copy of the Road Traffic Act.

Hon PETER FOSS: I am trying to get a copy at the moment. I was not able to write much more than that because I have not been able to get a copy of it. That seems to me to meet what in common parlance would be regarded as an owner.

Hon KEN TRAVERS: We are getting a copy of the Road Traffic Act as well. What the member has suggested is certainly the intent. We will get further confirmation of it. If members do not wish to raise any other issues about clause 5, I will formally move that we postpone consideration of clause 5 until after consideration of clause 4.

Further consideration of the clause postponed until after consideration of postponed clause 4, on motion by Hon Ken Travers (Parliamentary Secretary).

[Continued on page 13574.]

Clause 6 put and passed.

Clause 7: Section 18 amended -

Hon KEN TRAVERS: The first amendment standing in my name is about reordering and renumbering in readiness for the further amendments that I will move. These amendments seek to address the concerns that members raised earlier and to give effect to a point that Hon Jim Scott raised about people who currently have restricted taxi plates. The definitions are given in the amendments I will move. Obviously, they relate to peak-period plates and those who are allowed to operate for specified times or within specified control areas. Basically, there are a number of such areas in the outer areas of Perth - the northern corridor, the south eastern corridor and the southern corridor. I move -

- (1) Page 6, line 12 - To insert after "plates" -
and subject to subsection (1a)
- (2) Page 6, after line 17 - To insert -
 - (2) After section 18(1) the following subsections are inserted -
“
 - (1a) The Director General may accept an application for unrestricted taxi plates by an applicant who is not eligible because a person (the “**relevant person**”) is the owner, or has an interest in the ownership, of restricted taxi plates contrary to section 16(3)(b), (4)(d) or (5)(d) or (e) if the Director General is satisfied that the relevant person will divest himself or herself of the ownership, or interest in the ownership, of the restricted taxi plates if the application is successful.
 - (1b) If subsection (1a) applies, the Director General may issue a set of taxi plates in respect of the application only if satisfied that the relevant person has divested himself or herself of the ownership, or interest in the ownership, of the restricted plates.”.

The second amendment will address the concerns that members have raised. It makes it clear that the director general may accept an application for an unrestricted taxi plate to be leased by someone who is currently a holder of one of the restricted taxi plates; that is, to operate either in specified areas or at specified times.

Hon Alan Cadby: In the explanation you just gave you used the word “holder”. You mean the owner.

Hon KEN TRAVERS: The plate holder is the owner or the lessee.

Hon Alan Cadby: But currently he is the owner.

Hon KEN TRAVERS: The point is that a person who is a current owner of a peak plate will be able to apply. The director general will be able to consider that application, along with other applications, so long as he is satisfied that the relevant person intends to divest himself or herself of the ownership, or the interest in the

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ownership, of the restricted plate. The director general will be able to issue the unrestricted lease plate once the person has divested himself or herself of the ownership of, or interest in, the restricted plate. The intention is that the director general will give the person in the order of three months to go through that divesting process. That will allow those people who are currently working in the industry in a restricted capacity to move up and become lessees of full-time plates. That is the intent. I believe it will successfully address the concerns that members raised earlier in the debate.

Hon PETER FOSS: I am not sure whether the parliamentary secretary is trying to wear me out, but he is probably succeeding.

Hon Ken Travers: I was going to make the point that I didn't think I would ever try that challenge.

Hon PETER FOSS: I still have some problems. I said that I would wait to see whether the parliamentary secretary dealt with the problems. They are twofold. I will deal with the more fundamental one. The reason I thought it had to go in the earlier clause is that it deals with the qualification for the plate, whereas this clause deals with the process. I will give an example. One statute could set the qualifications for obtaining a university degree. Another statute could state how it is granted. They are quite different things. We have now moved on to deal with how a plate is granted. However, we have not changed the qualifications; we have not changed the criteria. We have said that a person can now do it, but we still have a process under which people are taken in the order in which they meet the qualifications. Therefore, there will still be people who do not meet the qualifications, and when the ranking order is being determined, they must go further down. I thought I had made that clear last time. My concern is that there are two different processes. Sure, the director general may issue a plate, if he gets that far down the ranking order. However, the people who do not meet the qualifications still do not meet them. Therefore, they are put down the order. The amendment does not state that the director general is to disregard the qualification when assessing them; it states that he may accept an application. I started to write something. I think I even said that we must say he is entitled to disregard that qualification, provided he is satisfied that the person will divest himself of the restricted plate. The problem about putting it in this part of the Bill is that it deals with process; it does not deal with qualifications. Therefore, I do not think there is any way around it, except to put it there. That is my first objection.

Hon KEN TRAVERS: Hon Peter Foss is absolutely right; this is about dealing with the process. It is not our intention to change the criteria, but we do want to change the process. The application is taken, assessed and determined, but the licence cannot be issued until the person meets the criteria. That is why we will not change the criteria - they will need to meet the criteria when they are issued with the licence. This will provide for that. We are dealing with the process by which the director general can assess the matter, consider it and get to the point of everything bar the issuing of the licence, but when the licence is actually issued, the person will need to meet the criteria, and divest himself of the plates. It meets the issues raised by Hon Jim Scott, that an existing owner of a peak plate can put in an application and be considered. If successful, the applicant will be told, and will then have to divest himself of his existing plate to be issued with the new lease plate. At the time of being issued with the plate, the person will meet the criteria. That is why we are not changing the criterion; we are changing the process.

Hon PETER FOSS: I will just finish this one off by taking a working example. The Government decides to issue 20 plates, and there are 20 applicants who meet all the criteria except for that mentioned in the proposed subsection. That is very handy - they all meet all the criteria. The applications of those who do not meet the criterion set out in the proposed subsection can be accepted, and can be issued once they have complied. That is fine. However, what happens if 20 plates are being issued, and 40 people apply. All 40 meet all other criteria, but 20 do not meet the criterion about already owning a plate. They are not even included in the ballot, because no ballot is held until all applicants have met the criteria equally. Twenty people do not meet the criterion on ownership of plates, so they are out. .

Hon Ken Travers: The criterion is that they agree to divest themselves of the plates if successful.

Hon PETER FOSS: They must agree to give up their plates in order to apply. That is exactly the same thing. These people are being told that they have Buckley's chance of getting a plate unless there are no other applicants. They will be put at the bottom of the list but they were meant to be at the top of the list. For the purpose of determining the people to be considered, the qualifications should be able to be disregarded. The criteria should not be disregarded when the licences are finally issued.

The parliamentary secretary is confusing a couple of characteristics. Criteria are for the issuing authority; they govern the decision made. Qualifications govern what other people need to have. These are criteria; things that the issuing authority must take into account when making decisions. Therefore, they cannot be considered until after all the applications have been made. Applications might be accepted from people who have criminal

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records, provided they can obtain an order from the court. Those applications can be accepted, but when the applicants are being considered, the criteria must be applied. I hear what the parliamentary secretary is saying - that it works on the basis that there are insufficient candidates to overwhelm the number of plates to be issued. That is my first objection.

My second point is really a query rather than an objection. Why have the criteria been limited so much? I accept that an amendment will be moved to include the definition of "lessee", so those people will be taken out. Are people entitled to apply if they have joint ownership of plates? What if somebody had joint ownership of a set of plates, could not stand the co-owner and wanted to get out, but not until securing a new set of plates? Will that person be excluded? As far as I can see, the wording seems to exclude somebody with an unrestricted plate for Bunbury who wants to become a driver in the metropolitan area. Why is this being done? Is it not enough that they get rid of the plates? Why must it be so narrow? Why could proposed subsection (1a) not read as follows -

The Director General may accept an application for taxi plates by an applicant who is not eligible because a person (the **"relevant person"**) is the owner, or has an interest in the ownership, of taxi plates contrary to section 16(3)(b), (4)(d) or (5)(d) or (e) if the Director General is satisfied that the relevant person will divest himself or herself of the ownership, or interest in the ownership, of the taxi plates if the application is successful.

Why not say that? That is all that is necessary. Why do we keep finely dividing this legislation to make it more restrictive? Why does the Government want to limit itself to this tiny little area? There should be more discretion. I can never understand why people want to do this. People want to work out these funny rules; it all goes into the Act, and then they are stuck with it. I am sure the effect will be to exclude someone in a situation that was never thought of. This seems to be unnecessarily restrictive on the Government. The Government will be caught by it, because it is bound by the criteria. I am offering a better piece of legislation that will give the Government more discretion and room to move, while the parliamentary secretary wants to hone it down to restrict discretion. If the parliamentary secretary wants to persist with this amendment, I would like to make some changes, because it seems to be unnecessarily restrictive. The parliamentary secretary has not dealt with the problem of defining the criteria in the first instance. They may be disregarded, but licences may not be issued until they are met. Actually, it is not really a criterion; it is a qualification.

Hon Jim Scott: Could that be done simply by adding to proposed subsection (1b) the words "and is not the owner and has no interest in the ownership of an unrestricted taxi plate".

Hon PETER FOSS: It would be much easier to do it this way; to make the proposed subsection read -

The Director General may accept an application for taxi plates by an applicant who is not eligible because a person (the **"relevant person"**) is the owner, or has an interest in the ownership, of taxi plates contrary to section 16(3)(b), (4)(d) or (5)(d) or (e) if the Director General is satisfied that the relevant person will divest himself or herself of the ownership, or interest in the ownership, of the taxi plates if the application is successful.

Why not do that? It is up to the director general, who may, not must, accept an application. Proposed subsection (1b) should then be amended to read -

If subsection (1a) applies, the Director General may issue a set of taxi plates in respect of the application only if satisfied that the relevant person has divested himself or herself of the ownership, or interest in the ownership, of the plates.

Why make more work with these other words? The definition of restricted taxi plates would not then be required. The real problem lies in proposed section 16(3). That should not be a criterion. It should say that taxi plates are not to be issued to a person under those circumstances, but an application can be received. Maybe the problem is that this provision is in the wrong place in the first instance.

Hon Ken Travers: Sorry, who is trying to wear who down, again?

Hon PETER FOSS: It has finally struck me what is wrong with this. The parliamentary secretary wants to make an amendment here and I want to make an amendment there. The problem all along has been that proposed subclause (3) does not belong where it is. It belongs where the parliamentary secretary says it belongs.

The issue of whether a person can be issued with a taxi licence should be a qualification rather than a criterion. I will give members an example. A person cannot hold two offices of profit under the Crown at the same time. The appointment to a second office of the Crown does not mean that the person must vacate the first office of profit; it disqualifies the person from the first office of profit under the Crown upon his being appointed to the second one. Although the appointment to a second office of profit disqualifies a person from holding the first

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profit of office, it is not a criterion for an appointment. For instance, if the Director of Public Prosecutions were appointed as a judge, he would immediately cease to be the DPP because he could not hold both offices at the same time. However, it is not a criterion to be appointed as a judge that the person not be the DPP; it is just that the two offices are incompatible. That is the problem with clause 5, proposed subsection (3). The parliamentary secretary has said that it further describes clause 5, proposed subsection (2)(a), but it is not about that at all; it is not one of the criteria.

Hon KEN TRAVERS: It is a shame we removed the rights to get a law degree by way of articles. We should have amended the law to make it a requirement that members of Parliament do their articles! We could argue for days about where the clauses of the Bill should be placed. However, there is no doubt that the way the Bill is drafted achieves the intent. It provides for the criteria and for the exemption from the criteria.

While I am on my feet I want to seek some guidance. I have received advice that a word is missing from the amendment I moved. I wonder whether I could get some guidance about the simplest way to deal with that. It is probably a bit more than a Clerk's amendment. In the last line of proposed subparagraph (1b) I want to insert after the word "restricted" the word "taxi".

The DEPUTY CHAIRMAN: The simplest thing to do it is to seek leave to insert that word as an amendment to the amendment.

Hon KEN TRAVERS - by leave: I move -

To insert the word "taxi" after the word "restricted" in the last line of proposed subparagraph (1b) in amendment (1).

Amendment on the amendment put and passed.

Hon PETER FOSS: I move -

To delete the words "unrestricted" and "restricted" from proposed paragraphs (1a) and (1b) in amendment (1).

Hon KEN TRAVERS: As much as I appreciate the efforts of Hon Peter Foss to introduce provisions to allow for the Government to enter into buyback, I oppose this amendment. I understand his concerns about tricky Governments in the future. However, this Government has clearly stated that it will not allow buyback. We are not going down that path. We have made that decision and we will not do that. If Hon Peter Foss's amendment were passed, it would allow the Government to set up a scheme of arrangement with a bank - I will not mention any names -

Hon Peter Foss: What about Bankers Trust and Brian Burke?

Hon KEN TRAVERS: The member means Macquarie Bank. The member's amendment would allow the Government to set up an arrangement with a bank so that if the Government offered the industry a voluntary buyback arrangement, as it issued the lease plates the owners could set up an arrangement with the bank to buy back the plates they currently own and then apply for a lease plate. That may be the intent. We know that Hon Peter Foss is a deregulationist and supports getting rid of taxi plates. That is what this amendment would allow. We do not want that option. We appreciate that the member is trying to raise the issue of buyback again. However, we do not want to go down that path and we will oppose the amendment. We want to provide the ability for drivers to upgrade from being peak drivers to full drivers. That is what Hon Jim Scott asked the Government to accommodate. As I said earlier, Hon Jim Scott engaged in constructive dialogue with the Government and we have accommodated his proposals. However, we will not accept an amendment that would provide either this Government or a tricky Government, which Hon Peter Foss keeps talking about, with the option of setting up a scheme of arrangement allowing for a voluntary buyback in which a third party could buy the plates in a scheme or arrangement with the Government, and then the Government could eventually cancel those plates and issue the drivers who originally owned those plates with lease plates. The amendment, by removing those words, provides for that to happen in the future, and we will not accept that.

Hon PETER FOSS: If I were not a lawyer, I might be persuaded by that wonderful speech by Hon Ken Travers, but he is totally and utterly wrong.

Hon Ken Travers: I have it right. We know what your motivations are. You support the deregulation of the industry.

Hon PETER FOSS: I know why the member came up with that. It is well known that the Minister for Planning and Infrastructure, who was in cahoots with Brian Burke, tried to allow for a bank in the eastern States to buy out not only Black and White Taxis but also sufficient extra taxis to give them a reasonable market share. We know that the minister has been lobbied by Brian Burke and that Brian Burke wrote her some advice to do certain

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things, which she started to do. We also know that Brian Burke happened to know some considerable days before the public, and certainly before the taxi industry did, what the minister was going to do. I can see why the parliamentary secretary would think that I am trying to allow the minister to do what she fully intended to do, which is what Brian Burke asked her to do.

The parliamentary secretary is talking nonsense, and I will explain why. My amendment does not allow buyback because, currently, if somebody wants to offer to buy a taxi plate from another person, he can. He can take that offer to a large number of people. That is what Brian Burke was trying to do with Black and White Taxis. The parliamentary secretary knows that Black and White Taxis was prepared to sell to his client but the client was not happy that there were not enough taxi plates. That is why I have always been suspicious of the figure of 20 per cent. It was the figure arrived at to satisfy the eastern States bank for which Brian Burke was operating as an agent. I am glad this subject has arisen. There is a very good reason the Government chose the figure of 20 per cent and wants to increase it. It is because of Brian Burke and his clients. Leaving that aside, the Government's proposal will work only if people sell their plates voluntarily. There is nothing to stop them doing that now. They can buy as many plates as they like.

Hon Ken Travers: The difference is that they cannot apply for a lease plate now.

Hon PETER FOSS: Each of those people could become a lessee of the eastern States bank, which is exactly what the minister was trying to achieve with the buyback scheme. While those people were lessees of the bank, they could apply to get one of the hire plates. Luckily, of course, no more than 20 per cent of the licences can be allocated for that scheme. The Opposition recommended that provision. The Government might have moved the final amendment but the Opposition raised it. One of the taxi industry's concerns was that the buyback scheme was nothing more than an attempt to pay back a Labor member. Brian Burke is still a powerbroker within the Labor Party. He is still fiddling in a WA Inc way with government property to enable the Government to give him a bit of help. I know that was behind the Government's proposal. It was defeated because of the extent of the objections to it in the circumstances in which it was occurring. The parliamentary secretary's remarks, given the total ignorance he has just shown about the meaning of this Bill, do not surprise me. The Government has decided that it has created such a mess that the best way out of it is to try to go on the attack. I can tell Hon Ken Travers that a compulsory buyback proposal cannot proceed because the Government has not been given any power to do that. If Brian Burke's client wants to buy all Black and White's taxi plates, which we understand he was discussing, and the client wants to lease them back to the taxi drivers it has bought them from, it can still do that. Nothing in this Bill will stop those people from applying for one of these leases. It will be possible then and it is possible now.

Hon Ken Travers: Do you agree that under your amendment they will be able to sell to the bank and apply also for a lease plate?

Hon PETER FOSS: They can do that now.

Hon Ken Travers: No; they can't.

Hon PETER FOSS: Why?

Hon Ken Travers: They would not be issued with a plate once they owned one.

Hon PETER FOSS: They would have sold it to the bank; they would not own it any longer.

Hon Ken Travers: They would have to sell it in advance and take the risk of not being issued with a lease plate. With this amendment they can have two bob each way.

Hon PETER FOSS: They can do that anyway. If Hon Ken Travers understood the legislation, he would know that the solution is very simple. If the Government really wants to know how to do this, I suspect government people involved should see a lawyer. However, I am prepared to give the parliamentary secretary a bit of free legal advice. I can think of an easy way to do it right now. I have been concerned from day one that this legislation would enable the parliamentary secretary's minister to give Brian Burke's client the share of market he wants in another way and probably more cheaply.

Hon Ken Travers: Why are you moving this amendment? That will assist him.

Hon PETER FOSS: Those are my concerns. However, I am prepared to give the minister a degree of credibility that perhaps she does not deserve, in view of the clear evidence we have heard of the negotiations and discussions taking place between Brian Burke and the minister. He wrote her a letter telling her what to do. He is getting involved with banks in the eastern States who want to buy a substantial share of this market. When that falls in a heap, we are supposed to believe that Alannah MacTiernan has suddenly had a change of mind; she no longer has a desire to help her mate Brian Burke. I hope that is the case, although I have my doubts. The parliamentary secretary knew darn well when he gave that example what I was thinking of. Members might

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have noticed that I had not raised that example in this Chamber. Now that the parliamentary secretary has raised it, let us deal with it. My amendment does not allow that. It is allowed because of a minister who has been very complacent until now. She has done everything that Brian Burke has told her to do. She makes sure that he knows in advance what she is going to do. If Hon Ken Travers thinks that is all right; I do not. I have been very restrained in not raising it before.

I have been trying to help the parliamentary secretary make this good legislation. However, I am getting a little concerned, because in the course of debate, the very subject that no-one has been mentioning - Brian Burke and the involvement of eastern States banks - is suddenly raised. By whom? It was raised by the parliamentary secretary in what we call a Freudian slip. He seized the opportunity to try to accuse the Opposition of permitting the very thing the minister contemplated earlier. I am somewhat concerned that even though the minister has supposedly completely forgotten about the buyback - she has backed down completely - I am not all that certain the minister has completely lost the idea. Now that the parliamentary secretary's Freudian slip has shown that he knows just as much as we know about what his minister is up to - we can assume that he has a better knowledge of the workings of his minister's mind - and has let drop this very interesting scenario of the bank and the buyback and a substantial market share, we must be a teensy bit concerned that perhaps the minister is not quite as forgetful of her former plans - or shall we say Brian Burke's plans - as would otherwise seem to be the case.

The parliamentary secretary can claim as loudly as he likes what this Bill will permit. However, as a lawyer, I can tell him that is nonsense as are most of the propositions he has mentioned to date. However, I will stop at that if that is all it is. I am nonetheless concerned. Now that he has raised the matter, can I have the parliamentary secretary's assurance that the minister does not intend to facilitate a takeover of a substantial proportion of the Western Australian taxi industry by an eastern States bank, as was previously mooted as a possibility when she was proposing to instigate the buyback scheme?

Hon KEN TRAVERS: An eastern States bank would be assisted in this matter if it could advise drivers to submit an application for a lease plate and indicate they are intending to divest themselves of that plate to the bank should the drivers be successful. Even if they already own a fully unrestricted plate they will be able to go through the selection criteria and, dare I say, because of their experience and other attributes, they would probably have a very good chance of being successful applicants and of being issued with a new lease plate. They would then be given the option of divesting themselves of their existing plate to the bank. That would provide the assistance that the member is talking about. That is why we want to keep it to restricted plates and why I will not support the amendment moved by Hon Peter Foss. He should think through his amendment. Regardless of whether that is his intent, the amendment would enable that, and the Government will not support it.

Hon PETER FOSS: I do not know how many members in this Chamber heard me ask a direct question. I am sure most members heard me do so. The direct question was: is the minister intending to assist an eastern States bank to acquire a substantial proportion of the Western Australian taxi industry? I thought everybody would have heard that question. Apparently the parliamentary secretary did not hear it. I want him to hear it because I hope that, as parliamentary secretary, he is better informed than the rest of us of the minister's present intentions. I would like a categorical, unqualified and direct answer to that question.

Hon KEN TRAVERS: I understand the process we are going through. It amounts to whether I can tell Hon Peter Foss which members of Parliament will do what. The minister has not informed me that that is her intention. I am not aware of her having any intentions along that line. To the best of my knowledge, no. Given that I have not provided a categorical denial because I have not asked that question of the minister, I understand that Hon Peter Foss will accuse me of not answering the question.

I am unaware of the answer to that question. I have never asked that question of the minister, but I can assure the member that I have never heard her say that is her intention. I have never been given any advice that that is her intention and I am not aware of that being her intention. However, I am aware that she has made it very clear that buyback is off the agenda. It strikes me that the only way to achieve the scenario suggested by Hon Peter Foss is to go down the path of buyback, which is off the agenda. The minister has made it clear that she has no intention of going down the path of buyback.

Hon PETER FOSS: I will have to make myself clear. I was not talking about buyback. Buyback was the minister's method of achieving the sale of a substantial part of the Western Australian taxi industry to an eastern States bank. I agree that she has abandoned buyback. I am interested to know whether she has abandoned the notion of putting a substantial proportion of the Western Australian taxi industry into the hands of an eastern States bank. Although for the time being I am prepared to accept that the parliamentary secretary does not know the answer to that question, I would like his assurance before the Bill passes through the Committee that he will

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speak to his minister so that he can come back to the House and give us an absolute and categorical assurance that she does not intend to do that.

Hon Ken Travers: I am happy to deal with that at the third reading stage.

Hon PETER FOSS: I am now sufficiently concerned that buyback was an alternative method -

Hon Ken Travers: Mr Foss, I am prepared to take that up during the third reading.

Hon PETER FOSS: I thank the parliamentary secretary very much indeed, because I want an unqualified assurance from the parliamentary secretary that the minister has told him so.

Hon MURRAY CRIDDLE: I note the definition of restricted and unrestricted taxi plates on the second page of these draft amendments. Why will the impact of a sale be only on restricted taxi plates? In other words, why will the scenario that the parliamentary secretary outlined affect only one area?

Hon KEN TRAVERS: We are not interested in giving people who already have an interest in a taxi plate assistance through this provision to apply for a lease plate. This provision is specifically aimed at people who have peak-period plates or restricted-area plates. If those people apply for a plate that will allow them to operate throughout the metropolitan area, which would effectively upgrade their licence, this provision will provide them with a mechanism to have that application considered, but they must then divest themselves of their interest in the taxi plate prior to the issue of the lease plate.

Hon MURRAY CRIDDLE: I thought the parliamentary secretary's argument for not having the word "unrestricted" in the provision was that the plate could be sold to an outside group.

Hon Ken Travers: No, that would be if the words "unrestricted" and "restricted" were deleted. That would allow people with an unrestricted plate to lodge an application and to indicate that they intended to divest themselves of that plate if they were successful in obtaining a lease plate. Those people already have a plate. It is therefore not the intent of this provision.

Hon MURRAY CRIDDLE: What is the difference? If they have a restricted plate, must they divest themselves of it to get the other plate?

Hon Ken Travers: Yes.

Hon MURRAY CRIDDLE: What is the difference?

Hon KEN TRAVERS: The difference is that restricted plates restrict people in what they can do. Currently, people with peak-period plates can drive on Friday and Saturday evenings and on specific days. This provision will allow them to drive six days a week, work longer hours in the industry on a fuller and more permanent basis and to upgrade to a lease plate; whereas someone who has a plate already has the ability to do that.

Hon Murray Criddle: Whether people have a restricted or unrestricted plate, they will still have to divest themselves of that plate to get a lease plate.

Hon KEN TRAVERS: Technically people could sell off an unrestricted plate and apply for a lease plate; however, they would run the risk of the application being unsuccessful. This provision will allow people who have a restricted plate and who have applied for a lease plate to be informed that the application has been successful so that they can divest themselves of the restricted plate before the new one is issued. In the other scenario, those people would take the risk that if they divested themselves of the plate and were unsuccessful in the application for a lease plate, they would be without a plate and they would have to try to lease one in the private market. They would take a significant risk if they went down that path. This provision allows for people on lesser plates - for want of a better term - to upgrade their plate without taking the risk of divesting themselves of it prior to the outcome of their application.

Hon MURRAY CRIDDLE: I understand that. Why then, given all the criteria that we passed earlier, do unrestricted licences come into this scenario?

Hon Ken Travers: It is because we want people to have only one plate ultimately.

Hon MURRAY CRIDDLE: That is exactly what I am saying, so what is the problem?

Hon KEN TRAVERS: I am not sure. However, one of my advisers thinks that currently someone with a restricted plate who applies for an unrestricted plate would end up with an unrestricted plate.

Hon Murray Criddle: But if they have an unrestricted plate now, they are not allowed to have another one anyway. I cannot understand what you are getting at.

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Hon Peter Foss: That applies to all plates, not just lease plates. Section 18 of the Taxi Act deals with current taxi plates, not lease plates. We are therefore amending a section that deals with an income plate, whether it is bought or -

Hon Ken Travers: It is an application -

The DEPUTY CHAIRMAN (Hon Simon O'Brien): Order! I will put the question if no member is on his or her feet. Members must be recognised by the Chair if they wish to speak. The question is that the words proposed to be deleted be deleted.

Hon MURRAY CRIDDLE: I make one final point. I understood that the people coming into the industry would be able to hold only one set of plates.

Hon Ken Travers: Yes.

Hon MURRAY CRIDDLE: If they have a set of plates, how will there be a problem getting another set?

Hon KEN TRAVERS: I am not sure that I understand the question. This provision deals with people with a restricted operator's plate who want to lease an unrestricted plate; in that case, they must divest themselves of the restricted plate. We are dealing with limiting those people who are taking lease plates to one plate. If they currently have a plate, they must divest themselves of it before they can be issued with the new lease plate.

Hon PETER FOSS: This amendment seeks to amend the amendment to the clause. It deals with the issue of taxi plates. As I understand it, this amendment applies only to leases, because it uses the word "application" and applications apply only to licences. It is a fine point. It is an application under section 16 of the Act. It would seem to me that part of our problem arises out of the fact that there is a difference between proposed subsection (3)(a) and subsection (3)(b) and (c). Paragraphs (b) and (c) are quite different in character from (a). Proposed subsection (3)(a) states -

Without limiting subsection (2)(a), taxi plates may be leased by an individual only if the Director General is satisfied that the individual -

- (a) will be the owner and principal driver of the vehicle operated as a taxi using the plates;

That is the criterion. The legislation goes on to state that plates can or cannot be issued because of certain things. It seems to me that one reason we are getting into trouble here with the impact of what all this will be is that the amendment made by the parliamentary secretary - (1b) - should really substitute for proposed subsection (3)(b) and (c). As such, it would read that the director general may not issue a set of taxi plates in respect of an application unless the director general is satisfied that the individual "is not the owner, and has no interest in the ownership, of taxi plates; and is not the lessee of taxi plates" but may accept an application if satisfied "that the relevant person has divested himself or herself of the ownership, or interest in the ownership, of the restricted plates". The director general may then issue a set of plates if satisfied that a person has divested himself of ownership. That seems to me what we are talking about. The reason we are getting into a knot is that we have taken two provisions, split them up, and strung them 13 sections apart. We are getting extremely confused as a result.

I think the parliamentary secretary needs to look at this again. We are having a lot of trouble understanding this because, as Hon Murray Criddle has said, it does not appear to be connected. We have provisions in one place and provisions in another. I have suggested an amendment because I am unhappy with what the Government is putting up. Before we make an absolute dog's breakfast of this, the parliamentary secretary should really think about it. It would be handy if parliamentary counsel were here. We are all arguing about something that goes back to something that only parliamentary counsel can help with. If parliamentary counsel were here, we would not be struggling with this, and I am sure we could work things out quickly. I am now starting to understand why parliamentary counsel want to put the provision in here. If proposed paragraphs (b) and (c) were put in here, we would find ourselves quickly getting through this. We are all struggling with the concepts. I now understand what the parliamentary counsel was about; I thought parliamentary counsel were wrong because of where proposed paragraphs (b) and (c) started. I suggest that we will move along much faster if we could tell parliamentary counsel what was the problem. We are talking about drafting problems. It seems wrong to me that we are hammering out a drafting problem without one of the main players being present. I invite the parliamentary secretary to move on to something else, otherwise we are going to batter ourselves to death because we are missing the one person who can solve this.

Hon KEN TRAVERS: I have readily moved on when I have thought it was necessary. We have sought advice from parliamentary counsel on this; they are aware of the amendment moved and have given advice on this. The provisions are not 13 sections apart; only two. The provisions will be in section 16 and 18 of the Act. One deals

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with the criteria, which will remain in place regardless of what happens. Section 18 deals with the process for choosing people. People will be given the opportunity to apply if they have indicated they meet the criteria. It is very simple and straightforward to me. Everyone has a different view about where different things should go in the world.

Hon Peter Foss: What will happen when there are 40 applicants for 20 licences but they do not meet the criteria?

Hon KEN TRAVERS: People will meet the criteria for the purposes of consideration. What they do not meet is the criteria to be issued with a licence at the completion of the process. They will be assessed alongside all the other applicants because they are eligible to be considered because of the provision we are dealing with. That is very clear. They will then be able to be issued with a licence. If there are 40 applicants for 20 positions, and 20 of them are existing plate owners -

Hon Peter Foss interjected.

Hon KEN TRAVERS: No, they are not.

Hon Peter Foss: Why?

Hon KEN TRAVERS: Because of the operation of this clause.

Hon Peter Foss: It allows you to accept it; it does not allow it in this regard. The parliamentary secretary has not answered the question.

Hon KEN TRAVERS: I have.

Hon Peter Foss: You have not. The parliamentary secretary has just told me that that is the way it is going to be done. It ain't! The criteria have to be taken into account and people will not get to the stage of even being allowed to issue because those people will slip down to the bottom of the selection list.

Hon KEN TRAVERS: The criterion is that they undertake to divest themselves.

Hon Peter Foss: That is not the criterion. It is not in that section; it is in the next one. It is not a criterion at all.

Hon KEN TRAVERS: Proposed subsection (2) provides the criteria and proposed subsection (3) is about the issuing.

Hon Peter Foss: Proposed subsection (3) is not; it specifically qualifies proposed subsection (2)(a), which deals with the criteria. I can read. Why does the provision state "Without limiting subsection (2)(a)."?

Hon KEN TRAVERS: Without limiting the criteria; it follows on. It is not ahead of; it is after.

Hon PETER FOSS: The parliamentary secretary tries to tell us that proposed subsection (3) is not to do with criteria but is to do with issuing. Why on earth is it in section 16? Section 18 deals with issuing. He told me not more than half an hour ago that if I tried to change it in section 16, I was in the wrong section - section 18 deals with issuing. He is now telling me that section 16 deals with issuing. That is what I have been saying to him. I have worked out what is the problem. Proposed paragraphs (b) and (c) have nothing to do with criteria. Proposed subsection (3) states "Without limiting subsection (2)(a)". Proposed subsection (2)(a) lists the criteria to be met by the successful applicant. Proposed subsection (3)(a) is a criterion but (b) and (c) are not. The criterion decides who a plate may be given to. If there are 40 applicants and 20 of them already own plates, they will be left out because they do not meet the criterion.

Hon Ken Travers: No, they will not.

Hon PETER FOSS: The parliamentary secretary says they will not but the Act says they will.

Hon Ken Travers: No, it doesn't.

Hon PETER FOSS: I can only go by the wording of the legislation. It states -

Taxi plates shall also be offered for lease, with the invitation to apply to lease taxi plates specifying -

(a) the criteria to be met by the successful applicant;

If people do not meet the criteria, they are not in! Proposed subsection (3) states -

Without limiting subsection (2)(a), . . .

It is plainly some of the criteria.

Hon Ken Travers: Keep reading.

Hon PETER FOSS: I will -

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taxi plates may be leased by an individual only if the Director General is satisfied that the individual . . . They have not met the criteria.

Hon Ken Travers: The criteria to be met for the lease are not to be considered in the application.

Hon PETER FOSS: Yes, I agree with that. However, proposed subsection (2) states that taxi plates shall also be offered for lease, with the invitation to apply to lease taxi plates specifying the criteria to be met. Where does it say that meeting the criteria can be deferred?

Hon Ken Travers: In proposed section 18.

Hon PETER FOSS: No. That allows the application to be received, not to be deferred. It does not allow the criteria to be ignored when judging between the applicants. That is what criteria are. If the words "Without limiting subsection (2)(a)" were not included at the beginning of the proposed subsections, perhaps the parliamentary secretary might be able to argue his point. However, those words are included. If the parliamentary secretary does not believe there is any relationship between proposed subsections (3) and (2)(a), why are the words "Without limiting subsection (2)(a)" included?

Hon Ken Travers: Section 18 of the Taxi Act requires the director general to be satisfied that the relevant person will divest himself or herself. That will then apply to proposed sections 16(3)(b), (4)(d) and (5)(d) or (e), which are the relevant provisions we have been talking about. Two sections of legislation often interrelate. The end result is as I have explained it.

Hon JIM SCOTT: Although I will not support the deletion of the words, could a way around this argument, which would clarify the situation, be to insert in proposed subsection (3) an additional paragraph stating something along the lines that a restricted licence owner or person who has any interest in a restricted licence may be accepted by the director general, provided the person meets the provisions of -

Hon Ken Travers: The cross-reference is already there in proposed section 18. It cross-references with proposed section 16.

Hon JIM SCOTT: It does, does it? If the parliamentary secretary is convinced that that will not restrict those people, I am happy. However, it concerns me that it might not be accepted. I am happy if the full intention is made very clear by the Committee, through the statement by the parliamentary secretary on behalf of the minister, and the addition of the proposed subsections will ensure that those people will have access to these leased licences. I certainly do not want to accept the amendment by Hon Peter Foss because I think it would open up a Pandora's box.

Hon KEN TRAVERS: As a way of moving forward, after this debate I will ensure that all these issues are readdressed. These amendments will go back to the lower House. The Government's intention is clear. If Hon Peter Foss is correct in his interpretation, the Government will want to amend this amendment to ensure that it is accurate. I am sure that when we send the message to the other place, it will send it back to us if it is not correct. It will not provide us with that provision. I ask members whether we can move on, deal with the other amendment and make some progress on this Bill today.

Hon PETER FOSS: I have been keen to make progress all along. I suggest to the parliamentary secretary that if he reads proposed subsection (3) as not having anything to do with criteria, the simplest way of dealing with it all would be to delete the words "Without limiting subsection (2)(a)" in proposed subsections (3) and (4). If they are not criteria, I do not think those proposed subsections need to have those words. If they have nothing to do with the criteria to be met, there is no reason to have those qualifying words. What makes it seem to be a criterion, which the Government must apply, is that it has specifically described them as being criteria by putting those limiting words at the beginning of those two proposed subsections.

Hon Ken Travers: I understand the point you are making and I have indicated that.

Hon PETER FOSS: I do not want the Government to end up with unworkable legislation. I know what the Government's intention is, but the Parliament's intention is garnered from the words of the Act. We have made so many chops and changes to the Bill that we will probably have to look at the whole thing again to see what will result. If the parliamentary secretary wishes to make the distinction between proposed subsections (2) and (3), I think there are real problems with the opening words. Once they are removed, I think there probably will not be a problem. One way or another, the parliamentary secretary needs to address it. I do not want to beat my head against a wall on this issue. I am trying to help, but I am also trying to protect people in the taxi industry, who I see as being the most important people. They are the people whom the Government is supposedly trying to encourage. They are the people who do not have a current unrestricted taxi plate, are experienced and dedicated to the industry and will be good owners of these new plates.

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Amendment on the amendment, as previously amended, put and negatived.

The DEPUTY CHAIRMAN (Hon Simon O'Brien): The question now is that amendment (1) moved by the parliamentary secretary be agreed to.

Amendment put and passed.

The DEPUTY CHAIRMAN: The question now is that amendment (2), as amended, be agreed to.

Amendment, as previously amended, put and passed.

Hon KEN TRAVERS: I move -

Page 6, after line 19 - To insert -

(3) After section 18(3) the following subsection is inserted -

“

(4) In this section -

“**restricted taxi plates**” means taxi plates used on a taxi that may operate only during specified times or within specified parts of a control area;

“**unrestricted taxi plates**” means taxi plates other than restricted taxi plates.

”.

I have discussed the reasons for this amendment fairly well as part of the preceding debate.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 8: Section 19 amended -

Hon ALAN CADBY: I would like clarification on proposed section 19(2), which refers to plates being forfeited to the director general and possibly being offered for sale or lease, as the case requires, if payment of the annual fee is not made within 30 days. That provision appears two or three times in different clauses. Does it mean that if the plates are leased, they can only be re-leased, and if they are owned, they can only be resold? In other words, can there be a mix between plates that are offered for sale and plates that are offered for lease?

Hon KEN TRAVERS: It would be up to the Government at the time to choose how to release those plates in accordance with the Act. Earlier we dealt with the cap of 20 per cent. If we were sitting at that 20 per cent mark, a plate could not be reissued as a lease plate if it was a private plate at that time. In a sense the decision is the same at the end of each year. If a decision were made to release new plates into the market, the Government would need to decide whether it wished to lease them or put them out to tender.

Hon ALAN CADBY: Although we are not debating proposed section 23A, it specifies that if a lessee forfeits his plates, they are offered for lease - it does not say that they will be offered for sale. That contradicts what the parliamentary secretary just said.

Hon Ken Travers: Proposed section 23A states “may” be offered for lease.

Hon ALAN CADBY: Does that mean that they “may” be offered for lease or sale?

Hon KEN TRAVERS: As I said by way of interjection, the plates “may” be offered - the Government would have the choice.

Hon ALAN CADBY: Once a plate holder forfeits his right to hold a plate, the Government can either sell or lease that plate. Can the plate be leased only if the number of lease plates has fallen below that 20 per cent threshold we agreed to earlier?

Hon KEN TRAVERS: Yes. That will override everything else.

Clause put and passed.

Clauses 9 and 10 put and passed.

Clause 11: Section 23 amended -

Hon ALAN CADBY: This Bill is rather difficult to follow at times, particularly after listening to the discussions that have taken place. We agreed earlier to a change that means there will no longer be plate owners; they will

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be holders. Subclause (2) states “in the case of an owner of taxi plates”. That is the old terminology rather than the new terminology.

Hon KEN TRAVERS: The term “plate holders” captures both lessees and owners. This clause refers to the collective. Proposed subsection (2)(a) relates specifically to owners, and proposed paragraph (b) relates to lessees.

Hon ALAN CADBY: The clause refers to a divestment period. Earlier in the debate reference was made to a three-month divestment period, but this clause refers to the period being 45 days. Is it 45 days or three months?

Hon KEN TRAVERS: This is a different issue.

Hon Alan Cadby: It is the same terminology.

Hon KEN TRAVERS: True. I understand the point of the member’s question. One time frame refers to someone who is applying for a lease plate. We are giving people a reasonable chance to divest themselves of other interests. This clause refers to someone who is required to forfeit his plate because he is no longer considered an appropriate person to be in the industry. We are giving people a period in which to do that, but we are of the view that, as different circumstances apply, the divestment period should be only 45 days. This clause applies to someone who has done something that requires him to forfeit or divest himself of the plate because he is no longer fit to hold that plate.

Clause put and passed.

Clauses 12 and 13 put and passed.

Clause 14: Section 25 amended -

Hon JIM SCOTT: Proposed new section 25(1)(c) states -

if, as a result of forfeiture under subsection (3) of section 23, those plates may be offered for sale or lease in accordance with section 16 - the forfeiture of the right to those plates under that subsection.

Will the offer for sale or lease take place under the same rules as the normal releases?

Hon KEN TRAVERS: Yes, it would be under the same rules, in accordance with the Act. There is no other mechanism for doing that. The department may decide to hold off on offering the plate straightaway if it knows that a release is coming up so that the plate can be offered as part of a package.

Clause put and passed.

Clauses 15 to 18 put and passed.

Postponed clause 4: Section 3 amended -

Resumed from 20 November after the clause had been partly considered.

Hon KEN TRAVERS: I move -

Page 2, line 12 - To insert after “acquire” -

, by virtue of a successful application under section 16(2),

Yesterday we debated the terms “lease” and “lessee” and how they apply to the Act. The intent is that the meaning of the word “lessee” is confined to people who are already covered in the legislation as lessees rather than those in the private market place. These amendments simply seek to clarify that - we were of the view that it was already clear. Further wording from parliamentary counsel has been obtained that now puts it beyond any question or doubt and addresses the issues raised by members yesterday.

Amendment put and passed.

Hon KEN TRAVERS: I move -

Page 2, after line 14 - To insert -

“lessee”, in relation to taxi plates, means a person who acquires, by virtue of a successful application under section 16(2), the right to use the plates for a period specified by the Director General;

Amendment put and passed.

Postponed clause, as amended, put and passed.

Postponed clause 5: Section 16 amended -

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Resumed from an earlier stage of the sitting after the clause had been amended.

Hon KEN TRAVERS: I have a further amendment to this clause. Members will recall that during debate Hon Peter Foss raised concerns about the definition of “owner” in circumstances in which people lease or own a car by other mechanisms, or have beneficial ownership of a car. I move -

Page 5, after line 5 - To insert -

“**owner**”, in relation to a vehicle, has the same meaning as that given in section 5(1) of the Road Traffic Act 1974;

This amendment is in accordance with the suggestion made by Hon Peter Foss. It will basically provide for a person who is nominated as the owner, a person who has a contract under the Consumer Credit (Western Australia) Code, a person who has the use of a vehicle under a hire-purchase agreement, and the like - that is, the scenarios that Hon Peter Foss raised earlier - to be considered the owner for the purposes of this clause if that person is the sole user of the vehicle.

Amendment put and passed.

Postponed clause, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.