

TAXI DRIVERS LICENSING BILL 2013

Committee

Resumed from 21 November. The Deputy Chair of Committees (Hon Amber-Jade Sanderson) in the chair; Hon Jim Chown (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Progress was reported after the clause had been partly considered.

Hon JIM CHOWN: The last time we were speaking on this matter we were discussing the issue of complaints handling, and Hon Sally Talbot queried how the process will change with the implementation of the Taxi Drivers Licensing Bill 2013. I will take this opportunity to provide a brief overview of how complaints are currently handled by the department and how some things will change.

Currently, complaints are received from four main sources: a direct call to the department, by email, by presenting a complaint in person to a Department of Transport office or a referral from a taxi dispatch service; on occasions, complaints are also received by via other channels, such as members of Parliament representing their constituents. Complaints are investigated and appropriate action taken if they are upheld. Most information on complaints is held in a database that I believe was commissioned in 2002. Although there have been several modifications and improvements to the database over the years, the age of the system is showing. Most notably, the system does not handle complaints with multiple breaches particularly well; does not sufficiently differentiate between metropolitan and country complaints in some cases; is not good at providing informative reports on the outcomes of complaints; and does not link well with infringements issued against a driver, particularly when multiple infringements are issued. The system does not link well with mobile on-road compliance equipment, and because a separate system is used for on-road contacts, there is not a single view of driver histories or a single process for managing compliance issues. I am sure members will understand my point.

The supporting information technology infrastructure of the current complaints handling system is very limited. This bill includes provisions for a penalty points system, and clause 35 requires the chief executive officer to maintain a penalty register system. This will of course be a computerised system, and the creation of such a system provides an excellent opportunity to ensure that other systems, including the complaints handling system, are updated. The new complaints system will provide a mechanism for large taxi dispatch services to share complaints data and refer complaints, provide a mechanism for the small taxi dispatch services and country operators to lodge complaints online via a web-based application and provide a mechanism for the public to lodge complaints online via a web-based application. This will be in addition to the existing methods of telephone, email and in person. I hasten to point out that in 2013, consumers' expectations of online lodgement go far beyond sending an email, and I believe the addition of an online lodgement facility will be a definite improvement. The department wants the new system to do more than the existing system so that it can be more effective in its role as a regulator. In particular, it wants better reporting systems and better integration with officers in the field.

I would like to talk more about the nuts and bolts of this new system. As I said earlier, this is an IT project. At the moment, much of the detail is in development. We are still at the stage where business analysts are talking about data models and functional requirements. As I stated before, these new systems will give the department visibility of complaints and will ensure that the provisions of this bill can be properly enforced.

The government will be utilising the condition-making powers conferred under section 29 of the Taxi Act 1994 and section 47ZD(3) of the Transport Co-ordination Act 1966 to require taxi dispatch services and country taxi car licensees to ensure allegations of a breach of this bill or its regulations are shared with and referred to the department. In addition, regulations can be drafted under section 47ZF of the Transport Co-ordination Act 1966 to provide for requirements relating to the recording and handling of complaints and breaches of this bill.

A breach of a taxi distribution service condition imposed under section 29 of the Taxi Act 1994 incurs a maximum penalty of \$5 000. Section 60(3) of the Transport Co-ordination Act 1966 provides for a maximum penalty of \$2 000 for a breach of a regulation made under the act. Most importantly, there are cancellation provisions in both acts under section 30(1)(b) of the Taxi Act 1994. A taxi dispatch service that repeatedly breaches conditions can have its registration cancelled. Under section 47ZF(1)(k) of the Transport Co-ordination Act 1966, regulations can be drafted outlining the circumstances by which a country taxi car licence can be suspended or cancelled. Repeated failure to refer complaints could be prescribed as a grounds for cancellation. In other words, there are appropriate sticks to ensure that taxi dispatch services and country taxi operators cooperate with the department. These sticks will be put in place and used if and when necessary. Fortunately, the working

relationship between the department and the industry has improved significantly in recent years to the point where, I suspect, it will only be the most recalcitrant of operators against whom the stick will be required.

We can talk about existing complaint-handling processes and their shortcomings that have been around for many years; however, we can acknowledge that in the implementation of this bill we have an opportunity to fix those shortcomings. I will reiterate again that the government has made it clear that when this bill is implemented, the department will have a visibility of complaints so that individuals who breach the rules will be brought to account.

Hon SALLY TALBOT: I have a point of clarification. Was that a statement by the minister that the parliamentary secretary has just read into *Hansard*?

Hon JIM CHOWN: It is my statement.

Hon SALLY TALBOT: It is your statement?

Hon JIM CHOWN: Yes.

Hon SALLY TALBOT: So in the statement, when the parliamentary secretary referred to “I”, that was him, not the minister?

Hon JIM CHOWN: That is correct.

Hon SALLY TALBOT: I ask the parliamentary secretary, if what he just said was an account—I was listening, I was just outside the chamber—of how the existing system works, why do we need the act? The changes and shortcomings in the existing system that the parliamentary secretary has very clearly acknowledged—surely, we do not need an act to change them. The whole point of my question was that none of these provisions are included in the act. Presumably, these will be part of the regulations.

Hon JIM CHOWN: The member is partly right; we do not need regulations to change processes. We are doing that as part of the implementation of this bill.

Hon SALLY TALBOT: I am sorry to start in such a nitpicking way, but can I just ask the parliamentary secretary, when he said that I am partly right, in what sense am I wrong?

Hon JIM CHOWN: The member is right, rather than partly right. As I have already said, as part of the implementation of the bill, it gives us an opportunity to do so. I was not nitpicking either.

Hon KEN TRAVERS: I very much appreciate the statement that the parliamentary secretary has made this morning. It still leaves me trying to understand exactly what the system will be like. It seems to have been a reasonably forward-moving position as to how complaints will be dealt with. I understood from the parliamentary secretary’s statement that all complaints will now need to be visible to the department. If people do not provide the complaint, there will be a penalty. However, we last met to discuss this bill on 21 November. On page 6396 of *Hansard*, in answer to the question of whether the Department of Transport will decide whether it investigates the complaint, the parliamentary secretary said the department will investigate all breaches. I am still trying to understand this point; namely, if a complaint is lodged with a taxi dispatch service and it is then made available to the department, through this system he has outlined today, will the department then investigate? Or is it possible that the department will monitor what investigation the taxi dispatch service undertook and not conduct its own investigations into that complaint?

Hon JIM CHOWN: If it is an alleged breach, the department will investigate.

Hon KEN TRAVERS: As I said before, I am very pleased to hear that because that is very different from how we were briefed on this bill at the time. It sounds like there has been a significant shift in the government’s thinking; that is a good thing. We were briefed that taxi dispatch services could still investigate and deal with the complaint at the taxi dispatch level; that it would not be investigated by the department. Therefore, that proposal being put to us will definitely not occur. Will the department that take over and conduct the full investigation into that complaint if it is a breach of the code of conduct?

Hon JIM CHOWN: That is more of a statement.

Hon KEN TRAVERS: No, it is a question.

The DEPUTY CHAIR (Hon Amber-Jade Sanderson): No, the member put a question.

Hon KEN TRAVERS: It was a very clear question. I want to confirm —

Hon Jim Chown: Sorry.

Hon KEN TRAVERS: — the proposal that was outlined to us during the briefing—namely, that it was still possible for a taxi dispatch service to conduct the investigation. The department would be able to view it on its website. If the department was satisfied with the taxi dispatch services’ investigation, it would not take any

further action. Is that now off the table? In other words, as soon as a complaint is lodged with the taxi dispatch service and logged in the system, will a full investigation of all the dealings of that matter be taken over by the department? That is what I want to have confirmed by the parliamentary secretary.

Hon JIM CHOWN: I cannot comment on what took place in Hon Ken Travers' briefing because I was not present.

Hon Ken Travers: I understand.

Hon JIM CHOWN: As the member has outlined it, that is the way forward.

Hon KEN TRAVERS: I am very happy with that. My only other question I wanted to ask of the parliamentary secretary is in respect of the statement that he just made. I was listening intently and want to make sure of my reading of it so that it concurs with what I believe to be the existing legislation. For an operator of a taxi in the country who does not refer a matter to the department when they receive a complaint, the penalty—or, as the parliamentary secretary referred to it, the “stick”—will be lower than the penalty for a taxi operator in the metropolitan area who does not refer a matter to the department. Was I correct in my understanding of that? I think it was a penalty of \$5 000 or \$2 000.

Hon JIM CHOWN: The member is correct; there is a difference in the penalties. One act is older than the other. As I stated, the Taxi Act 1994 has a maximum penalty of \$5 000 and the Transport Co-ordination Act 1966 has a maximum penalty of \$2 000.

Hon KEN TRAVERS: Is there any logic to the different penalties that apply in regional Western Australia and metropolitan Western Australia? I understand that the two acts operate separately, but my personal view is that we probably should bring together all state legislation that deals with all matters relating to taxis. We should get rid of the Taxi Act 1994, the Transport Co-ordination Act 1966 and the Taxi Drivers Licensing Bill 2013 and bring them into one consolidated piece of legislation. Is there logic in the different penalties for regional and metropolitan WA? If there is not, should we then not make some amendments through this legislation to ensure that there is consistency of penalties across the state? Is that something that can potentially be done cooperatively, with the parliamentary secretary's officers helping to prepare those amendments, so that they fit within this legislation and there is consistency? As the minister points out, those penalties will become very crucial in terms of the sticks that will be needed to ensure that this legislation is properly implemented.

Hon JIM CHOWN: The member makes a good point, but the reality is that we are not confident that it is necessary to amend this bill to accommodate his point. In reality, under this bill, there will be amendments to the regulations to the relevant acts, as we have already stated, which could produce consistent outcomes. Does that make sense?

Hon KEN TRAVERS: I am afraid it does not. It does not make any sense at all, because the maximum penalties are defined by the act and not by the regulations. Unless a regulation is going to be brought in that says first, second and subsequent offences will never attract a fine of more than \$2 000, and, therefore, the maximum penalty by regulation will somehow be brought back to \$2 000, then I cannot see how regulations can be used to get consistency. I make the point that a higher penalty, or the threat of a higher penalty, is needed for regional operators who often run and own their own businesses. The operators of regional taxi businesses are often the owners, so when a complaint is made against them, they might have a strong vested interest to not pass on that complaint, whereas in the system that operates in the metropolitan area, taxi dispatch services are at least a step distant from the plate owners, and they will not have that incentive; in fact, they will have a greater incentive to comply because they would lose their whole business should they incur the wrath of the Department of Transport for not passing matters on. The area where we are most likely to have recalcitrance that requires the use of a stick, to use the parliamentary secretary's term, to ensure they comply is regional WA. Therefore, we would want to have higher penalties in regional WA, yet we have the reverse. The metropolitan area has higher penalties and the regional areas have lower penalties.

Trying to get legislation through the Parliament is always difficult and time-consuming. There are many logjams during the drafting of legislation, and that is why the Legislative Council has for some time had very little work. I suspect that will not improve in the near future. We have a bill sitting here before us and we have identified a problem, so would it not be a good opportunity to use the expertise available to the parliamentary secretary to quickly amend the act to allow for that consistency now, rather than proceeding down this path and setting up a regime that will, depending on which part of the state it applies to, have different penalties? I think that is a silly way of proceeding. I would urge the parliamentary secretary to reconsider his position on this. As I say, I would like to know whether the parliamentary secretary agrees that the likelihood of recalcitrance is greater in regional WA because we do not have the same taxi dispatch service structure there as we have in Perth.

Hon JIM CHOWN: With regard to the first question about consistency, I will be more than happy to take that question on notice and get back to the chamber with a way forward on that matter. In respect of the second

question about taxi dispatch services in the country with private taxi operators—Hon Ken Travers has already indicated that most of them are—the reality is that drivers in both the metropolitan and regional taxi entities have the ability, under the Taxi Act 1994 and section 47ZF of the Transport Co-ordination Act 1966, to lose their licences if they are repeatedly recalcitrant.

Hon KEN TRAVERS: That is true, but the penalty is the question. I doubt that a licence would ever be taken away for a first offence, and if it were, I suspect the matter would find its way to the State Administrative Tribunal pretty quickly. We have outlined maximum penalties, but the first offence penalty will probably be significantly less than the maximum; the maximum in the metropolitan area is \$5 000, and it is not beyond the realm of possibility for a first offence to be \$2 000. In regional Western Australia, we are probably looking at somewhere between \$200 and \$500, so the incentive to at least do that a couple of times to avoid the department even becoming aware of these matters is significantly higher in regional Western Australia, particularly if a driver knows that the offence that has been complained about could cause them to run into serious issues with the department. They would take their chances and say, “Well, it’s a couple of hundred bucks; I’ll wear that”, whereas it strikes me that a penalty of a more substantial nature, which we obviously accept is what is required in the metropolitan area, would achieve that consistency.

I appreciate the parliamentary secretary saying that he will take that question on notice. I suspect that most of it would probably require new clauses. I would suggest that we try to progress through this legislation now and when we get to the point where we have completed examining the legislation, bar the point at which we deal with new clauses at the very end, we could maybe adjourn debate on the bill to give the parliamentary secretary time to talk to the minister over the weekend about new clauses. That is provided we can proceed through the rest of the legislation today, which is certainly my intention.

Hon Simon O’Brien: Knock it off by lunch!

Hon KEN TRAVERS: As long as I do not get too many interjections, it was certainly my plan to try to knock off clause 1 by lunchtime, Hon Simon O’Brien, as a gesture of my goodwill!

I thank the parliamentary secretary for his prompt response!

The final thing I want to say about the short title of the bill is that the parliamentary secretary used the term “sticks”. I want to make a final comment about the general detail of this bill. It may be that the parliamentary secretary will be able to come back and say that what I am about to propose can be dealt with within the bill. This is a bill very much built around sticks and compliance. In fact, if there is one thing that is lacking in the approach that has been outlined in terms of the way in which this bill will be implemented, it is a lack of carrots for good drivers. We currently have in Western Australia the capacity to offer some carrots to good drivers because we now have lease plates. As new drivers have come through, we have arrived at a point at which about half of the fleet is on government lease plates and half are privately owned; it may be slightly less than that for the lease plates. I propose that the government considers looking at carrots. I suspect that drivers who have penalty points will find it very difficult to secure a lease plate through the application process, but beyond having obtained a lease plate through the application process, I would like to see an arrangement under which drivers who stay in the industry and have an impeccable record, have not received complaints and are complying with the code of conduct, are rewarded. One of the ways we could reward them is that, over a period of time, we decrease the weekly cost of their lease plates, so that there is a real incentive to ensure they are complying with the act; a real carrot for people to actually excel in the way they perform as taxidriver so that they do not get complaints being lodged against them. It would be fantastic to come up with a scheme under which, over a 10, 15 or even 20-year period—I am willing to discuss the length of time—drivers can end up making a very small weekly payment for a lease plate as a reward for having been a good driver.

I just put it on the record that it is my view that there are many sticks in this bill and not many carrots that I can see. I suspect, with a bit of enlightenment, we could probably fit that into the existing regime, certainly for the metropolitan area, without having to make any formal amendments, if the parliamentary secretary wants to confirm for me that that is the case, or if he believes that there would need to be some amendments to put in place a regime like that. I really encourage the government to look at the idea of some more carrots in the legislation to reward good drivers, and I think one way of doing that is to reduce, over time, the payments they make for lease plates.

I thought I might have got a response, but it is fine if the government wants to take time to think about that. I will just say that the Labor opposition will support clause 1.

Clause put and passed.

Clause 2: Commencement —

Hon KEN TRAVERS: This is actually a very complicated clause 2, compared with the ones that we would normally see —

Several members interjected.

Hon KEN TRAVERS: Have members actually had a look at it? Hon Simon O'Brien can laugh, but if he had a look at it, can he tell me whether, compared with the standard —

Hon Simon O'Brien: Yes, I have had a look at it.

Hon KEN TRAVERS: Does he not agree that, compared with the standard commencement clauses, this is a complicated commencement clause?

Hon Simon O'Brien: All right, Touchy, it's got more detail in it than others!

Hon KEN TRAVERS: So what is so humorous about that?

Hon Simon O'Brien: What's your drama?

Hon KEN TRAVERS: What is so humorous about it?

Hon Simon O'Brien: Oh, sorry; you've gone all grumpy again, have you?

Hon KEN TRAVERS: No, I am just asking a question! I am always a happy chappie!

The DEPUTY CHAIR (Hon Amber-Jade Sanderson): Members, please allow Hon Ken Travers to speak to the clause.

Hon KEN TRAVERS: I understand that part of the complexity of this clause is related to other legislation that passed through this place some time ago and is likely to be proclaimed. I have two questions. Firstly, can the parliamentary secretary give us an indication of when the government expects that those other clauses will be proclaimed, and which is the more likely scenario that is provided for in clause 2? Secondly, can the parliamentary secretary give us a brief outline of the government's time frame for when it expects the various parts of this bill to be brought into operation?

Sitting suspended from 1.00 to 2.00 pm

Hon JIM CHOWN: Hon Ken Travers asked when the various road traffic reform acts, one of which is referred to in clause 2 of the bill, are expected to commence operation. The department advises that they are expected to commence operation during the first half of 2014. The proclamation date for clause 2 (b) is expected to be in the latter part of 2014, with the department targeting an October–November time frame. This means that all provisions of the act should take effect around April–May 2015.

Hon KEN TRAVERS: The other part of my question is which section of the road traffic legislation is expected to be in operation, because there are various options available? In that time frame, when will those other bills be proclaimed, and which one are we likely to be dealing with? I did not think it was going to be that hard, parliamentary secretary.

Hon JIM CHOWN: We did not pick up that there was a further question and it is a complicated answer. My understanding of the member's question is which clauses would be required and which would not be required.

Hon Ken Travers: Yes.

Hon JIM CHOWN: Okay. Clause 2 (c) referring to the Road Traffic Legislation Amendment Act 2012 would not be required. Clause 2 (d) referring to part 10 would be required. And clause 2 (e) would not be required.

Hon Ken Travers: By the time this bill comes in clause 2 (c) will be the only one that applies.

Hon JIM CHOWN: If it all happens as expected, the answer is yes.

Clause put and passed.

Clause 3: Terms used —

Hon KEN TRAVERS: As we go through this clause, we will understand why I think a single bill would be useful. The term "authorised officer" is defined in this clause as having the meaning given to it in clause 41(1). Is it intended that the authorised officers who will operate under this bill will be the same authorised officers who operate under the Transport Co-ordination Act 1966 and the Taxi Act 1994? I assume that the officers who enforce those other pieces of legislation will be the same officers who will be authorised under the Taxi Drivers Licensing Bill.

Hon JIM CHOWN: Yes.

Hon KEN TRAVERS: The reason I ask that is that it made sense to me that that is what the government would do. The definition of “authorised officer” in the Taxi Act 1994 states —

authorised officer means —

- (a) an officer designated or appointed under section 31; or
- (b) a member of the Police Force;

The Transport Co-ordination Act 1966 does not have a definition of “authorised officer”; however, the definition of “authorised officer” in the regulations of 1982 states —

authorised officer means —

- (a) an officer of the Department authorised in that behalf by the Director General;
- (b) any member of the Police Force;

Of course, clause 41 of the Taxi Drivers Licensing Bill states —

- (1) For the purposes of this Act, an authorised officer is —
 - (a) a police officer; or
 - (b) a person designated by the CEO under subsection (2).
- (2) The CEO may designate as an authorised officer a person employed in, or engaged for the purposes of, the Department.

There are a couple of interesting points there, as there are slightly different definitions in each case. Of course, section 31 of the Taxi Act 1994 states —

The Director General may designate any officer of the department as an authorised officer, and may otherwise appoint as many authorised officers as he or she considers necessary for the purposes of this Act.

They are three quite different definitions, although, arguably, reference to a police officer is consistent across all of them, except that slightly different terminology is used. Is it intended that there will be a single instrument of appointment for those officers or will they have to be separately appointed under each act and quite distinctly appointed by the minister?

Hon JIM CHOWN: Yes, there will be separate instruments for each appointment.

Hon KEN TRAVERS: That causes me some concern, as there is always a chance that someone will be appointed under one act but not another due to an administrative oversight. I am intrigued as to why we would not try to bring the definition of “authorised officer” into a format that allows for a single appointment and a cross-reference in the acts so that the authorised officer is an authorised officer appointed under the Taxi Act 1994, or to define in the Taxi Act and the Transport Co-ordination Act that an authorised officer is an authorised officer appointed under the Taxi Drivers Licensing Act 2013. Was that ever considered; and, if it was not, why would we not try to get uniformity across the three pieces of legislation?

Hon JIM CHOWN: No, it was not considered. It was not considered mainly because there is no specific problem with the delegation of authority.

Hon KEN TRAVERS: Even though this question relates to clause 41 as well as to the definition in this clause, is it the intention of the department to use as authorised officers people who are not direct employees of the government—that is, to appoint people who are engaged or contracted to the department to provide the services rather than direct employees?

Hon JIM CHOWN: Not currently, no.

Hon KEN TRAVERS: I raise this issue now because it relates to the way in which the definition is provided in other acts. My view is that, under the Taxi Act 1994, someone could not be appointed as a designated officer unless they were an officer of the department; they would have to be an employee of the department. In my view, it is clear that, under the 1994 act, only an officer of the department can be appointed as an authorised officer, yet the definition in clause 3, which refers to the meaning given in clause 41, clearly provides for an officer who is engaged for the purposes of the department. That suggests to me that these services will be able to be contracted out and a private company will be employed to provide these services, as is done on the trains with the revenue protection officers, who are employed through MSS Security. That suggests to me that that provision will allow that. Is that correct? Is that the reason why there is a different definition of “authorised officer” in this legislation from the fundamental definition in the Taxi Act 1994?

Hon JIM CHOWN: The member is correct, but that is certainly not the intention.

Hon Ken Travers: So we can delete it when we get to clause 41; are you happy with that?

Hon JIM CHOWN: The reason it has been put in the legislation is that it is just a standard style of drafting.

Hon KEN TRAVERS: The next definition that applies across the three pieces of legislation is the definition of “taxi dispatch service”. I do not know whether the parliamentary secretary has a copy of the Taxi Act 1994 in front of him; if not, I can certainly give him the relevant page.

Hon Jim Chown: Can you refer to the page?

Hon KEN TRAVERS: It is on page 4 of the Taxi Act 1994 and at the top of page 7 of the bill there is the definition of “taxi dispatch service”. They are actually different definitions of a taxi dispatch service. I would have thought it was pretty simple—a taxi dispatch service is a taxi dispatch service, and we would want one consistent definition. I wonder whether the parliamentary secretary could explain to us why there are two definitions of a taxi dispatch service. I think that just makes things complicated for people if in the Taxi Act and its provisions that deal with the industry there is one definition of a taxi dispatch service and in the bill there is another. I make the point that I note that the definitions are not significantly different, but they are different, and I do not understand why identical wording would not be used.

Hon JIM CHOWN: The definition in the Taxi Act is for the intent of the Taxi Act, and the definition in this bill is for the intent of this bill. Parliamentary counsel often use clauses from other legislation in bills and always use the same definitions if they can, unless there is a need to make some changes for the intent of a bill, as is the case with the bill before the chamber today.

Hon KEN TRAVERS: I completely concur with the parliamentary secretary that it would normally be expected that parliamentary counsel use the same language to provide consistency, because things can get quite complex if definitions are changed. This legislation deals with a company. In the main, taxi dispatch services are companies and it does not matter how they are defined in the bill, Swan Taxis will always be Swan Taxis and Black and White Cabs will always be Black and White Cabs. Hence, I agree with the parliamentary secretary that consistent wording is needed wherever possible. I cannot understand why different wording is needed in this Taxi Drivers Licensing Bill 2013 to define a taxi dispatch service relative to the Taxi Act 1994. Why is it so necessary to have different wording in this legislation compared with what is already defined as a taxi dispatch service in the 1994 act?

Hon JIM CHOWN: The reason for the difference in the definitions of a taxi dispatch service is that under the Taxi Act 1994, taxi dispatch services need to be registered and the intent of the Taxi Drivers Licensing Bill 2013 is to address some driver issues. For example, clause 9 states that a taxi dispatch service can commit an offence. That is why the difference exists.

Hon KEN TRAVERS: The parliamentary secretary has actually raised my concerns. He is absolutely right that taxi dispatch services likely to be offending under this legislation can surely only be those taxi dispatch services licensed under the Taxi Act 1994. Hence, I would have thought that the definition of a taxi dispatch service for the purpose of this legislation would have been a taxi dispatch service authorised under the Taxi Act 1994. We would not think a different definition would be given because, by the parliamentary secretary’s own explanation just then, that would suggest that a taxi dispatch service can exist that is not a taxi dispatch service under the 1994 act. Is that the case? Does the parliamentary secretary expect that there will be taxi dispatch services prosecuted under clause 9 that are not taxi dispatch services authorised under the 1994 act?

Hon JIM CHOWN: The definition of a taxi dispatch service provided in this bill pertains only to this bill and has nothing to do with the Taxi Act 1994. Under the definition in this bill there will be taxi dispatch services captured for its requirements and if they commit an offence, that legislation will apply to them.

Hon KEN TRAVERS: The only way I think that could occur is in the case of an unlicensed taxi dispatch service operating in the areas covered by the Transport Co-Ordination Act 1966; is that correct?

Hon JIM CHOWN: Would the member mind repeating the question?

Hon KEN TRAVERS: If I understood the parliamentary secretary, he is saying that taxi dispatch services will be captured by the definition under this bill but they are not necessarily taxi dispatch services authorised under the 1994 act. If they were operating in the metropolitan area, they would have to be licensed under the 1994 act, otherwise I assume the department would be trying to close them down and prosecute them for acting illegally. It would strike me that the only way that could occur is by having unregistered and unregulated taxi dispatch services operating in regional areas that are covered by the Transport Coordination Act 1966. This definition is intended to capture those unregulated taxi dispatch services under this legislation. Does that make sense to the parliamentary secretary now?

Hon JIM CHOWN: If somebody in the country is providing some of these services, as stated here, they can be captured by this bill.

Hon KEN TRAVERS: Again, this is what concerns me about the way in which the three acts will work. We have a highly regulated system in the metropolitan area under which taxidriver have to be approved. There is a set of regulations and drivers are monitored and policed. There are strong provisions attached to that system under the Taxi Act 1994. We do not have any formal recognition of taxi dispatch services in regional WA. I understand that under the current system, all the regulation of the industry is effectively done through the plate holders. If any other activity is going on, the department, for want of a better term, ignores that. It just looks at the outcomes it wants and it achieves that by regulating the plate holders. In my view, this bill will bring in a system for those regional areas that will give imprimatur to this third body but there will be no formal regulation of that third body other than some elements here. Again, that starts to create a very dangerous situation and we could have a very confused system. We would have regulated taxi dispatch services in the city and unregulated taxi dispatch services in the country that are not dealt with under the Transport Coordination Act but are dealt with under the Taxi Drivers Licensing Bill. Does the parliamentary secretary not see the inherent complexity of that and the inherent dangers for the industry of that sort of structure?

Hon JIM CHOWN: The member is correct but this is the current situation. To unpick all that, this bill would be more complicated than it currently is. To unpick three acts would take a great deal of time. It is always desirable to have the same law applying across any particular situation. I think the member has already acknowledged the complexities of the various acts.

Hon KEN TRAVERS: I guess it depends on what analogy we use, whether we are unpicking or whether we have a tangled ball and we are tangling it more. Rather than trying to unpick, we are untangling. The best way of operating would be, for the purposes of this act, to have registered taxi dispatch services in metropolitan areas, so we define a registered taxi dispatch service under the Taxi Act 1994. With respect to the other issues that may arise—dealing with complaints and matters that relate to taxis operating under the Transport Coordination Act 1966, we continue to regulate those in the same way that we currently do; that is, by dealing directly with the plate owners. I will give an example, if the Chair will indulge me, by looking at how clause 9 is structured. I think that is the clause that the parliamentary secretary referred to earlier today. It has two elements to it. The clause deals with causing or permitting an unlicensed driver to drive a taxi. I understand that there are two potential offences; there is an “or” there. The first is when a person commits an offence if the person causes or permits another person to drive a vehicle. It would strike me that the best way of administering this clause would be in the regional areas under the Transport Coordination Act. For instance, someone would be prosecuted under that clause if they allowed someone to drive a taxi who was not a licensed taxidriver. In the metropolitan area, the taxi dispatch service would be the body that would prosecute. Again, it gets more complex in Perth because often the plate holder does not have that direct relationship with the driver; it is either a taxi management company or an operator. I am trying to work out why we would not do that. It is interesting that the definition that is being used is “a person”, which suggests that an individual would be charged, not the taxi dispatch service. The intention may be to pick up the company and the person and use the Interpretation Act to turn “person” into another legal entity. We can probably deal with that when we get to clause 9.

I come back to my key point. Why would we not seek to continue to administer the acts as we currently do; that is, by dealing directly with the plate holders—the owner of the taxi in the main in regional WA, and the taxi dispatch services in the metropolitan area where we have a formal process for creating these taxi dispatch services? Is it not possible to be done that way? If that is the case, would we not be better off making it clear that taxi dispatch services will apply only in the metropolitan area? It is not about unpicking; it is the simplest way of keeping that clear delineation of the different responsibilities of the different acts that will apply in WA should this bill be passed, which I hope it will.

Hon JIM CHOWN: I appreciate the member’s comments on this matter but, as he well knows, parliamentary counsel drafts these bills —

Hon Ken Travers: But we approve them.

Hon JIM CHOWN: And we approve them; agreed. However, the reality is that we give them information for achieving the desired outcomes, the drafting takes place, it is checked by the department and if it works, it is presented in this house for debate, as it is now.

Hon KEN TRAVERS: The parliamentary secretary is absolutely right; that is the process, but ultimately we are the lawmakers, not parliamentary counsel. The whole point of having a Parliament is for us to examine the legislation. The whole point of having a committee stage is for us to consider the legislation in detail and to understand it. Members in the chamber would probably universally agree—something that happens probably more often than most people realise—that we want to reduce red tape. We want to keep issues as simple as possible in terms of legislation and not to overcomplicate it. If we bring in an increasingly complex matter and—as the parliamentary secretary said—stitch it all together, but stitch it together in an incredibly complex way, it is incumbent upon the parliamentary secretary to get the advice he needs to explain to the chamber why we must

do it in such a complex way. What I am putting to the chamber is far simpler and clearer: that we continue to keep clear definitions between the Taxi Act 1994 and the Transport Co-ordination Act 1966 and not get this third complexity. In certain circumstances things will change when the Taxi Drivers Licensing Bill 2013 is enacted. I genuinely think that the way in which this legislation operates will cause real issues in country Western Australia. Suddenly there will be an issue around what is and what is not a taxi dispatch service; what are its responsibilities, and does it have to comply with the rules applied under the 1994 legislation? I understand that the metropolitan area works under a different regime to the country area because they are different systems. There was a single taxi service in a town, but I cannot remember its name, and I think the owner handed back his plates —

Hon Jim Chown: Bunbury to Albany.

Hon KEN TRAVERS: No, they are not good examples, and I will explain why in a minute. I am sure there probably is a town somewhere that has a single taxi operated by only the owner. The other situation is a single taxi with an owner and someone else potentially operating it. All of a sudden, that owner is now a taxi dispatch service. My view is that we could capture them if the owner allowed someone who is not a legal driver to drive that taxi under the clause about a person allowing it to be done. Then we go right the way through to Mandurah Taxis at the top end of the scale. For all intents and purposes, that business operates as if it were the equivalent of Swan Taxis or Black and White Cabs in the Perth metropolitan area. In between those scenarios are a range of operational methods. The parliamentary secretary used the example of Bunbury. To the best of my recollection, Bunbury has a taxi dispatch company that is owned and operated as a cooperative of plate owners, and they, as a company, also own a number of other plates. Albany's service is run by two privately-owned companies that own a bunch of plates each and are in rapid competition. In Bunbury there might be one or two plates that sit outside the system we are talking about and operate as individuals. My grave concern is that if, when dealing with taxis in regional Western Australia, we manage and deal directly with the owners of the plates instead of using the current structure, and we insert the "taxi dispatch service" definition into this bill, that we will somehow start to bring the operations of these taxis under a new regime. This will be an unintended consequence of this bill as opposed to keeping it quite separate so that when we talk about taxi dispatch services, we do so as approved under the 1994 act. It is almost like they do not exist for the purposes of the legislation. That is the best way of dealing with this issue. The more explanations I get about this, the more convinced I am that to maintain this definition as it stands will have unintended consequences for the operators of taxis in regional WA, and it will put on them burdens beyond what are currently in place.

If it is the intention of the government to regulate that system and taxi dispatch services in regional WA by using the Taxi Drivers Licensing Bill as a proxy, rather than amending the Transport Co-ordination Act, then that is a very dangerous thing. If that is the intent of the government, then it should make its reasons clear because my gut feeling is—perhaps I have been mistaken—that a number of members who represent the regional areas in Western Australia will suddenly say, "Hang on, minister. That was not explained to us when we were told about this piece of legislation. If that is what you are doing, we want to go back and talk to the people who run taxis in our communities to find out whether that is a good or a bad thing, and we also want a clearer picture about how that will operate." Is it the intention of the government to effectively regulate taxi dispatch services in regional Western Australia and to use this Taxi Drivers Licensing Bill as the vehicle for doing that?

Hon JIM CHOWN: I thank Hon Ken Travers for his concern about the issue, but that is not the intention of the bill. This bill does not do that. Clause 9 creates an important offence. Does Hon Ken Travers want to deal with that clause now or as to why it is drafted as it is?

Hon KEN TRAVERS: There are issues that we will need to deal with at clause 9. We are dealing with clause 3, so if we want to redefine and reorder the bill, the point at which we would do that is under clause 3, "Terms used". If we want to define "taxi dispatch service" to limit it to only those that operate in metropolitan Perth, this is the point at which we would limit it. By the time we debate it at clause 9, it would be too late. I used clause 9 as an example, but I am happy to talk about some of the detailed elements of clause 9 when we get to it. Can the parliamentary secretary give a guarantee that under the regulation making powers, the government will not put in place a range of regulations that will start to create and formalise the regulation of taxi dispatch services in regional WA? That is, will the regulations relate to the owners of plates in regional WA, not taxi dispatch services; or, will the government impose regulations that will use the definition of "taxi dispatch service" to apply to people who provide these services in regional WA and start to regulate them through the regulation making power of this bill?

Hon JIM CHOWN: The answer is no, not under this bill.

Hon KEN TRAVERS: We will see whether that changes as we proceed through the bill and go into the detail of some of the other clauses. From what the parliamentary secretary said during debate on clause 1, it is the government's intention to bring in regulations that will start to apply to the way in which regional taxi dispatch

services are applied. I suspect that if a limit is not put on that, there is a real danger that government can find a backdoor way to bring in the regulation of taxi dispatch services in regional WA similar to what was done in the 1994 act. I will not labour that point any longer.

There are numerous different definitions across the three pieces of legislation. Each piece of legislation has a different definition of “approved”, which is a simple word. The language in the three pieces of legislation jumps between the use of “CEO” and “director general”. Even the definition of a simple thing such as a department changes. One would have thought that the definition of “department” is one and the same no matter what act one looks at. However, it changes across the three pieces of legislation, which is quite extraordinary. Another thing that I find fascinating is that clause 3 provides a definition of “Commissioner of Police” but fails to give a definition of “police officer”. Reference to the Commissioner of Police appears in later clauses of the bill, but the clear point is “police officer”. I suspect the answer will be that we all know what a police officer is. But we also all know what a Commissioner of Police is. I do not know why we need a definition of “Commissioner of Police” but not a definition of “police officer”. Perhaps the parliamentary secretary can assist me.

Hon JIM CHOWN: The Interpretation Act defines “police officer”.

Hon KEN TRAVERS: But it does not define “Commissioner of Police”?

Hon Jim Chown: No.

Hon KEN TRAVERS: The final area I want to look at is a bit complex, but it is worth bringing to the attention of the chamber the way in which the definition of “taxi” will be dealt across the three pieces of legislation. The Transport Co-ordination Act 1966—unless I have missed it somewhere along the line—does not have a definition of “taxi”. It has a definition of “taxi-car”, which reads -

A vehicle that is used for the purpose of standing or plying for hire or otherwise for the carrying of passengers for reward

The 1994 Taxi Act defines a “taxi” as —

A vehicle which is used for the purpose of standing or plying for hire, or otherwise for the carrying of passengers for reward, but does not include an omnibus licensed under the Transport Co-ordination Act 1966 or a vehicle of a class declared by the Director General under subsection (2) not to be a taxi;

Members will note that there is no definition of “taxi” in the Taxi Licensing Bill 2013. However, clause 4, which is headed “Driving vehicle as taxi”, reads —

For the purposes of this Act, a person drives a vehicle as a taxi if —

- (a) the person uses the vehicle for the purpose of standing or plying for hire or otherwise for the purposes of carrying passengers for reward; and
- (b) the vehicle is —
 - (i) operated (as defined in the Taxi Act 1994 section 3(1)) using taxi plates issued under that Act; or
 - (ii) operated (as defined in the Transport Co-ordination Act 1966 section 47Z) under a taxi-car licence issued under that Act.

I assume the reason that there is no definition of “taxi” in this bill is because of the complexities that will arise because there are effectively two taxis. However, my concern is with the use of “and”. We do not have a definition of “taxi”. Later on the bill lists a number of the most serious offences that will apply to a person who drives a vehicle as a taxi. If we do not put a definition of “taxi” in the bill, how will we define what one is? If the vehicle is operated as a taxi then it is a taxi. If someone is driving both without a taxi licence and is impersonating a taxi, will they be covered only under the 1994 act for driving a vehicle that is not a taxi or will they also be able to be charged with driving a taxi without a licence to be a taxidriver? I will make it a bit clearer. I do not have a taxi licence and the vehicle I drive is not a licensed taxi. But I go out there and pretend that I am driving a taxi. I put all the colours and lights on the vehicle and go out on the road and ply for hire reward. Then diligent officers catch me. Will I be charged only with driving a vehicle as a taxi that is not licensed as a taxi, or will I also be charged with driving without a taxi licence? That is significant because we will get to the prescribed offences section, which relates to driving without a licence. If I will not be charged with driving without a taxi licence, then when we get to those clauses that prescribe offences that would prevent me from ever getting a taxi licence, it would strike me that we need to put a clause into the bill. That is why I am asking now under “Definitions” when we are discussing how to deal with the definition of a taxi and whether or not we need to have a definition of a taxi, so we can also charge them at that point. Or, when we get further in the bill, if we need to amend it to ensure that there is a statutory provision that says that if I have driven an unlicensed vehicle that was not a taxi and I was unlicensed as a taxidriver, then I should not be able to get a taxi licence. Otherwise

we are creating a loophole where, in the future, an unlicensed driver's best bet is not to drive a licensed taxi, but to make a vehicle look like a licensed taxi and try to use that to ply for hire reward. To come back to the simple question I am asking, parliamentary secretary, if someone is driving a vehicle that is not a licensed taxi and they are not a licensed taxidriver but purporting to be a taxidriver, will they be charged only under the Taxi Act 1994 or the Transport Co-ordination Act 1966, or will there be an ability to charge them under this Taxi Drivers Licensing Bill 2013 for also driving without a licence? If that is the case, do we need to change the definitions?

Hon JIM CHOWN: The member is correct. The offences would be charged under the Taxi Act 1994 and the Transport Co-ordination Act 1966. At this stage, the department is happy to look at the issue the member raised and it could well be addressed by prescribing that as a disqualification offence, but we will need to consult with the industry about going forward with that matter.

Hon KEN TRAVERS: I think the appropriate time to deal with that issue is when we get to the other prescribed offences that automatically preclude someone from being able to drive a taxi. I am happy to leave that where the parliamentary secretary has left it. I do comment that it seems to be a very complex way of dealing with this legislation—we do not actually define a taxi anywhere in it. We have a whole clause that tries to define “taxi” but it still does not give a definition of taxi, even though taxi is used consistently throughout the bill. In both of the other bills which deal with taxis, there is actually a definition of taxi. It is worth getting this on the record. If a matter goes to court, how would the court interpret what a taxi is, in light of the fact that the bill does not contain a specific definition of the word “taxi”?

Hon JIM CHOWN: The most important part about clause 4, “Driving vehicle as taxi”, is not the vehicle, but whether the person is driving the vehicle as a taxi for the purposes of carrying passengers for hire or reward, as stated in subclauses (1) and (2).

Clause put and passed.

Clause 4: Driving vehicle as taxi —

Hon KEN TRAVERS: Is the parliamentary secretary confident that the way this is defined, we will not inadvertently pick up omnibuses that are licensed under the Transport Co-ordination Act 1966 but are excluded under the Taxi Act 1994? Is it the government's intention that omnibuses licensed under the Transport Co-ordination Act 1966 will continue to be excluded under the Taxi Act 1994?

Hon JIM CHOWN: Yes.

Clause put and passed.

Clause 5: Approved medical reports —

Hon ALANNA CLOHESY: This clause provides that a report from a medical practitioner as to whether a person is fit to drive a taxi must be in the approved form. Will that form be in the regulations?

Hon JIM CHOWN: The form will be approved in writing by the CEO, and it is not prescribed. It will take the format of the national fitness to drive guidelines for commercial and private vehicle drivers. It is available online.

Hon ALANNA CLOHESY: Why will the form not be in the regulations?

Hon JIM CHOWN: In the current situation, the form is not prescribed. It is available online.

Hon ALANNA CLOHESY: I would have thought that such an important form, which states whether a person is physically or mentally fit to perform certain tasks, would necessarily be a prescribed form.

Hon JIM CHOWN: It would be very unusual to have such a form prescribed because, in reality, this is an administrative document. It would fulfil the requirements for commercial and private vehicle drivers.

Hon ALANNA CLOHESY: If a taxidriver or, indeed, any other licensed vehicle driver who is required to complete that form and have it approved wished to challenge the assessments contained in that form, particularly the definitions, how would they go about that?

Hon JIM CHOWN: I assume that the member's question is: if an applicant gets one of these assessments done and they are not happy with the outcome of that assessment —

Hon Alanna Clohesy: No, it is not the outcome; it is the content of the assessment. I will get to the outcome in a moment.

Hon JIM CHOWN: The member is asking how someone can challenge the assessment form.

Hon ALANNA CLOHESY: First of all, it is the form itself, because within the form there are a number of assumptions and preconceived ideas about particular behaviours and measures of health and fitness. The form

itself may have the effect of precluding some people from even applying. The first part of the question is about the form itself.

Hon JIM CHOWN: The department is unaware of any problems with the medical form; in fact, the form is based on a national standard. I think I have already explained previously in responses what that particular form is about. If there are any problems, the department would like to hear about them before we get too far down the track.

Hon ALANNA CLOHESY: What process is used to provide feedback and complaints about the form if the department would like to know about them?

Hon JIM CHOWN: Concerns about this matter would be expressed through normal communication channels such as formal correspondence or email to the department by applicants.

Hon ALANNA CLOHESY: I move to the assessment of mental fitness. How is mental fitness assessed and diagnosed?

Hon JIM CHOWN: It is assessed in accordance with the assessing fitness to drive guidelines.

Hon ALANNA CLOHESY: I am trying to find the guidelines and the assessment form, but I am having a bit of difficulty because there are a couple online. One is the commercial driver medical assessment form.

Hon JIM CHOWN: I am happy to let the member have the guidelines that the form will be taken from and also the medical assessment instructions that are currently in use.

Hon ALANNA CLOHESY: I welcome a copy of the medical assessment instructions and a copy of the form. I would like the opportunity to discuss those after I have seen a copy of them, if that is possible.

Hon JIM CHOWN: I will get this to the member.

Hon ALANNA CLOHESY: I have a couple of other questions before I come back to that matter. The medical reports will go to the CEO and the CEO will then assess a person's fitness to be a taxidriver based on the medical reports; is that correct?

Hon JIM CHOWN: It is the assessment of the doctor the applicant has been to. I guess it is fair to say that the CEO would more than likely take that assessment on board, but he does have the ability to seek other medical opinions in regard to that particular assessment.

Hon ALANNA CLOHESY: My question is about the CEO. I will just deal with that one first. What other reports does the CEO take into account if there is more than one—the parliamentary secretary suggested in his answer that there may be more than one?

Hon JIM CHOWN: I will repeat my answer. Normally, the doctor's assessment of the applicant and the medical examination would be accepted by the CEO, but the CEO can seek further advice from other medical practitioners or experts about any matter he may be concerned about.

Hon ALANNA CLOHESY: Is the applicant notified about that?

Hon JIM CHOWN: The member asked a good question and I like to be as precise as possible in this process, so I will take the question on notice and we will try to get a definitive answer about that process before the end of the day.

Hon ALANNA CLOHESY: Who is the CEO? There is a definition in this bill that states that the CEO is the chief executive officer of the department, but in the Taxi Act, the CEO is the director general. I understand that the department has a director general, but does it have a CEO as well?

Hon JIM CHOWN: The director general is the CEO and the CEO is the director general.

Hon KEN TRAVERS: I had decided not to mention these definitions and move on, but now they have been raised. The government has a policy of calling its heads of department directors general these days. The Taxi Act refers to the director general, and now, in the language of legislation, we have reverted to references to the CEO. Why is there not consistency and why do we not use the term "director general", when, particularly for this government, the title given to the head of government departments is director general?

Hon Jim Chown interjected.

Hon KEN TRAVERS: In the Taxi Act it is "director general"; in this legislation it is "CEO", but the government calls its heads of departments directors general. It is just bizarre.

Hon JIM CHOWN: I am glad the member is being consistent on this matter and not picky! The current term "director general", moving forward, will become "CEO".

Hon Helen Morton: It's in the legislation. It is always in the legislation that way.

Hon Ken Travers: No; in the Taxi Act it is the director general.

Hon JIM CHOWN: In some of those old acts, as the member is well aware, going back a number of years, a head of department was designated as the director general.

Hon ALANNA CLOHESY: I would like to postpone consideration on this clause until such time as we have had an opportunity to go through the assessing fitness to drive standards and until we hear back from the parliamentary secretary about the other matter.

Further consideration of the clause postponed, on motion by Hon Alanna Clohesy.

Clause 6: Fit and proper person to hold a licence —

Hon KEN TRAVERS: I have a very quick question regarding a fit and proper person to hold a licence. This is pretty important because I think earlier the parliamentary secretary said that that may be the main test used to determine whether someone is granted a taxi licence. Are any changes intended to the way the fit and proper person test is administered under this legislation compared with the way it is done in current legislation? When someone gets a T extension, they have to be a fit and proper person. Are any changes intended under this legislation compared with the way a fit and proper person is determined under the current legislation?

Hon JIM CHOWN: No.

Clause put and passed.

Clause 7: Designated areas —

Hon KEN TRAVERS: This is one of those clauses that get complicated due to the fact we are dealing with the Taxi Act. Is it the intention that this clause will allow sub-areas to be prescribed within the controlled area covered by the Taxi Act 1994 in order to make separate requirements for licences?

Hon Jim Chown: Do you mean sub-operational areas?

Hon KEN TRAVERS: Yes, I mean sub-operational areas where there will be different requirements for getting a taxi licence or holding a licence. Will that be the case or is there an intention to keep controlled areas under one body to be consistent across the area with respect to taxidriver's licences?

Hon JIM CHOWN: No changes are contemplated.

Hon KEN TRAVERS: My reading of the way this legislation is written suggests that that could occur at some point in the future, so is that possibility not eliminated from it?

Hon JIM CHOWN: The member is correct. It could be done at some stage in the future, but there is no current intention to make any changes.

Hon KEN TRAVERS: The reason I asked that is that both within and between the controlled area, particularly the Mandurah–Rockingham area, there is often an issue of people being dropped off and whether another person can then be picked up. Area-restricted taxis in the metropolitan area, I think, can drop off, and if they can get another lift returning to the area they cover, they are covered. Under clause 7(2)(a) the circumstance of a driver then being able to pick up would not be covered if things were defined in that way. A taxidriver can take someone out of the area and pick someone else up outside of the area under the current legislation, but under this legislation it strikes me that the definition implies that a taxidriver will not now be able pick someone up in that circumstance because they will not have a taxi licence that enables them to pick someone up in that area.

Hon Jim Chown: Do you mean for the return journey?

Hon KEN TRAVERS: Yes, for the return journey. There is obviously the ability to prescribe by regulations the possibility of doing that in those circumstances, but in light of the fact that that provision is already operating, why would we not have provision in this legislation for a similar ability for a taxidriver to pick someone up outside their designated area on their return journey?

Hon JIM CHOWN: My understanding of the member's question, and I will use the member's example, is that a taxi journey from the Perth metropolitan area to Mandurah—from a designated urban area to a regional area—to drop off a passenger is fine, but, under this clause, a return fare back to the designated area is not allowable. Is that the member's understanding?

Hon Ken Travers: Yes, that is my reading of the way it is written. A taxidriver can take a passenger out there but cannot pick up a return journey. But I understand that, under the way things currently operate, that is something they can do.

Hon JIM CHOWN: The member has raised another good point. This facility could be prescribed under regulation.

Hon KEN TRAVERS: I made the point that it can be prescribed but, equally, we could delete clause 7(2)(a) and just have it all prescribed. I am not a big fan of framework legislation. I accept that it has to happen occasionally, but if we know that a situation occurs, why make provisions for half of the problem; why put a provision in the legislation to deal with half of a circumstance that we know occurs, but not for the other half? In the Rockingham–Mandurah area there is a fair bit of crossover between the taxis. I think there is a time limit on them to pick up another passenger. It strikes me that if this is the case, we should put it in the legislation and make it a part of the definition.

Hon Phil Edman: It is hard to get a taxi in Rockingham.

Hon KEN TRAVERS: Is it? Why is that, Hon Phil Edman? My understanding is that extra area-restricted taxis have been released in that area. I think part of the problem—my personal view—is that the Mandurah area should be incorporated into the control area of Perth, because now, between the southern Rockingham area, the southern end of the city —

Hon Phil Edman: We actually had our own taxi service.

Hon KEN TRAVERS: Rainbow, was it?

Hon Phil Edman: Yes. They have gone.

Hon KEN TRAVERS: There is a lot of movement between Mandurah and the southern end of the City of Rockingham—Secret Harbour—and that area to the south. That is why I am dealing with this; there will be a lot of movement between the control area and the non-prescribed area. We should try to normalise that as part of this whole process because it is bizarre that a driver in Rockingham will have to meet different tests from a driver in Mandurah when for all intents and purposes they provide the same job.

I will let the parliamentary secretary answer my original question after I was eloquently distracted.

Hon JIM CHOWN: I will take the question on notice. The department will give it to its compliance people and get the member a response. But I think the member in some way has probably answered his own question across the chamber. My interpretation is that the Rockingham–Mandurah scenario is very different from, say, the metropolitan area to Northam. Unless there are some designated rules, there will be cross-pollination and metro taxidriviers will have an impact on rural taxidriviers during quiet times. We need to have some fairly clear guidelines on what takes place here. The department will get on to the compliance people to have a look at this. As the member is aware, in all industries there is give and take in these situations and if things are too restrictive, more problems are caused than are solved.

Can we just have a quick comfort break?

The DEPUTY CHAIR (Hon Amber-Jade Sanderson): I will leave the chair until the ringing of the bells.

Sitting suspended from 3.46 to 3.52 pm

Hon KEN TRAVERS: I accept the parliamentary secretary's comments, and I appreciate the briefing. Earlier, I asked whether it was planned to potentially start to designate areas within the controlled area. Certain areas are covered by area-restricted taxis, which are already part of the Taxi Act. We could start to say that the requirements needed to get a licence for an area-restricted taxi are different from the requirements needed to drive an all-areas taxi. For instance, I think we talked about a knowledge test earlier in the debate. Drivers may need to pass a stronger knowledge test if applying for a taxi licence that allows them to drive across the whole metropolitan area. If a driver has an area restricted to only the north, or hopefully in the south metropolitan Rockingham–Kwinana area—we need to ensure that there are enough area-restricted taxis to look after Hon Phil Edman —

Hon Phil Edman: I don't want to drink and drive.

Hon KEN TRAVERS: Although the member does have the benefit of a very good train service to get him home that the people of Ellenbrook miss out on. He should stop distracting me. I could see a scenario.

If someone was found to be driving a taxi outside the designated area and they picked someone up and took them back to the designated area—we have not prescribed that that can happen, I understand; I will be pleased for the parliamentary secretary to correct me—that person would potentially be charged under clause 8(6) of the bill, which would incur a \$2 500 fine. Am I correct? Is that an example of how a penalty would be incurred and when we would address the recourse to someone breaching clause 7?

Hon JIM CHOWN: The answer is yes, clause 8(6) is the correct provision.

Hon KEN TRAVERS: I appreciate that. The point of asking that question was to ensure that they are not captured by the prescribed offences that appear later in the bill under clause 8(1), (2) and (4). If taxidriviers were convicted of an offence but did not have the right designation on their licence, they would not lose or become

ineligible to have a taxidriver's licence. I wanted to clarify that there is no chance that they would ever be charged under clause 8(1), (2) or (4).

Hon JIM CHOWN: They would always be charged under clause 8(6).

Clause put and passed.

Clause 8: Driving taxi while not authorised by licence —

Hon KEN TRAVERS: When the parliamentary secretary gave his statement at the start of the afternoon, he talked about penalties being between \$2 000 and \$5 000. I have since looked at the Transport Co-ordination Act. The highest penalty I can find in that act is \$1 000. I might be missing something. Can the parliamentary secretary refer me to the section in the Transport Co-ordination Act in which the penalties are \$1 000? I have had only a quick look through it. The penalty I found is for an unlicensed driver under section 47ZE. As a consequence of bringing in clause 8, later in the bill we delete section 47ZE. The other penalties that I can see in the Transport Co-ordination Act are in section 47ZD. If a person is found to be driving an unlicensed taxi, the penalty is \$80 for a first offence, \$200 for a second offence and \$400 for a subsequent offence. From memory, under section 15 of the Taxi Act, the penalty for driving an unlicensed taxi is \$5 000. Under clause 8 of this bill, driving a taxi without a licence will incur a fine of up to \$10 000, but in the case of a subsequent offence, the minimum penalty is a fine of \$2 000.

One of the concerns I have is that we will set up a regime with those penalties. I do not have a complaint about the penalties in clause 8; I think they are appropriate. We need to send a very serious message that driving a taxi without a licence will be treated very seriously and will incur significant penalties. I suspect that some people will probably argue that the penalty for driving a taxi without a licence should be significantly higher, depending on the circumstances, and if a person were to continue to do it then potentially they should get a custodial sentence rather than just a fine of \$2 000. However, my concern is that this is a real incentive for people who want to carry people for hire or reward and who will be better off pretending they are a taxi without using a taxi because, particularly in regional WA, the first time they are caught, the offence will be only \$80, whereas if they get into a taxi and drive without a licence, the penalty will be up to \$10 000. On a second offence, the penalty will be only \$200, but it is a guaranteed penalty of \$2 000 if they are driving a taxi. I support the penalties that we are bringing in, but has the government given any consideration—or have I missed it somewhere in this legislation—to correspondingly increase the penalty for driving a vehicle as a taxi that is not a licensed taxi, so that it gives a corresponding sense of seriousness? This is otherwise an almost perverse encouragement for a person who wants to operate as an unlicensed taxidriver to do it in an ordinary vehicle because the penalties will be a lot less.

Hon JIM CHOWN: With regard to the member's first question, section 56 of the Transport Co-ordination Act 1966 states —

Every person guilty of an offence against this Act or against any regulation for which a penalty is not expressly provided is liable to a penalty not exceeding \$2 000 ...

With regard to the other question, no consideration has been given to changing the maximum penalties in the Taxi Act or Transport Co-ordination Act.

Hon KEN TRAVERS: The problem I have with that answer is that when I refer to part IIIB, headed "Taxi-cars in country districts" —

Hon Jim Chown: Is the member talking about the Transport Co-ordination Act?

Hon KEN TRAVERS: Yes, but I am still on that \$2 000 penalty issue. In part IIIB of the Transport Co-ordination Act, the first instance where I see penalties is under section 47ZD, which prescribes for people who drive, for hire or reward—the ones I talked about earlier—a vehicle not licensed as a taxi, or a taxi car as defined, a paltry penalty of \$80 for a first offence. The next serious offence is to drive a taxi car without a taxidriver's licence, which has a specified penalty of \$1 000, and then all the other regulations for taxis are made under the regulation-making powers of section 47ZF. However, section 47ZF(1)(zj) states —

notwithstanding section 60(3)(b) ...

Which is the provision that allows for penalties for regulations —

prescribing penalties not exceeding \$200 for the breach of any regulation.

Looking at that, I would have thought that, in the case of country taxis, the penalty of \$2 000 is not appropriate. The maximum penalty a person would get is \$1 000 under section 47ZE; for any other penalties that are prescribed under those regulation-making powers of section 47ZF, the maximum penalty is only \$200. The first offence penalty for driving an unlicensed taxi is \$80, with a maximum penalty of \$4 000. Perhaps the parliamentary secretary will answer that part of the question first. Does that apply with regard to section 56 of the Transport Co-Ordination Act and country taxi cars? I think section 60 states that it would be overridden by

the fact that specific penalties are provided for all the different areas of country taxis; therefore, I cannot see how the \$2 000 penalty would apply to the operation of country taxis anyway.

Hon JIM CHOWN: We will take the question on advice.

Hon KEN TRAVERS: I have found it now. It is section 56, which states —

... against any regulation for which a penalty is not expressly provided ...

So in the case of country taxis, there are expressly provided penalties. I appreciate the parliamentary secretary's comments that he will take the question on advice. However, it strikes me that if this deal is to achieve the outcomes, this legislation should increase the penalties in the Transport Co-ordination Act. If I drive a car that is not a licensed taxi, particularly in regional WA, all I will get is an \$80 fine. I think the parliamentary secretary said earlier that it would be that section under which people will be charged for driving without a licence, and not under this bill. People will be charged with the offence of driving an unlicensed taxi. The maximum penalty is \$80 for the first offence. They would be crazy to then drive a licensed taxi and incur a penalty of up to \$10 000. Unless we increase the penalties—it is my view that we can do so in this bill—for driving a vehicle as a taxi when it is not licensed to be a taxi, we will set up a perverse situation that will give rise, particularly in parts of regional Western Australia, to people offering themselves for hire for reward and, similar to the term used in London, they will become “cowboy cabs”. If we build up the penalties in this bill, we will encourage the proliferation of cowboy cabs unless we also amend the other pieces of legislation to make it just as serious an offence, if not more, to be a cowboy cab.

Hon JIM CHOWN: I thank the member for his comments; we will consider the matter further.

Hon KEN TRAVERS: In all seriousness, I would appreciate it if the parliamentary secretary talked to the minister to see whether we can reach an agreement—not today, but at the end of the bill. We might insert new clauses to make those amendments. That will be really important to make this bill work. Given the parliamentary secretary's commitments on clause 8, I am happy for it to pass at this stage.

Clause put and passed.

Clause 9: Causing or permitting unlicensed driver to drive taxi —

Hon KEN TRAVERS: I assume we will use provisions from the Interpretation Act so that “a person” can also include a body corporate. The first part is easy if it involves regional circumstances. We have talked about that, and I expect it will be the owner of the plate or cab who will be charged. However, when a person is a provider of a taxi dispatch service, does the parliamentary secretary envisage that both the corporate entity and the individual who allowed it to happen will be charged, or will it be a case of one or the other? What will be the predominant way to charge in Perth? Will it be the corporate entity of the taxi dispatch service or the individual; and, if it is the individual, who is that individual? Is it the chief executive officer of the company or the manager who was on duty at the time?

Committee interrupted, pursuant to standing orders.

[Continued on page 6851.]

Sitting suspended from 4.14 to 4.30 pm