

# Explanatory Memorandum

## ***Taxi Drivers Licensing Bill 2013***

Taxi drivers have a unique role within the community. They provide personal, on-demand transport services throughout the State to people from all walks of life who require their services for business, private or social travel. Passengers require travel at all hours of the day and night, on every day of the year and travel in close quarters with a taxi driver, often alone.

The community expects taxi drivers to be capable drivers, competent at their occupation, well-presented, courteous, knowledgeable about the geography and features of their locality, trustworthy and of good character.

This Bill will establish a dedicated occupational licensing law for taxi drivers.

Presently, the authority to undertake the occupation of taxi driver and the regulation of taxi driver conduct is spread across three statutes: the *Road Traffic Act 1974 (WA)*, the *Taxi Act 1994 (WA)* and the *Transport Co-ordination Act 1966 (WA)*.

People who undertake the occupation of taxi driver are currently authorised to do so by the Director General under provisions of the *Road Traffic Act 1974* and subsidiary legislation made under it, namely, the *Road Traffic (Authorisation to Drive) Regulations 2008*.

Regulation 11 provides that the authority to drive conferred on a person by a driver's licence does not extend to the authority to drive a vehicle carrying passengers for reward, unless the driver's licence has been endorsed by the Director General with an extension specifically authorising such driving.

Regulation 12 provides that the Director General may endorse a driver's licence with an extension "T", if the licence holder wishes to be authorised to drive a vehicle that is a taxi carrying passengers for reward. It sets out the matters the Director General must be satisfied regarding in order to be empowered to endorse a driver's licence with an extension "T". The Director General may suspend or cancel an extension "T", if the Director General has reasonable grounds to believe or is satisfied that a person whose driver's licence is endorsed with the extension "T" is not medically fit or of appropriate character to drive a vehicle that is a taxi.

The key focus of the *Road Traffic Act 1974*, however, is the regulation of drivers and vehicles (including vehicle equipment, mass, dimension and loading standards) for road safety purposes.

The *Road Traffic Act 1974* regulates the driving behaviour of taxi drivers by imposing the same road rules and drug and alcohol prohibitions on taxi drivers that are imposed on all other private and commercial drivers.

Taxi driver conduct is not otherwise regulated under the *Road Traffic Act 1974*. It is regulated under the *Taxi Act 1994* and the *Transport Co-ordination Act 1966*. Regulations made under these Acts prohibit or require particular behaviours and impose fines that are to apply in the event of a contravention.

The key focus of these Acts, however, is the authorisation of persons to operate vehicles, or to cause vehicles to be operated, as taxis, by selling or leasing taxi plates or by giving taxi-car licences to those persons. Many of the persons regulated by these Acts do not drive taxis as an occupation.

This Bill will create a better framework for the regulation of taxi drivers.

It will create a taxi driver licensing regime. The Chief Executive Officer (CEO) of the Department of Transport will be the licensing authority.

Persons wishing to undertake the occupation of taxi driver will be required to meet the same standards under this Bill that must currently be met under the *Road Traffic Act 1974*.

As is currently the case, the CEO will be empowered to suspend or to cancel a taxi driver licence, if there exist reasonable grounds to believe that a person is no longer fit to be a licensee, either because of the person's character or medical fitness.

This Bill will also introduce some new measures that will apply to taxi drivers. It is considered that they will help to deter undesirable behaviour in taxi drivers and, if such behaviour is detected, provide for the swift and consistent removal of offending persons from the taxi industry.

These new measures are as follows.

#### Penalty points

Under the Bill, conduct offences applying to taxi drivers will be created. For example, it will be an offence to:

- refuse to carry a passenger's assistance animal;
- refuse a fare, unless particular circumstances (such as a perceived threat to the safety of the taxi driver) are the case;
- fail to take a passenger to his or her destination via the most economical route.

Other appropriate offences will also be created.

The Bill will introduce a penalty points regime applying to taxi drivers who commit these offences.

When an excessive number of penalty points is recorded against a person, the CEO will be required to serve that person with an excessive penalty points notice. When served, the person's taxi driver licence will be cancelled and the person will be disqualified from holding or obtaining a taxi driver licence for a period prescribed in the regulations.

Periods of disqualification of differing duration will apply, depending upon whether or not a person has previously been given an excessive penalty points notice. It is proposed that if a person is given an excessive penalty points notice for a fourth time, the period of disqualification that will apply to that person will be permanent.

The types of offences that will lead to the giving of an excessive penalty points notice will be more minor in nature, however they relate to conduct on the part of a taxi driver that may cause a passenger to suffer inconvenience, distress, a lack of service or poor service. In other words, they are the kinds of low level offences that undermine public confidence in the taxi sector.

A person will have to commit more than one such offence before accumulating an excessive number of penalty points. This will enable any affected taxi drivers to alter their behaviour in order both to improve their service to passengers and to prevent their taxi driver licences being cancelled due to the accumulation of penalty points.

The penalty points regime is set out in Part 5 Division 4 of the Bill.

### Disqualification offences

The Bill will provide for more serious offences to be “disqualification offences”. Conviction of a disqualification offence will result in the immediate cancellation of a taxi driver licence and the imposition of a period of disqualification, the duration of which will be prescribed in regulation.

An offence of driving a vehicle as a taxi while not being authorised to do so will be a disqualification offence. Other offences may be prescribed as disqualification offences. For example, a sexual assault committed against a passenger may be prescribed as a disqualification offence.

Once again, the regulations will prescribe differing periods of disqualification, determined in accordance with the severity of a disqualification offence and whether or not it is a first, second or subsequent offence of that kind. In some circumstances, a permanent disqualification will be imposed.

Part 5 Division 3 of the Bill sets out provisions relating to disqualification offences.

### Code of conduct

In addition, the Bill will provide for the CEO to approve of a code of conduct applying to taxi drivers.

The code of conduct will differ from offence provisions created in the Bill and in regulations that will be made under the Bill; the code of conduct will describe the characteristics that a taxi driver is expected to display when undertaking his or her occupation, the manner in which a taxi driver is expected to conduct himself or herself and behaviour that it is expected a taxi driver should not engage in. It will outline a set of guidelines by which taxi drivers should conduct themselves.

If the CEO has reasonable grounds to believe that a taxi driver has breached the code of conduct, the Bill will provide that such a breach may be taken into consideration by the CEO in determining whether or not the taxi driver is fit to be a licensee.

## **Part 1 - Preliminary**

### **1. Short title**

This clause provides that when this Bill is passed by Parliament and receives Royal Assent, it will be known as the *Taxi Drivers Licensing Act 2013*.

### **2. Commencement**

This clause will set out when the provisions of the *Taxi Drivers Licensing Bill 2013* will commence operation.

#### Clause 2(a)

Under clause 2(a), Part 1 of the Bill will commence operation on the day on which the Bill receives the Royal Assent and becomes an Act.

Part 1 contains confirmation of the Bill's short title, definitions and commencement details.

#### Clauses 2(b) and 2(f)

Under clauses 2(b) and 2(f), the substantive provisions of this Bill will commence operation in two tranches: the first tranche under clause 2(b) and the second tranche 6 months later pursuant to clause 2(f).

Currently, persons wishing to undertake the occupation of taxi driver obtain authorisation to do so from the Director General under the provisions of the *Road Traffic Act 1974* (WA) (RTA). The mechanism for the conferral of authorisation is the endorsement of a person's driver's licence with an extension "T".

When the provisions of this Bill are passed by the Parliament and commence operation, authority to be a taxi driver will cease to be conferred under the RTA and taxi drivers will instead be regulated under this Bill.

Under clause 2(b), there will be a transitional period created during which the following provisions of this Bill will commence operation:

- provisions enabling persons authorised to be taxi drivers under the RTA to apply, via a simplified application process, for the grant of a taxi driver licence (Part 9);
- provisions enabling applications for the grant of a taxi driver licence to be made by a person who is not authorised to be a taxi driver under the RTA (Part 3);

- provisions empowering a person to seek the review of a decision of the CEO (Part 8 and Part 10 Division 4);
- provisions dealing with administrative matters such as delegations, the CEO's power to approve of matters relevant to the operation of the taxi driver licensing regime and immunity from liability (Part 8);
- provisions requiring the exchange of relevant information between authorities (such as the CEO and the Commissioner of Police), where this information exchange is necessary to enable the administration and enforcement of this Bill and other written laws (Part 7);
- provisions that will repeal any unrequired consequential amendments, the need for which depends upon the timing of the commencement of operation of other legislation and which is set out in clauses 2(c), 2(d) and 2(e) (Part 11).

These provisions will commence operation on a date specified in a proclamation made for this purpose.

Under clause 2(f), the remaining provisions of the Bill will commence operation 6 months later. These provisions will:

- create the offence of driving a vehicle as a taxi while not being authorised to do so under this Bill (Part 3);
- set out the various circumstances in which a taxi driver licence may be suspended or cancelled, and the means by which such a suspension or cancellation may occur (Part 5);
- set out who is empowered to enforce the provisions of this Bill and the powers available to enable their enforcement (Part 6);
- make amendments to other Acts that are necessary as a consequence of the commencement of operation of the Bill (Part 10).

#### Clause 2(c)

This subclause will set out when Part 10 Division 1 of this Bill will commence operation, if it is required to commence operation at all.

Part 10 Division 1 will amend provisions contained in the *Road Traffic Act 1974* (WA) (RTA) Part IVA. These amendments are necessary as a consequence of provisions of this Bill.

Under a suite of laws that will reform Western Australian road traffic laws, the provisions of the RTA Part IVA will be deleted by the *Road Traffic Legislation Act 2013* (WA) (RTLAA) section 8, because their subject matter will instead form part of the new *Road Traffic (Authorisation to Drive) Act 2008*.

The RTLAA has yet to commence operation.

If, on the day on which the first tranche of this Bill's provisions commence operation, the RTLAA has not yet commenced operation, the amendments contained in Part 10 Division 1 will be required. This is because the provisions of

the RTA Part IVA will still be in force, and Part 10 Division 1 will be required to amend them as a consequence of the commencement of operation of the Bill.

In this case, clause 2(c)(i) will provide for Part 10 Division 1 to commence operation on the same day as the first tranche commences operation.

If, however, the RTLAA commences operation before the first tranche commences operation, the amendments contained in Part 10 Division 1 will become obsolete because the RTA Part IVA will have been repealed.

In this case, clause 2(c)(ii) will provide that Part 10 Division 1 will not come into operation.

If this is the case, clause 89 will repeal Part 10 Division 1.

#### Clause 2(d)

This subclause will set out when Part 10 Division 2 of this Bill will commence operation.

Part 10 Division 2 will amend the *Road Traffic (Authorisation to Drive) Act 2008* (WA) (RTATDA).

The RTATDA is one component Act of a suite of laws that will reform Western Australian road traffic laws. The reforms are expected to come into force in 2014.

Although its provisions have yet to commence operation, the RTATDA has been amended since it received Royal Assent in 2008.

In particular, the *Road Traffic Legislation Amendment (Information) Act 2011* (WA) Part 4 will amend the RTATDA to insert a new Part 2 Division 3A. The amendments are drafted to commence operation immediately when the RTATDA commences operation.

Amendments contained in Part 10 Division 2 of this Bill will amend the RTATDA Part 2 Division 3A.

For this reason, this subclause will provide for Part 10 Division 2 to commence operation as follows.

If the *Road Traffic Legislation Amendment (Information) Act 2011* Part 4 has already commenced operation when the provisions of this Bill commence operation pursuant to clause 2(b), then clause 2(d)(i) will provide for Part 10 Division 2 to commence operation on the same day as those provisions of this Bill.

If the *Road Traffic Legislation Amendment (Information) Act 2011* Part 4 has not yet commenced operation when the provisions of this Bill commence operation, then clause 2(d)(ii) will provide for Part 10 Division 2 to come in to operation on

the day on which the RTATD, and the *Road Traffic Legislation Amendment (Information) Act 2011* Part 4, later come into operation.

### Clause 2(e)

This subclause will set out when Part 10 Division 3 of this Bill will commence operation, if it is required to commence operation at all.

Part 10 Division 3 will amend the *Road Traffic Legislation Amendment Act 2012* (WA) (RTLAA) by deleting the RTLAA section 191 if, when the provisions of this Bill commence operation, the RTLAA has not yet commenced operation.

The RTLAA is one component Act of a suite of laws that will reform Western Australian road traffic laws. The reforms are expected to come into force in 2014.

The RTLAA contains only consequential amendments to other Acts affected by the reforms.

The RTLAA section 191 will provide for an amendment to be made to the *Transport Co-ordination Act 1966* (WA) (TCA), changing reference in the TCA section 47ZE to the *Road Traffic Act 1974* (WA) to reference instead to the *Road Traffic (Authorisation to Drive) Act 2008* (WA).

The TCA section 47ZE will be repealed by clause 87 of this Bill, however, as it will become obsolete when all of the provisions of the Bill commence operation. The RTLAA amendment to section 47ZE is therefore redundant.

If the RTLAA commences operation before the provisions of this Bill, section 191 will come into effect, will act to amend the TCA section 47ZE and will be unable to be repealed

If this is the case, clause 2(e)(ii) will provide that Part 10 Division 3 does not come into operation at all and clause 90 will provide for it to be repealed.

If the RTLAA has not yet commenced operation, clause 2(e)(i) will provide for Part 10 Division 3 to commence operation so that the obsolete amendment that is the subject of the RTLAA section 191 will be repealed.

### **3. Terms used**

Clause 3(1) will define various terms used throughout this Bill.

The term ***additional identification document*** is to have the meaning given in clause 24(1)(b).

The term ***applicable training course or test*** is to mean a training course or test approved by the CEO under clause 56(1).

The term ***approved*** is to mean approved in writing by the CEO.

The term **approved medical report** is to have the meaning given in clause 5.

The term **authorised officer** is to have the meaning given in clause 41.

The term **cancellation order** is to mean an order that has been made pursuant to clause 32.

The term **CEO** is to mean the chief executive officer of the department of the Public Service that is principally assisting the Minister allocated administrative responsibility for this Bill with its administration. It is intended that the provisions of this Bill will be the responsibility of the Minister for Transport and that the Minister will be assisted by the Department of Transport in its administration.

The term **class** is used in relation to a vehicle, it is to mean a class of vehicle prescribed in regulations made pursuant to clause 62(2)(a). Licensees under this Bill will be authorised to drive a class or classes of vehicle as a taxi, in accordance with conditions imposed on their taxi driver licences by the CEO (see clause 16).

The term **Commissioner of Police** is to mean the person who is the Commissioner of Police pursuant to the *Police Act 1892 (WA)*.

Apart from its ordinary meaning, the term **conviction** is to include a situation in which a person was found guilty of an offence, or a situation in which the person pleaded guilty to an offence and the court accepted the plea, whether or not a conviction was recorded in relation to the offence.

The term **criminal record check** is to mean a document issued by a law enforcement body, or another appropriate body that has been approved by the CEO for this purpose, that sets out details of a particular individual's criminal conviction history, if any, for offences committed in Western Australia or another Australian jurisdiction.

The term **current penalty points** is to mean the penalty points that have been recorded against a person pursuant to Part 5 Division 4 of this Bill and that have not expired or been cancelled or been otherwise removed from the penalty points register maintained by the CEO under Part 5 Division 4.

The term **dealt with by infringement notice** will have meaning in relation to an alleged offence that is prescribed as a penalty points offence. When this term is used in relation to such offence, it will mean when an infringement notice has been issued for an alleged offence and the alleged offender has dealt with the infringement notice by paying the modified penalty associated with the infringement notice.

The term **Department** will mean the department of the Public Service that is principally assisting the Minister allocated administrative responsibility for this Bill with its administration. It is intended that the provisions of this Bill will be the

responsibility of the Minister for Transport and that the Minister will be assisted by the Department of Transport in its administration.

The term **designated area** is to have the meaning given in clause 7.

The term **disqualification offence** is to have the meaning given in clause 33(1).

When the term **disqualified** is used in relation to a person, it is to mean that the person is disqualified from holding or from obtaining a taxi driver licence, either because of clause 33(2)(b) (because the person has been convicted of a disqualification offence) or because of clause 38(3)(b) (because of the accumulation of an excessive number of penalty points).

The term **drive a vehicle as a taxi** is to have the meaning given in clause 4.

The term **driver's licence** is to have the meaning given in the *Road Traffic Act 1974 (WA)* section 5(1), until the *Road Traffic (Administration) Act 2008 (WA)* commences operation. When the *Road Traffic (Administration) Act 2008* has commenced operation, the term is to have the meaning given in section 4 of that Act.

Subject to clause 3(2), the term **driving authorisation** is to mean either:

- (a) a driver's licence granted under the *Road Traffic Act 1974 (WA)* or, when the *Road Traffic (Administration) Act 2008 (WA)* commences operation, under that Act; or
- (b) a driver's licence or driving authorisation granted under a law of another Australian jurisdiction, that is not a learner's permit; or
- (c) driving authorisation granted under by a foreign jurisdiction, that is not a learner's permit.

The term **driving authorisation law** is to mean the *Road Traffic Act 1974 (WA)*, until the *Road Traffic (Authorisation to Drive) Act 2008 (WA)* commences operation. When the *Road Traffic (Authorisation to Drive) Act 2008* commences operation, it is to mean that Act.

The term **excessive penalty points notice** is to mean a notice given under clause 38.

The term **foreign driving authorisation** is to mean an authorisation granted to a person under a law of an external Territory (such as the Cocos (Keeling) Islands or Christmas Island) or of another country, that authorises the person to drive in Western Australia.

The term **infringement notice** is to mean a notice given to a person under a written law:

- (a) alleging the commission of an offence; and

- (b) offering the person the opportunity to pay the modified penalty associated with the infringement notice, in order to have the alleged offence dealt with out of court.

The term **learner's permit** is to have the meaning given in the *Road Traffic Act 1974* (WA) section 5(1), until the *Road Traffic (Administration) Act 2008* (WA) commences operation. When the *Road Traffic (Administration) Act 2008* commences operation, it is to have the meaning given in section 4 of that Act.

The term **licence** or **taxi driver licence** is to mean a licence granted under Part 3 of this Bill.

The term **licence document** is to mean a licence document issued to a licensee by the CEO under clause 20.

The term **medical practitioner** is to mean a person who is registered under the *Health Practitioner Regulation National Law (Western Australia) Act 2010* (WA) as being in the medical profession.

When the term **notifiable condition** is used in relation to a person, it is to mean any permanent or long-term mental or physical condition that is likely to, or treatment for which is likely to, impair the person's medical fitness to carry on the occupation of taxi driver.

The term **penalty points offence** is to have the meaning given in clause 34(1).

The term **penalty points register** is to mean the register maintained by the CEO under clause 37.

When the term **provider** is used in relation to a taxi dispatch service, it is to mean:

- (a) a person who is registered as the provider of a taxi dispatch service under the *Taxi Act 1994* (WA); or
- (b) a person who provides a taxi dispatch service in respect of vehicles authorised to be operated as taxi-cars under the *Transport Co-ordination Act 1966* (WA).

The term **qualification period** is to have the meaning given in clause 56. It will mean the period of time approved by the CEO, following the completion of a training course or test approved by the CEO, that the person who completed the training course or test will be considered by the CEO to possess the competency or competencies the subject of the training course or test. This is necessary as competencies may be lost if they are not put to use.

The term **suspended** is to have the meaning given in clause 30(4).

The term **suspension order** is to mean an order made by the CEO under clause 30.

The term **taxi dispatch service** is to have the same meaning as that given in the *Taxi Act 1994* (WA) section 3(1), which is a service that provides:

- (a) radio base, computer or telephone services for vehicles driven as taxis or makes arrangements for such vehicles to be provided with such services; and
- (b) controlling, co-ordinating, administrative and other services to the taxi industry.

The term **test** is to mean a written test, an oral test, a practical assessment or any combination of those things.

The term **traffic record check** is to mean a document issued by the Western Australian Police, or another appropriate body that has been approved by the CEO for this purpose, that sets out details of a particular individual's traffic conviction history, if any, for offences committed in Western Australia or another Australian jurisdiction.

Clause 3(2) will clarify what is meant whenever reference is made in the Bill to a person "not holding a driving authorisation".

It will provide that one circumstance in which a person will be taken not to hold a driving authorisation will be during any time in which the person's authorisation to drive is suspended or cancelled, either by operation of a relevant Act or by an administrative action of a relevant licensing authority.

For example, when a person's driver's licence is suspended, although the person may still hold the driver's licence, it is of no effect while it is suspended.

Under this clause, for the duration of the period that the driver's licence is suspended, the person will be considered not to have held a driver's licence.

This is a relevant matter for the purposes of this Bill, as the length of a person's driving experience will be relevant to the CEO when the CEO is determining whether or not a person ought to be granted a taxi driver licence (see clause 12) and may be relevant to the CEO when the CEO is determining whether or not a licensee ought to have his or her taxi driver licence varied to extend the licensee's authorisation in a relevant manner.

#### **4. Driving vehicle as taxi**

This clause will clarify when a person will be considered to drive a vehicle as a taxi and, as a result, be required to hold a taxi driver licence.

Clause 4(1) will provide that a person is to be taken to drive a vehicle as a taxi if:

- the person uses the vehicle for the purpose of carrying passengers for reward, including any time during which the person parks the vehicle at a taxi rank or taxi stand to await passengers or drives the vehicle while plying for hire; and

- the vehicle is authorised, under either the *Taxi Act 1994 (WA)* or the *Transport Co-ordination Act 1966 (WA)*, to be operated as a taxi.

Pursuant to clause 4(2), a person will not drive a vehicle as a taxi, even if the person receives a reward for doing so, provided the amount received is not intended to be more than the running costs of the vehicle.

This subclause is necessary because a vehicle that is authorised to be operated as a taxi may, from time to time, be driven for private purposes, by persons who are licensees and by persons who are not licensees, such as a licensee's spouse or other family member.

If, in the course of driving the vehicle for private purposes, a person drives it and receives a payment from another person in an amount that is, for example, intended to cover fuel costs only, the person driving it will not commit an offence of driving a vehicle as a taxi without being licensed to do so.

For example, some people perform voluntary work that involves them driving ill or infirm members of the community to do their shopping or to attend medical appointments. These volunteers receive a small allowance for performing this community service that is intended to cover their fuel costs and wear and tear on the vehicle.

Without clause 4(2), such a volunteer would commit an offence under this Bill of being an unlicensed taxi driver, if the person drove the vehicle to perform this community service and received the allowance for doing so.

Clause 4(3) will provide that, for the purposes of determining under clause 4(2) whether an amount received as a reward exceeds the running costs of the vehicle, the amount will not be considered to exceed the running costs if it is an amount equal to or less than an amount prescribed in regulations made for this purpose.

## **5. Approved medical reports**

Commercial drivers spend more time driving than private drivers do and are therefore at an increased crash risk. They may also be monitoring various in-vehicle communication and work-related systems, a further factor that increases the likelihood of a crash. In the case of commercial drivers who are responsible for carrying passengers, the consequences of a crash are significant. They are therefore subject to more stringent medical standards than private drivers, in order to reduce to a minimum the risk of a crash due to long-term injuries or illnesses. Taxi drivers are commercial drivers.

This clause will define what will constitute an approved medical report.

Clause 11(3) (c) will require an applicant for the grant of a taxi driver licence to provide the CEO with an approved medical report at the time of making the application.

Clause 12(1) will set out the matters regarding which the CEO must be satisfied before the CEO will grant an applicant a taxi driver licence. One such matter concerns the applicant's mental and physical fitness to drive a vehicle as a taxi.

The CEO will have regard to an approved medical report in determining whether an applicant is mentally and physically fit to drive a vehicle as a taxi.

Clause 21 will set out other circumstances in which a licensee must give the CEO an approved medical report.

Clause 5(a) will enable the CEO to determine the form in which an approved medical report must be provided.

Clause 5(b) will require an approved medical report to be prepared by a person who is a medical practitioner.

Under clause 5(c)(i), an approved medical report will only be able to be prepared by a medical practitioner following an examination of the person the subject of the report by the medical practitioner, for the purpose of assessing the person's mental and physical fitness to drive a vehicle as a taxi.

If a person is required under another provision of this Bill to provide the CEO with an approved medical report, clause 5(c)(ii) will require the report to be no more than 3 months old at the time it is provided to the CEO.

## **6. Fit and proper persons to hold a licence**

The nature of taxi driving brings taxi drivers and their passengers into close contact with one another. Journeys take place at all hours of the day and night on every day of the year. Passengers often travel unaccompanied.

In order to ensure the safety of passengers, the CEO will be unable to grant a person a taxi driver licence if the CEO is not satisfied that the applicant is of good character (see clause 12(1)(d)).

Clause 30(1) will empower the CEO to suspend a taxi driver licence if the CEO has reasonable grounds to suspect that the licensee is not a fit and proper person to hold a licence.

Clause 32(1) will empower the CEO to cancel a taxi driver licence if the CEO is satisfied that the licensee is not a fit and proper person to hold a licence.

The CEO may take any relevant matter into consideration in determining whether a person is or is not a fit and proper person to hold a taxi driver licence.

Clause 6(1) will provide that, without limiting the other matters that the CEO may consider in making such a determination, the CEO may have regard to whether or not there exist reasonable grounds to believe that a person has contravened the provisions of this Bill, regulations made under this Bill or a code of conduct approved by the CEO under clause 29.

Clause 6(2) will provide that a person is deemed not to be a fit and proper person to hold a taxi driver licence if:

- the person has been convicted of an offence which is prescribed, pursuant to clause 33(1), as a disqualification offence; and
- the conviction has not been overturned on appeal or set aside; and
- the relevant period of disqualification, that the regulations prescribe as applying in the case of a person's conviction of the disqualification offence, has not yet elapsed since the person's conviction.

## **7. Designated areas**

This clause will introduce the concept of a "designated area" in which a licensee is authorised to drive a vehicle as a taxi.

Clause 7(1)(a) will provide that one designated area is the "control area" as defined in the *Taxi Act 1994* section 3 (and in particular in the *Taxi Regulations 1995* regulation 4), which comprises the metropolitan area, bounded by the Shires of Wanneroo, Swan, Kalamunda, Armadale, Kwinana and Rockingham, and parts of the Shires of Mundaring and Serpentine-Jarrahdale.

Clause 7(1)(b) will empower the making of regulations designating another area or areas.

The key reason for designating different areas within which a licensee will be authorised to drive a vehicle as a taxi is because additional competencies may be required by a person who wishes to drive in a particular designated area.

Clause 12(1) will set out the matters regarding which the CEO must be satisfied before the CEO will grant an applicant a taxi driver licence. One of the matters concerns the applicant's competence to carry on the occupation of taxi driver. Under that clause, one method by which the CEO will be satisfied regarding the applicant's competence is if the applicant has successfully completed a training course or courses approved by the CEO for this purpose and/or has successfully passed any test or tests approved by the CEO for this purpose.

For example, the CEO might determine that additional competencies are necessary in an applicant who wishes to be authorised to drive a vehicle as a taxi in the "control area" prescribed under the *Taxi Act 1994*. The CEO might determine that such an applicant must be able to demonstrate a reasonable geographical knowledge of the designated area, by passing a test approved for this purpose or by successfully completing a training course approved for this purpose.

In order for the CEO to assess whether an applicant for a taxi driver licence has the necessary competencies, it will be necessary for the applicant to notify the CEO, pursuant to clause 11(3)(b), at the time of application, regarding in what designated area or areas the applicant wishes to drive as a taxi.

Under clause 8(6), it will constitute an offence for a licensee to drive a vehicle as a taxi in a designated area, if that licensee's licence does not authorise the licensee to do so.

Clause 7(2) will provide, however, that a licensee will not commit an offence against clause 8(6) if the licensee is carrying passengers to a place in a designated area, but the journey began in a place outside the designated area.

Clause 7(2) will also empower the making of regulations prescribing other circumstances in which it will not constitute an offence.

## **Part 2 – Unlicensed persons driving taxis and related offences**

### **8. Driving taxi while not authorised by licence**

This clause creates the offence of carrying out the occupation of taxi driver while not being authorised to do so as required under the Bill.

Because slightly different circumstances may surround the commission of such an offence, this clause creates a number of offence provisions that are all variations on the same theme of the unauthorised driving of a vehicle as a taxi.

Higher penalties apply, however, for unauthorised taxi driving offences committed in more serious circumstances.

Clause 8(1) will create the offence of driving a vehicle as a taxi while not being licensed under the Bill. A person will commit this offence if he or she does not hold a taxi driver licence.

The maximum penalty a court may impose for a first such offence will be \$10,000. In the event that an offence is a second or subsequent offence, the court will be required to impose a minimum fine of \$2,000 but may impose a fine of up to \$10,000.

(Clause 8(7) will provide that, for the purposes of determining when an offence against clause 8(1) is a subsequent offence, the offender's previous conviction of a clause 8(1) offence or of the more serious offence created in clause 8(2) or 8(4) is to be counted as a prior offence against clause 8(1).)

Clause 33 will provide that conviction of an offence against clause 8(1) will also result in the convicted offender being disqualified from being able to obtain a taxi driver licence for a prescribed period.

Clause 8(2) will create the offence of driving a vehicle as a taxi while not being authorised to do so because:

- the offender is disqualified from holding or obtaining a taxi driver licence; or

- at the time of the commission of the offence, the offender held a taxi driver licence but that taxi driver licence was not in force because the CEO had suspended it.

There are two ways in which a licensee may be disqualified from holding or obtaining a taxi driver licence:

- following the cancellation of the offender's taxi driver licence because the offender has been convicted of an offence that is a disqualification offence pursuant to clause 33(1); or
- following the cancellation of the offender's taxi driver licence because an excessive number of penalty points were recorded against the offender, for alleged offences under the *Taxi Act 1994 (WA)*, the *Transport Co-ordination Act 1966 (WA)* and this Bill or regulations made under it, and as a result the CEO gave the offender an excessive penalty points notice pursuant to clause 38.

This offence is considered more serious than an offence against clause 8(1), as the circumstances of the offence will involve the offender driving a vehicle as a taxi when the offender's authority to do so has been removed either by the operation of provisions of this Bill or by the CEO following particular conduct on the part of the offender.

As a consequence, the court will be required to impose a minimum fine of \$2,000 for such an offence but may impose a fine of up to \$10,000.

Clause 33 will provide that conviction of an offence against clause 8(2) will also result in the convicted offender being disqualified from being able to obtain a taxi driver licence for a prescribed period.

Clause 8(3) will provide that a person charged with the more serious unauthorised taxi driving offence created by clause 8(2) may instead be convicted of an offence against clause 8(1) if the evidence that is led establishes that the alleged offender was driving while not licensed under the Bill, but is not sufficient to establish that the unauthorised taxi driving occurred in the circumstances described in clause 8(3).

Clause 8(4) will create the offence of driving a vehicle as a taxi while the offender is licensed under this Bill to do so, however is not authorised to drive under the *Road Traffic Act 1974 (WA) (RTA)*. For example, the offender's driver's licence may have been suspended or cancelled.

Once again, this offence is considered more serious than an offence against clause 8(1), as the circumstances of the offence will, unless the offender's driver's licence has expired, involve the offender driving a vehicle as a taxi when the offender's authority to drive under the RTA do so has been removed, following particular conduct on the part of the offender, either by a court, by the operation of provisions of the RTA or by the Director General.

As a consequence, the court will be required to impose a minimum fine of \$2,000 for such an offence but may impose a fine of up to \$10,000.

Clause 33 will provide that conviction of an offence against clause 8(4) will also result in the convicted offender being disqualified from being able to obtain a taxi driver licence for a prescribed period.

In some circumstances, a person may not be authorised to drive under the RTA because the person has failed to pay a fine and that non-payment has resulted in the person's driver's licence being suspended under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA) or under a similar law of another jurisdiction.

Clause 8(5) will provide that if a licensee is such a person and can show that the licensee was not aware that his or her driver's licence was suspended because of the non-payment of a fine, the licensee will have a defence to a charge of an offence against clause 8(4).

Clause 8(6) will create an offence of driving a vehicle as a taxi while licensed to do so, but either in a designated area other than a designated area in which the licensee is authorised to drive, or while driving a class of vehicle as a taxi that the licensee is not authorised to drive as a taxi.

This is because the CEO may require a licensee to meet higher standards of knowledge, skill or training, prior to being satisfied that the licensee should be authorised to drive a vehicle of a particular class as a taxi or to drive in a certain designated area.

A person who commits an offence against clause 8(6) will have met good character, medical fitness and other standard requirements, however, making this a lesser, but still significant, offence of driving a vehicle as a taxi while not properly authorised to do so. For this reason, the maximum penalty that a court may impose for such an offence will be \$2,500.

Clause 8(8) will make it clear that the provisions of clause 8 are not to have any effect upon other requirements that apply to a person driving a vehicle as a taxi, or to the operation of a vehicle as a taxi, that may be imposed under the RTA, the *Taxi Act 1994* (WA), the *Transport Co-ordination Act 1966* (WA) or any other relevant written law.

## **9. Causing or permitting unlicensed driver to drive taxi**

Clause 8 will create various offences applying to a person who drives a vehicle as a taxi in circumstances in which the person is not authorised to do so.

In the taxi industry, a number of third parties may facilitate the means by which another person can carry on the occupation of taxi driver.

For example, the provider of a taxi dispatch service relays passenger requests for taxi services to taxi drivers affiliated with the provider, and a person who is

authorised under the *Taxi Act 1994 (WA)* or the *Transport Co-ordination Act 1966 (WA)* to operate a particular vehicle as a taxi may lease that taxi to a taxi driver either on a short-term or long-term basis.

Under this clause, a third party may commit an offence of causing or permitting another person to commit an offence of driving a vehicle as a taxi while not being authorised to do so.

The maximum penalty that a court may impose for a first such offence will be \$10,000.

In the case of a subsequent offence, a court will be required to impose a penalty of at least \$2,000, but may impose a penalty of up to \$10,000.

Clause 9(2) will provide a third party with a defence, however, if the third party can show that it took reasonable steps to try to ensure that the person, who drove a vehicle as a taxi without authorisation, had authorisation.

For example, a third party might be considered to have taken reasonable steps if it implemented a management system under which the third party required a taxi driver, at regular intervals, to provide proof of his or her taxi driver licence and driver's licence status.

## **10. Forgery and improper use of identifying details**

If the CEO grants an application for a taxi driver licence, clause 20(1) will require the CEO to give the successful applicant a taxi driver licence document. It will take the form of a plasticised card, similar in size to a driver's licence document, and will bear the licensee's photograph, name and taxi driver licence number. It may also bear other information, such as the type of vehicle the licensee is authorised to drive as a taxi or the designated area in which the licensee is authorised to drive a taxi.

The taxi driver licence document will serve two important purposes.

Clause 24 will require a licensee to display the taxi driver licence document in a prominent position in the taxi. Seeing it in the taxi will provide a passenger, or prospective passenger, with some assurance that a taxi driver is appropriately authorised. It may also aid a passenger to identify his or her taxi driver by name or by taxi driver licence number, in the event that the passenger has a subsequent query or complaint.

In addition, a taxi driver licence document may assist in the enforcement of the provisions of the Bill. It may be tendered by a licensee to an enforcement officer, to a taxi dispatch service provider or to a plate holder from whom the taxi driver wishes to lease a taxi, in an endeavour to establish the licensee's authorisation to carry on the occupation of taxi driver.

Clause 10(2) will provide that a person will commit an offence if the person forges or alters, with fraudulent intent, a taxi driver licence document, or if a person uses a forged or fraudulently altered taxi driver licence document.

The maximum penalty that a court may impose for such an offence will be \$2,500.

Under clause 10(3), a licensee will commit an offence if the licensee permits another person to use:

- the licensee's taxi driver licence document; or
- another document issued to the licensee by the CEO that the CEO requires the licensee to display in any vehicle being driven by the licensee as a taxi; or
- identifying particulars, provided for the licensee's use by the provider of a taxi dispatch service, such as a PIN number used by the licensee to gain access to the taxi dispatch service system.

The maximum penalty that a court may impose for such an offence will be \$2,500.

Under clause 10(4), a person will commit an offence if the person uses:

- a licensee's taxi driver licence document; or
- another document issued to a licensee by the CEO that the CEO requires the licensee to display in any vehicle being driven by the licensee as a taxi; or
- identifying particulars, provided for a licensee's use by the provider of a taxi dispatch service, such as a PIN number used by the licensee to gain access to the taxi dispatch service system,

in order to pass himself or herself off as a person who is authorised to drive a vehicle as a taxi, when the person is not so authorised.

The maximum penalty that a court may impose for such an offence will be \$2,500.

A person charged with an offence against clause 10(4) is likely also to be charged with an offence against clause 8 of driving a vehicle as a taxi while not being authorised to do so.

## **Part 3 – Licensing of taxi drivers**

### **11. Application for licence**

This clause will set out the means by which a person may apply for the grant of a taxi driver licence.

Clause 11(1) will make it clear that only a natural person may apply for a taxi driver licence. A partnership or a company is not eligible to apply for or to be granted a taxi driver licence.

Clause 11(2) will make it clear that a person who has been disqualified, under another provision of this Bill, from holding or applying for the grant of a taxi driver licence, and who remains so disqualified is not permitted to apply for the grant of a taxi driver licence.

Clause 11(3) will set out the manner in which an application must be made.

Clause 11(3)(a) will require an application to be made using a form prepared on behalf of and approved by the CEO for this purpose.

Clause 11(3)(b) will require an applicant to state, in his or her application, the class or classes of vehicle that the applicant wants to be licensed to drive as a taxi and the designated area or areas in which the applicant wants to be licensed to drive a vehicle as a taxi.

This is necessary for the following reasons.

#### Classes of vehicles driven as taxis

Clause 62(2)(a) will empower the making of regulations that will describe each class of vehicle that a licensee may be authorised to drive as a taxi.

Clause 16(1)(a) will require the CEO to impose a condition on each taxi driver licence that indicates which class or classes of vehicle the licensee is authorised to drive as a taxi.

This is because it may be necessary to differentiate between the competencies required by a person who wishes to drive one class of vehicle as a taxi, compared to the competencies required by a person who wishes to drive another class of vehicle as a taxi.

Clause 12(1) will set out the matters regarding which the CEO must be satisfied before the CEO will grant an applicant a taxi driver licence. One of the matters concerns the applicant's competence to carry on the occupation of taxi driver. Under that clause, one method by which the CEO will be satisfied regarding the applicant's competence is if the applicant has successfully completed a training course or courses approved by the CEO for this purpose and/or has successfully passed any test or tests approved by the CEO for this purpose.

For example, the CEO might determine that additional competencies are necessary in an applicant who wishes to be authorised to drive a multi purpose taxi. In such a case, the CEO might determine to require such an applicant to complete successfully an additional training course that covers disability awareness and "hands on" training regarding the operation of the hoists and restraints with which a multi purpose taxi is fitted.

In order for the CEO to assess whether an applicant for a taxi driver licence has the necessary competencies, it will be necessary for the applicant to notify the

CEO, pursuant to clause 11(3)(b), at the time of application, regarding what class of vehicle or vehicles the applicant wishes to drive as a taxi.

### Designated areas

Clause 7 will introduce the concept of a “designated area” in which a licensee is authorised to drive a vehicle as a taxi.

It will provide that one designated area is the “control area” as defined in the *Taxi Act 1994* section 3 (and in particular in the *Taxi Regulations 1995* regulation 4), which comprises the metropolitan area, bounded by the Shires of Wanneroo, Swan, Kalamunda, Armadale, Kwinana and Rockingham, and parts of the Shires of Mundaring and Serpentine-Jarrahdale.

It will empower the making of regulations designating another area or areas.

The key reason for designating different areas within which a licensee will be authorised to drive a vehicle as a taxi is because additional competencies may be required by a person who wishes to drive in a particular designated area.

Clause 12(1) will set out the matters regarding which the CEO must be satisfied before the CEO will grant an applicant a taxi driver licence. One of the matters concerns the applicant’s competence to carry on the occupation of taxi driver. Under that clause, one method by which the CEO will be satisfied regarding the applicant’s competence is if the applicant has successfully completed a training course or courses approved by the CEO for this purpose and/or has successfully passed any test or tests approved by the CEO for this purpose.

For example, the CEO might determine that additional competencies are necessary in an applicant who wishes to be authorised to drive a vehicle as a taxi in the “control area” prescribed under the *Taxi Act 1994*. The CEO might determine that such an applicant must be able to demonstrate a reasonable geographical knowledge of the designated area, by passing a test approved for this purpose or by successfully completing a training course approved for this purpose.

In order for the CEO to assess whether an applicant for a taxi driver licence has the necessary competencies, it will be necessary for the applicant to notify the CEO, pursuant to clause 11(3)(b), at the time of application, regarding in what designated area or areas the applicant wishes to drive as a taxi.

Clause 11(3)(c) will require the applicant to provide the CEO with an approved medical report at the time of making the application.

Commercial drivers spend more time driving than private drivers do and are therefore at an increased crash risk. They may also be monitoring various in-vehicle communication and work-related systems, a further factor that increases the likelihood of a crash. In the case of commercial drivers who are responsible for carrying passengers, the consequences of a crash are significant. They are therefore subject to more stringent medical standards than private drivers, in

order to reduce to a minimum the risk of a crash due to long-term injuries or illnesses. Taxi drivers are commercial drivers.

Clause 12(1) will set out the matters regarding which the CEO must be satisfied before the CEO will grant an applicant a taxi driver licence. One such matter concerns the applicant's mental and physical fitness to drive a vehicle as a taxi.

The CEO will have regard to an approved medical report in determining whether an applicant is mentally and physically fit to drive a vehicle as a taxi.

Clause 5 will define what will constitute an approved medical report. It will be a report, provided using a form approved by the CEO for this purpose, that is made by a medical practitioner regarding the applicant, following an examination of the applicant conducted by the medical practitioner.

Clause 11(3)(d) will empower the CEO to require an applicant to provide, at the time of making the application, copies of documents that are relevant to the application.

For example, clause 12(1) will set out the matters regarding which the CEO must be satisfied before the CEO will grant an applicant a taxi driver licence. One such matter concerns the applicant's character and whether or not the applicant is a fit and proper person to be a licensee.

Clause 62(2)(d) will empower the making of regulations requiring an applicant to provide the CEO with documentation regarding any traffic or criminal conviction history, to assist the CEO in determining whether the applicant is a fit and proper person. An approved application form may therefore specify that an applicant must, at the time of making the application, include copies of this documentation.

Clause 11(3)(e) will require the payment of an application fee at the time an application is lodged.

## **12. Grant of licence**

This clause will set out when the CEO may grant an application for a taxi driver licence.

Clause 12(1) will prescribe those matters in respect of which the CEO must be satisfied, prior to granting an application for a taxi driver licence.

These matters reflect the requirements that currently apply under the *Road Traffic Act 1974 (WA)* (RTA) and the *Road Traffic (Authorisation to Drive) Regulations 2008 (WA)* to a person who wishes to be authorised to drive a vehicle as a taxi.

Under clause 12(1)(a), the applicant must hold a driver's licence under the RTA.

Under clause 12(1)(b), the applicant must have been authorised to drive, either under the RTA or an equivalent law in another jurisdiction, for a total of at least

3 years. This driving experience need not have been accumulated in one continuous period.

Under clause 12(1)(c), the applicant must be a minimum of 20 years of age.

Under clause 12(1)(d), the applicant must be of suitable character to hold a taxi driver licence.

Under clause 12(1)(e), the applicant must be medically fit, both physically and mentally, to undertake the occupation of taxi driving.

Under clause 12(1)(f), the applicant must have completed any training courses and/or tests approved by the CEO under clause 56, in order to demonstrate to the CEO that the applicant possesses the necessary competencies to be a taxi driver.

As competencies may be lost if they are not put to use, clause 56 will empower the CEO to determine for how long following the completion of an approved training course or test an applicant is to be considered to possess the demonstrated competency or competencies.

Clause 12(2) will empower the CEO to waive a requirement under clause 12(1)(f), however, if the CEO is satisfied by other means that the applicant possesses the necessary competency or competencies.

Clause 12(1)(g) will empower the making of regulations prescribing other requirements that an applicant must meet in order to be eligible for the grant of a taxi driver licence.

Although no regulations are presently contemplated, this subclause will ensure that, when enacted, the provisions of this Bill will be able to keep pace with any changing community or taxi industry needs concerning the characteristics and competencies that make for a good taxi driver.

### **13. Application for renewal of licence**

This clause will provide for the renewal of a taxi driver licence, provided the application for renewal is made prior to the expiry of the relevant taxi driver licence.

An application for renewal will not be able to be made once the relevant taxi driver licence expires.

Clause 13(1) will enable a licensee to apply for the renewal of his or her taxi driver licence up to 6 months prior to the expiry date of the licensee's licence. This reflects what the *Road Traffic Act 1974* allows in relation to the renewal of a driver's licence. It is intended to provide a licensee with a reasonable period of time within which to apply for a renewal, in the event that a licensee wishes to or needs to travel in the period leading up to the expiry of his or her licence.

Clause 15(1)(b) will provide that the renewed taxi driver licence will come into effect the day after the day on which the existing taxi driver licence expires.

Clause 13(2) will set out the manner in which an application for renewal must be made.

Clause 13(2)(a) will require an application for renewal to be made using a form prepared on behalf of and approved by the CEO for this purpose.

Clause 13(2)(b) will empower the CEO to require an applicant to provide, at the time of making the application for renewal, copies of documents that are relevant to the application.

For example, an approved application form may specify that an applicant must, at the time of making the application, include copies of documentation relating to the licensee's traffic and criminal conviction history.

Clause 13(2)(c) will require the payment of an application fee at the time an application for renewal is lodged.

Clause 13(3) will make it clear that a person whose taxi driver licence is suspended may not, while it is suspended, apply for the renewal of that licence.

#### **14. Renewal of licence**

Clause 14 will empower the CEO to grant an application for the renewal of a taxi driver licence, provided the CEO is satisfied that the licensee meets the criteria set out in clauses 12(1)(a) to 12(1)(e) inclusive, that is, that the licensee:

- holds a driver's licence that is current and that authorises the licensee to drive a vehicle of the kind that the licensee wishes to drive as a taxi (clause 12(1)(a));
- has been authorised to drive for at least 3 years, either continuously or for periods adding up to 3 years (clause 12(1)(b));
- is at least 20 years of age (clause 12(1)(c));
- is a person who is fit and proper to be licensed to be a taxi driver (clause 12(1)(d)); and
- is mentally and physically fit to drive a vehicle as a taxi (clause 12(1)(e)).

These are some of the criteria that the CEO must be satisfied regarding before the CEO will grant an application for a taxi driver licence. A licensee must continue to meet this criteria in order to remain licensed and in order to be eligible for the renewal of his or her licence.

Clause 14(b) will empower the making of regulations imposing other appropriate requirements that an applicant for renewal must meet in order to be eligible for renewal.

Although no additional requirements are presently contemplated, the inclusion of clause 14(b) will ensure that the provisions of this Bill are sufficient to keep pace with emerging industry trends and needs.

## **15. Duration of licence**

Clause 15(1) explains when a taxi driver licence granted by the CEO is to be considered to come into effect.

Clause 15(1)(a) explains when a taxi driver licence granted under clause 12 will come into effect.

Clause 15(1)(b) explains when a taxi driver licence granted under clause 14 will come into effect.

A taxi driver licence granted under clause 14 is a taxi driver licence granted by way of the renewal of an existing taxi driver licence. Clause 15(1)(b) will provide that, in this case, the taxi driver licence will come into effect the day after the day on which the existing taxi driver licence expires.

A taxi driver licence granted under clause 12 is a taxi driver licence granted to a person who does not hold a taxi driver licence. Clause 15(1)(a) will provide that, in this case, the taxi driver licence will come into effect on the day on which the CEO grants it.

Clause 15(2) will provide that a taxi driver licence will expire 2 years after the day on which it comes into effect according to clause 15(1).

Clause 15(3) will require the CEO to ensure that the expiry date of a taxi driver licence appears on the taxi driver licence document that the CEO will be obliged to issue to the licensee pursuant to clause 20.

Clause 15(4) confirms that a taxi driver licence will remain in force until it expires or it is cancelled either by the CEO or by the operation of one of the provisions of the Bill, unless clause 15(5) applies.

For example, clause 32 will empower the CEO to cancel a taxi driver licence if the CEO is satisfied that the licensee is not a fit and proper person to hold a taxi driver licence or that the licensee is physically or mentally unfit to drive a vehicle as a taxi.

Similarly, clause 33 will act to cancel a taxi driver licence, if a licensee is convicted of an offence that is prescribed, for the purposes of clause 33, as a “disqualification offence”. The cancellation will have effect upon the licensee’s conviction of the disqualification offence.

Clause 15(5) will provide that a taxi driver licence does not have any force, even if it has not expired and has not been cancelled, during any period in which the taxi driver licence is suspended.

Under clause 30, the CEO will be empowered to suspend a taxi driver licence if:

- the licensee is charged with an offence that is prescribed, for the purposes of clause 33, as a “disqualification offence”;
- the CEO suspects on reasonable grounds that the licensee is not a fit and proper person to hold a taxi driver licence;
- the CEO suspects on reasonable grounds that the licensee is physically or mentally unfit to drive a vehicle as a taxi;
- the CEO suspects on reasonable grounds that the licensee has committed an offence that is prescribed, for the purposes of clause 33, as a “disqualification offence”;
- the licensee has failed to comply with a requirement imposed under clause 21 to give the CEO a medical report;
- the licensee has failed to comply with a requirement imposed under clause 22 to complete a training course or test.

## **16. Conditions of licence**

Clause 16(1) will require the CEO to grant a licence subject to:

- a condition stipulating what class of vehicle or vehicles the licensee is authorised to drive as a taxi; and
- a condition stipulating in what designated area or areas the licensee is authorised to drive a vehicle as a taxi.

This is because it may be necessary to differentiate between the competencies required by a person who wishes to drive one class of vehicle as a taxi, compared to the competencies required by a person who wishes to drive another class of vehicle as a taxi.

Similarly, additional competencies may be required by a person who wishes to drive in a particular designated area.

Clause 12(1) will set out the matters regarding which the CEO must be satisfied before the CEO will grant an applicant a taxi driver licence. One of the matters concerns the applicant’s competence to carry on the occupation of taxi driver. Under that clause, one method by which the CEO will be satisfied regarding the applicant’s competence is if the applicant has successfully completed a training course or courses approved by the CEO for this purpose and/or has successfully passed any test or tests approved by the CEO for this purpose.

The CEO might determine that additional competencies are necessary in an applicant who wishes to be authorised to drive a multi purpose taxi. For example, the CEO might determine to require such an applicant to complete successfully an additional training course that covers disability awareness and “hands on” training regarding the operation of the hoists and restraints with which a multi purpose taxi is fitted.

Similarly, the CEO might determine that additional competencies are necessary in an applicant who wishes to be authorised to drive a vehicle as a taxi in the

designated area that is the “control area” prescribed under the *Taxi Act 1994*. The CEO might determine that such an applicant must be able to demonstrate a reasonable geographical knowledge of the designated area, by passing a test approved for this purpose or by successfully completing a training course approved for this purpose.

The imposition of conditions under clause 16(1) will ensure that a licensee’s authorisation to drive a vehicle as a taxi is appropriately restricted, in line with the licensee’s competencies.

Clause 16(2) will empower the CEO to impose, in addition to the conditions contemplated in clause 16(1), any other conditions to which the CEO considers the licensee’s taxi driver licence ought to be subject.

Clause 16(3) will empower the making of regulations prescribing common licence conditions and abbreviations by which those conditions may be known, in order to enable details of relevant conditions to be shown on a taxi driver licence document.

For example, it may be desired to prescribe a condition that would extend the authorisation conferred by a taxi driver licence to permit a taxi driver to carry an unaccompanied minor.

This subclause is not intended to prevent the CEO from being able to impose a condition on a taxi driver licence of a kind that is not prescribed in regulation, where the CEO considers the imposition of the condition to be appropriate in the circumstances.

## **17. Application for variation of licence conditions**

Clause 17(1) will permit a licensee to apply to the CEO for the variation of a condition that applies to the licensee’s taxi driver licence.

Clause 17(2) will require such an application to be made in a form that has been approved by the CEO for this purpose and to be accompanied by any documents or other information required in support of the application, as well as the relevant application fee.

The most common applications for variation are likely to be those made by licensees seeking authorisation to drive a vehicle as a taxi in an additional designated area and/or to drive an additional class of vehicle as a taxi.

## **18. Variation of licence conditions**

This clause will empower the CEO to vary the conditions that apply to a licensee’s taxi driver licence.

Clause 18(1) will empower the CEO to vary the conditions of a licence, provided the CEO is satisfied that:

- the variation is appropriate in the circumstances (clause 18(1)(a)); and
- the applicant for the licence variation has completed any training course or test approved by the CEO for the purpose of determining that the licensee possesses the necessary competencies making the licensee suitable to be authorised in the additional manner proposed (clause 18(1)(b)).

Clause 56 will empower the CEO to approve of training courses and tests for this purpose. As competencies may be lost if they are not put to use, clause 56 will also empower the CEO to determine for how long following the completion of an approved training course or test an applicant is to be considered to possess the demonstrated competency or competencies.

Clause 18(4) will empower the CEO to waive a requirement under clause 18(1)(b) for a licensee to complete an approved training course or test, however, if the CEO is satisfied by other means that the applicant possesses the necessary competency or competencies.

Clause 18(2) will empower the CEO to vary a licence either as a consequence of a licensee applying under clause 17 for the variation, or on the CEO's own initiative.

Clause 18(3) will make it clear that the CEO may vary a licence by changing the terms of an existing condition, by revoking an existing condition or by imposing an additional condition.

## **19. Notice of decisions on licences to be given**

Clause 19(1) will require the CEO to notify an applicant in writing, if the CEO determines to refuse the applicant's application for the grant of a taxi driver licence, or the applicant's application for the renewal of a taxi driver licence.

Clause 19(2)(a) will require the CEO to notify a licensee in writing if the CEO determines to refuse the licensee's application to vary the licensee's taxi driver licence. (For example, a licensee might apply to the CEO to request that the licensee's licence be varied to include a condition authorising the licensee to drive a further class of vehicle as a taxi.)

Clause 19(2)(b) will require the CEO to notify a licensee in writing if the CEO determines to exercise the CEO's power to vary the conditions applying to the licensee's taxi driver licence. (For example, the CEO might determine to revoke an existing condition, or impose an additional condition.)

Clause 19(3)(a) will require the CEO to include, in the written notification, the reasons why the CEO has made the decision.

Clause 19(3)(b) will require the CEO to include, in the written notification, advice that, under clause 55, the licensee may request a review of the CEO's decision.

## 20. Licence document to be issued to licensee

If the CEO grants an application for a taxi driver licence, clause 20(1) will require the CEO to give the successful applicant a taxi driver licence document.

Clause 20(2) will empower the CEO to determine the size, form and content of the taxi driver licence document. It is expected to be a plasticised card, similar in size to a driver's licence document. It will bear the licensee's photograph, name and taxi driver licence number. It may also bear other information, such as the type of vehicle the licensee is authorised to drive as a taxi or the designated area in which the licensee is authorised to drive a taxi.

Clause 49 will authorise the CEO to use a photograph, previously provided by a licensee to the Director General under the *Road Traffic Act 1974 (WA)* for use in the production of a driver's licence document, in the production of the licensee's taxi driver licence document.

The taxi driver licence document will serve two important purposes.

Clause 24 will require a licensee to display the taxi driver licence document in a prominent position in the taxi. Seeing it in the taxi will provide a passenger, or prospective passenger, with some assurance that a taxi driver is appropriately authorised. It may also aid a passenger to identify his or her taxi driver by name or by taxi driver licence number, in the event that the passenger has a subsequent query or complaint.

In addition, a taxi driver licence document may assist in the enforcement of the provisions of the Bill. It may be tendered by a licensee to an enforcement officer, to a taxi dispatch service provider or to a plate holder from whom the taxi driver wishes to lease a taxi, in an endeavour to establish the licensee's authorisation to carry on the occupation of taxi driver.

Clause 20(3) will empower the CEO to issue a new taxi driver licence document to a licensee (see clause 20(3)(a)) and to write to the licensee to require him or her to return to the CEO a previously issued taxi driver licence document (see clause 20(3)(b)).

For example, the CEO may determine to exercise his or her powers under this subclause in a situation in which a licensee's current appearance is considerably changed from the licensee's appearance as it is in the photograph that appears on the previously issued taxi driver licence document, if the CEO is aware that the licensee has provided a more recent photograph to the Director General under the *Road Traffic Act 1974*.

Another circumstance in which the CEO may determine to exercise his or her powers under clause 20(3)(b) to require the return of a taxi driver licence document is when the licensee's taxi driver licence has been suspended or cancelled under Part 5 of this Bill.

Under clause 25(1)(b), the licensee or former licensee will be required to surrender his or her taxi driver licence document to the CEO, in a manner approved by the CEO for this purpose, within 14 days of the day on which the taxi driver licence was suspended or cancelled.

In the event that a licensee or former licensee fails to comply with this requirement, under clause 20(3)(b), the CEO will be empowered to write to the licensee or former licensee, demanding the return of the taxi driver licence document.

Failure to comply with the CEO's written demand will constitute an offence under clause 25(2). The maximum penalty that a court may impose for such an offence will be \$1,000.

## **Part 4 – Obligations of taxis drivers**

### **Division 1 – Requirements relating to medical reports and training**

#### **21. Requirement to give approved medical report**

Commercial drivers spend more time driving than private drivers do and are therefore at an increased crash risk. They may also be monitoring various in-vehicle communication and work-related systems, a further factor that increases the likelihood of a crash. In the case of commercial drivers who are responsible for carrying passengers, the consequences of a crash are significant. They are therefore subject to more stringent medical standards than private drivers, in order to reduce to a minimum the risk of a crash due to long-term injuries or illnesses. Taxi drivers are commercial drivers.

This clause will set out when a licensee will be required to give the CEO an approved medical report.

Clause 5 will define what will constitute an approved medical report. It will be a report, provided using a form approved by the CEO for this purpose, that is made by a medical practitioner regarding the applicant, following an examination of the applicant conducted by the medical practitioner.

Clause 11 will require an applicant for a taxi driver licence to provide the CEO with an approved medical report at the time of making the application.

The CEO will have regard to an approved medical report in determining whether an applicant is mentally and physically fit to drive a vehicle as a taxi. Medical fitness is a prerequisite to the grant of a taxi driver licence.

If the application is successful, once granted a taxi driver licence, the licensee will be required under clause 21(1)(b) to provide the CEO with an approved medical report every 5 years. This will enable the CEO to be satisfied that the licensee continues to be medically fit to undertake the occupation of taxi driver.

It is important to note that the requirement for a licensee to provide the CEO with an approved medical report every 5 years, unless other provisions of this Bill apply to the licensee, represents a departure from the current position under the *Road Traffic Act 1974 (WA)* and, in particular, the *Road Traffic (Authorisation to Drive) Regulations 2008 (WA)* regulation 12(11).

Under those current provisions, a person who is authorised to carry on the occupation of taxi driver, because the person's driver's licence is endorsed with an extension "T", must submit to a medical assessment and provide the Director General with the resulting medical report more frequently once the person reaches 45 years of age.

Presently:

- when a person is under 45 years of age, the person must provide a medical report every 5 years (see regulation 12(11)(a));
- when a person is 45 years of age or older, but not yet 65 years of age, the person must provide a medical report every 2 years (see regulation 12(11)(b));
- when a person is 65 years of age or older, the person must provide a medical report every year (see regulation 12(11)(c)).

This clause will not impose different reporting requirements on licensees based upon age. This is because there is no evidence to support the need for the current frequency of medical assessments and medical reports in persons aged 45 years and above.

This position is considered to represent sounder, more appropriate policy and reflects equivalent laws in other Australian jurisdictions where, in the main, the requirement arises either every 3 years or every 5 years and is not age-based.

In addition, clause 27(1) will require a licensee to notify the CEO if the licensee is diagnosed with a notifiable condition. It will require the licensee to do so as soon as is reasonably practicable after the licensee's diagnosis and will trigger the CEO's powers under clause 21(1)(a).

Clause 21(1)(a) will empower the CEO to give a licensee a notice that requires the licensee to provide the CEO with an approved medical report in other circumstances, namely, if clause 21(2) applies.

Clause 21(2) will apply if the CEO suspects on reasonable grounds that the licensee is affected by a permanent or long-term medical condition that is likely to, or treatment for which is likely to, impair the licensee's mental or physical fitness to drive a vehicle as a taxi.

If this is the case, the CEO will be empowered under clause 21(2) to require the licensee to provide the CEO with an approved medical report. It will be necessary for the CEO to impose this requirement on the licensee by writing to him or her.

In doing so, the CEO will be required to specify the date by which the licensee must provide the approved medical report. Depending upon the nature of the licensee's medical condition, the CEO may determine, and will be empowered under this subclause, to require the licensee to provide further approved medical reports at intervals specified by the CEO in the written notice to the licensee. For example, the CEO may require a licensee to provide follow-up approved medical reports every 6 months following the provision of the initial approval medical report, so as to monitor a particular medical condition where this is appropriate.

Pursuant to clause 21(5), the written notice must also inform the licensee that the licensee has a right to seek a review of the CEO's decision to require the licensee to provide an approved medical report or reports, if the licensee does not agree with that decision. Clause 55 will provide a licensee with the right to request that the CEO reconsider the CEO's decision and, if the licensee remains dissatisfied following that reconsideration, to request that the State Administrative Tribunal review the CEO's decision.

Clause 21(3) will empower the CEO subsequently to cancel, or to vary the requirements imposed in, a written notice given to a licensee under clause 21(2), where the CEO considers this appropriate.

If the CEO writes to the licensee to vary the requirements imposed relating to the provision of an approved medical report or reports, clause 21(5) will require the written notice to include information that the licensee has a right to seek a review of that decision, if the licensee does not agree with it. Clause 55 will provide a licensee with the right to request that the CEO reconsider the CEO's decision and, if the licensee remains dissatisfied following that reconsideration, to request that the State Administrative Tribunal review the CEO's decision.

Clause 21(4) will require the CEO to cancel a written notice given under clause 21(2) requiring the provision of an approved medical report or reports, if the CEO later becomes satisfied that a licensee is no longer affected by the medical condition that prompted the CEO to give the licensee that written notice.

If this becomes the case, the CEO will be required to notify the licensee of the cancellation in writing.

## **22. Requirement to complete applicable training course or test**

Clause 12(1) will set out the matters regarding which the CEO must be satisfied before the CEO will grant an applicant a taxi driver licence. One of the matters concerns the applicant's competence to carry on the occupation of taxi driver. Under that clause, one method by which the CEO will be satisfied regarding the applicant's competence is if the applicant has successfully completed a training course or courses approved by the CEO for this purpose and/or has successfully passed any test or tests approved by the CEO for this purpose.

This clause will empower the CEO, once the CEO has granted a person a taxi driver licence, to require a licensee to undertake further training or to undergo further tests, from time to time, in order to:

- ensure that licensees' undertake continuous professional development;
- ensure that licensees remain competent and aware of developing trends in the taxi industry;
- follow up new licensees to ensure that they are successfully applying the competencies and knowledge gained in the completion of the training courses and tests required prior to the grant of their taxi driver licences;
- target drivers with specific trends in complaints, such as, for example, geographical knowledge.

To do this, clause 22(1) will empower the CEO to give a licensee a written notice stating:

- that the licensee is required to complete an applicable training course or test that has been approved by the CEO pursuant to clause 56;
- the day by which the licensee must have successfully completed the training course or test;
- that the licensee has a right, under clause 55, to seek a review of the CEO's decision to require the licensee to complete the training course or test;
- that the CEO may make a suspension order under clause 30(1), if the licensee does not comply with the training or testing requirement the subject of the written notice.

Clause 22(2) will empower the CEO to waive a requirement imposed by the CEO under clause 22(1), if the CEO is satisfied by other means that the licensee possesses the competency that was to be demonstrated by the successful completion of the training course or test.

For example, the CEO may be satisfied that the licensee possesses the particular competency because the licensee shows proof to the CEO that the licensee has recently completed a substantially equivalent training course or test.

In addition, clause 22(2) will empower the CEO to waive a requirement imposed under clause 22(1) for any other reason that the CEO considers appropriate

If the CEO determines to waive a requirement imposed under clause 22(1), the CEO must write to the licensee regarding the waiver.

Clause 22(3) will empower the CEO to extend the timeframe within which a licensee must complete a training course or test. The CEO has the discretion to refuse a request to extend the timeframe, however may elect to exercise this discretion in circumstances in which a licensee cannot reasonably comply with the written notice within the stated timeframe.

Clause 22(4) will make it clear that if the CEO:

- has imposed a requirement on a licensee under clause 22(1); and
- has not waived that requirement under clause 22(2),

the licensee must comply with the requirement.

## **Division 2 - Offences**

### **23. Requirement to comply with licence conditions**

Clause 16(1) will require the CEO to impose a condition on a licence, specifying:

- the designated area or areas in which a licensee is authorised to be a taxi driver; and
- the class or classes of vehicle that the licensee is authorised to drive as a taxi.

A breach of a condition imposed under clause 16(1) will constitute an offence under clause 8(6).

Clause 16(2) will empower the CEO to impose any other conditions on a taxi driver licence that the CEO considers are appropriate.

This clause will provide that it will constitute an offence for a licensee to fail to comply with a condition imposed by the CEO pursuant to clause 16(2).

The maximum penalty that a court may impose for such an offence is \$1,000.

### **24. Requirements to display and produce documents**

Clause 24(1) will require a licensee, when driving a vehicle as a taxi, to display the taxi driver licence document that the CEO will be required to issue to the licensee pursuant to clause 20.

It is expected to be a plasticised card, similar in size to a driver's licence document. It will bear the licensee's photograph, name and taxi driver licence number. It may also bear other information, such as the type of vehicle the licensee is authorised to drive as a taxi or the designated area in which the licensee is authorised to drive a taxi.

The taxi driver licence document will serve two important purposes.

Clause 24 will require a licensee to display the taxi driver licence document in a prominent position in the taxi. Seeing it in the taxi will provide a passenger, or prospective passenger, with some assurance that a taxi driver is appropriately authorised. It may also aid a passenger to identify his or her taxi driver by name or by taxi driver licence number, in the event that the passenger has a subsequent query or complaint.

In addition, a taxi driver licence document may assist in the enforcement of the provisions of the Bill. It may be tendered by a licensee to an enforcement officer, to a taxi dispatch service provider or to a plate holder from whom the taxi driver wishes to lease a taxi, in an endeavour to establish the licensee's authorisation to carry on the occupation of taxi driver.

Clause 24(1)(a) will require the licensee to display the taxi driver licence document, whenever the licensee is driving the vehicle as a taxi, in the taxi. The licensee will have to place it in a position in which it is highly visible to passengers and in the way approved by the CEO.

Clause 24(1)(b) will empower the making of regulations prescribing another document or documents that a licensee must display in a particular type of vehicle that is being driven as a taxi.

For example, a multi purpose taxi is a taxi that is specially equipped in order to be capable of carrying passengers who are travelling in wheelchairs or electric mobility scooters. A passenger travelling in a wheelchair or scooter in the rear of a multi purpose taxi would be unlikely to be able to see a taxi driver licence document displayed on or near by the dashboard of the taxi. For this reason, it might be considered appropriate to use this regulation-making power to require a licensee to display an additional document, bearing the licensee's name, photograph and taxi driver licence number, in the multi purpose taxi. The CEO might approve of the additional document being displayed in the rear of a vehicle being driven as a multi purpose taxi and in a place in which it may readily be seen by a passenger travelling in a wheelchair or scooter in that taxi.

Clause 61 will require the CEO to publish details (on the Department of Transport website) of the way or ways in which the CEO has approved that a taxi driver licence document or an additional document must be displayed, so as to enable licensees to comply with requirements imposed by clause 24(1).

Failure to comply will constitute an offence. The maximum penalty a court may impose will be \$1,000.

Clause 24(2) will require a licensee to show an authorised officer the licensee's taxi driver licence document, if the authorised officer requests the licensee to do so.

Pursuant to clause 41, a police officer will be an authorised officer. In addition, the CEO will be empowered to designate relevant officers of the Department of Transport as authorised officers.

Authorised officers will be responsible for the enforcement of the provisions of this Bill. Persons designated by the CEO as authorised officers will perform a dedicated enforcement role, however, while police officers will perform a limited enforcement function, the need for which is most likely to arise in the course of a police officer's performance of his or her frontline policing responsibilities.

For example, a police officer may stop a vehicle that is being driven as a taxi in order to ensure that the taxi driver is complying, or that the taxi complies, with relevant provisions of the *Road Traffic Act 1974 (WA)*. The police officer may, at the same time, exercise his or her powers as an authorised officer for the purposes of this Bill and request that the taxi driver produce his or her taxi driver licence document so that the police officer can establish that the taxi driver has a valid taxi driver licence.

## **25. Requirements to surrender documents**

Part 5 of this Bill will set out different circumstances in which a person's taxi driver licence may be suspended or cancelled.

Clause 25(1) will set out when a person, whose taxi driver licence has been suspended or cancelled under Part 5, will be required to surrender his or her taxi driver licence document that was provided to the person by the CEO under clause 20(1).

Clause 25(1)(a) will require the person to surrender the taxi driver licence document to an authorised officer, on the request of the authorised officer, if the taxi driver licence document is in the person's immediate physical possession at the time when the authorised officer requests it.

Otherwise, clause 25(1)(b) will require the person to make or her own arrangements to ensure that the taxi driver licence document is surrendered to the CEO, in a manner approved by the CEO for this purpose, within 14 days after the day on which the suspension or cancellation took effect.

It will be an offence to fail to surrender a taxi driver licence document, under either circumstance. The maximum penalty that a court may impose for such an offence will be \$1,000.

In the event that a licensee or former licensee fails to comply with a requirement under clause 25(1) to surrender a taxi driver licence document, clause 20(3)(b) will empower the CEO to write to the licensee or former licensee, demanding the return of the taxi driver licence document.

Failure to comply with the CEO's written demand will constitute an offence under clause 25(2). The maximum penalty that a court may impose for such an offence will be \$1,000.

## **26. Requirement to notify CEO of change of address**

This clause will require a licensee to notify the CEO if the licensee's residential address changes within 21 days following the change of address. Failure to comply will constitute an offence. The maximum penalty that a court may impose will be \$1,000.

It is important for the CEO to maintain current information regarding a licensee's residential address. This is because it may be necessary for the CEO to serve written notice on a licensee in relation to a particular matter.

For example, clause 22 will empower the CEO to serve written notice on a licensee, requiring the licensee to complete a training course or test within a specified timeframe.

This clause will permit the CEO to determine in what manner a licensee may notify the CEO regarding a change of address. For example, the CEO may approve of a licensee making such a notification by completing and lodging an on-line form, by filling out a hard copy of a form and lodging it at any one of a number of nominated locations or perhaps even by sending a text message to a dedicated mobile telephone operated by the CEO for this purpose.

Clause 61 will require the CEO to publish details (on the Department of Transport website) of the various means that the CEO has approved via which a licensee may notify the CEO in compliance with this clause.

## **27. Requirements to notify CEO of certain mental or physical conditions**

A person who wishes to carry on the occupation of a taxi driver must possess an appropriate level of physical and mental fitness.

Clause 12 will empower the CEO to grant an application for a taxi driver licence if, amongst other matters, the CEO is satisfied that the applicant is physically and mentally fit to drive a vehicle as a taxi.

A successful applicant, having become a licensee, is required to continue to be physically and mentally fit to drive a vehicle as a taxi.

Clause 14 will empower the CEO to renew a taxi driver licence if, amongst other matters, the CEO is satisfied that the licensee is physically and mentally fit to drive a vehicle as a taxi.

Clause 21(1) will require a licensee to undergo a medical assessment at 5-year intervals, to determine that the licensee is physically and mentally fit to drive a vehicle as a taxi, and to provide the CEO with a copy of the assessment report.

This clause will require a licensee to notify the CEO if the licensee is diagnosed with a "notifiable condition" or, if the licensee has previously notified the CEO regarding such a diagnosis, it will require the licensee to notify the CEO if there is any change in that condition.

Clause 3 defines what is meant by the term "notifiable condition". It is a medical condition affecting either the physical or mental health of a person, of a kind which will or may affect the person's physical or mental fitness to carry on the occupation of taxi driver.

Clause 27(1) will require a licensee to notify the CEO if the licensee is diagnosed with a notifiable condition. It will require the licensee to do so as soon as is reasonably practicable after the licensee's diagnosis.

Clause 27(2) will require a licensee, who has previously notified the CEO that the licensee has been diagnosed with a notifiable condition, to again notify the CEO if the licensee becomes aware of an increase in the extent to which the licensee's physical or mental health is or may be affected by the condition. It will require the licensee to do so as soon as is reasonably practicable, once the licensee becomes aware of the change in condition.

Failure to comply with a requirement imposed by clause 27(1) or 27(2) will constitute an offence. In either case, the maximum penalty that a court may impose will be \$1,000.

This clause will permit the CEO to determine in what manner a licensee may give the CEO notice of the condition or of the change in condition. For example, the CEO may approve of a licensee making such a notification by completing and lodging an on-line form or via a telephone call to the CEO's delegate.

Clause 61 will require the CEO to publish details (on the Department of Transport website) of the means that the CEO has approved via which a licensee is permitted to notify the CEO in compliance with this clause.

### **Division 3 – Regulations and code of conduct**

#### **28. Regulations about conduct of licensees**

This clause will empower the making of regulations requiring or prohibiting particular behaviour on the part of a licensee.

For example, regulations may be made providing that it will be an offence for a taxi driver to refuse to carry a passenger's assistance animal, to fail to assist a passenger with luggage, if requested by the passenger to do so, or to fail to wear a uniform, where required to do so.

Pursuant to clause 62(2)(l), a maximum penalty of \$2,500 may be prescribed as applying for an offence created under this clause.

#### **29. Code of conduct**

Clause 29(1) will empower the CEO to approve of a code of conduct applying to licensees.

Pursuant to clause 6, where the CEO has reasonable grounds to suspect that a licensee has contravened a code of conduct applying to the licensee, the CEO will be permitted to have regard to the contravention or contraventions in determining whether a licensee is a fit and proper person to be licensed to be a taxi driver.

By contrast, a contravention of an offence provision will attract a penalty.

Offence provisions will require or prohibit particular, specific behaviour on the part of a taxi driver. For example, it is intended to make a regulation that prohibits a taxi driver from refusing a fare, unless certain circumstances apply.

The code of conduct will differ from offence provisions created in the Bill and in regulations that will be made under the Bill. It will describe the characteristics that a taxi driver is expected to display when undertaking his or her occupation, the manner in which a taxi driver is expected to conduct himself or herself and behaviour that it is expected a taxi driver should not engage in.

A code of conduct will set out guidelines for appropriate taxi driver behaviour.

Clause 29(2) will provide that a code of conduct approved by the CEO will constitute subsidiary legislation pursuant to the *Interpretation Act 1984 (WA)* and, pursuant to section 42 of that Act, will require tabling in and will be subject to disallowance by the Parliament, as if that code of conduct were regulations.

Clause 29(3) will require a code of conduct approved by the CEO pursuant to clause 29(1) to be published on the Department of Transport website so that it is readily available to licensees. It will also require any code of conduct published on the website to be kept up to date.

## **Part 5 – Suspension, cancellation and disqualification**

### **Division 1 - Suspension**

#### **30. Suspension order**

Clause 30(1) will empower the CEO to suspend a taxi driver licence in the following circumstances.

Under clause 30(1)(a), the CEO may take this action if the licensee is charged with an offence that is a disqualification offence for the purposes of clause 33(1).

Offences created under clause 8 of this Bill will be disqualification offences. These are offences of driving a vehicle as a taxi in various circumstances involving the offender not being authorised as required under this Bill.

Other offences may be prescribed as disqualification offences under clause 33(1)(b). For example, a sexual assault committed against a passenger may be prescribed as a disqualification offence.

Under clause 30(1)(b)(i), the CEO may take this action if the CEO suspects, on reasonable grounds, that the licensee has committed a disqualification offence.

This ground differs from the ground the subject of clause 30(1)(a). In the case of clause 30(1)(a), the CEO may take the action because the licensee has been

charged with a disqualification offence. Under clause 30(1)(b)(i), the licensee will not, or will not yet, have been charged with the disqualification offence.

Under clause 30(1)(b)(ii), the CEO may take this action if the CEO suspects, on reasonable grounds, that the licensee is not a fit and proper person to hold a taxi driver licence.

Without limiting the circumstances in which the CEO might form this view, examples of such circumstances are those in which the CEO has reasonable grounds to believe that the licensee has contravened the provisions of this Bill, regulations made under it or the code of conduct approved under clause 29.

Under clause 30(1)(b)(iii), the CEO may take this action if the CEO suspects, on reasonable grounds, that the licensee is not physically or mentally fit to hold a taxi driver licence.

Without limiting the circumstances in which the CEO might form this view, the CEO might have reasonable grounds to believe that the licensee is not medically fit to be a taxi driver on the basis of information contained in an approved medical report provided to the CEO by the licensee in compliance with a requirement to do so under clause 21.

Under clause 30(1)(c)(i), the CEO may take this action if the licensee has failed to comply with a requirement imposed under clause 21(1) to give the CEO an approved medical report.

Under clause 30(1)(c)(ii), the CEO may take this action if the licensee has failed to comply with a requirement imposed under clause 22(4) to complete a training course or test.

Under clause 30(2), if the CEO suspends a taxi driver licence under clause 30(1)(a) or 30(1)(b), the CEO may, in doing so, provide that the suspension order will not be revoked unless the licensee undertakes remedial action of the kind stipulated by the CEO in the order. (Clause 31 will set out the circumstances in which the CEO must or may revoke a suspension order.)

For example, the CEO might suspend a taxi driver licence under clause 30(1)(b)(ii), because the CEO has reasonable grounds to believe that the licensee is not fit and proper, in light of sustained complaints made to, and investigated by the CEO, that the licensee has breached the code of conduct by behaving aggressively and unprofessionally towards passengers.

The suspension order made by the CEO could provide that the CEO will revoke it if the licensee undertakes successfully relevant training aimed at addressing the behavioural issues that led to the CEO taking the action.

Clause 30(2) does not provide for a suspension order made under clause 30(1)(c) to include a requirement that the licensee undertake remedial action. This is because the CEO has made the suspension order under that subclause because the licensee has failed to comply with a requirement imposed under

another provision of this Bill. In these circumstances, the remedial action to be undertaken by the licensee is to comply with the requirement.

Clause 30(3) will require the CEO to give written notice to a licensee regarding a suspension order. The written notice will be required to include the following information:

- (a) that the taxi driver licence is suspended;
- (b) the day on which the suspension takes effect;
- (c) why the CEO is suspending the taxi driver licence;
- (d) any remedial action that the licensee is required to take under clause 30(2);
- (e) if the suspension order is made under clause 30(1)(b) or 30(1)(c), advice that the licensee has a right to a review of the CEO's decision pursuant to clause 55.

If the CEO makes a suspension order under clause 30(1)(a), however, that is, because the licensee is charged with a disqualification offence, the licensee will not have a right to a review of the CEO's decision.

This policy position has been taken because disqualification offences are offences of a serious nature and conviction of a disqualification offence will lead to the cancellation, by the operation of this Bill, of a taxi driver licence.

If the licensee is convicted of the disqualification offence, the provisions of clause 33 will act to cancel the licensee's taxi driver licence.

If the licensee is acquitted of the disqualification offence, the CEO will be required under clause 31(2) to revoke the suspension order.

Clause 30(4) will provide that when a suspension order is made in relation to a taxi driver licence, that licence will be suspended for a period that commences on the day stated in the written notice pursuant to clause 30(3)(b), and ends either on the day on which:

- the suspension order is revoked pursuant to clause 31(5)(b); or
- the licence expires; or
- the licence is cancelled .

Clause 30(5) will provide that a further suspension order may be made, even if the relevant taxi driver licence is already suspended.

This situation might arise if the CEO has other grounds on which to suspend the taxi driver licence.

For example, the CEO might make a suspension order under clause 30(1)(a), because the licensee is charged with a disqualification offence.

Shortly following this action, the CEO might also form reasonable grounds to believe that the licensee is not medically fit to be a taxi driver, because of

information contained in an approved medical report provided to the CEO. As a result, the CEO might make a further suspension order under clause 30(1)(b)(iii).

In the event that the CEO should revoke the first suspension order, because, for instance, the charge relating to the disqualification offence is withdrawn, the taxi driver licence will remain suspended on the basis that the CEO has reasonable grounds to believe that the licensee is not medically fit to be a taxi driver.

Clause 30(6) will empower the CEO to write to a licensee, whose taxi driver licence is the subject of a suspension order, to notify the licensee that the CEO is varying the suspension order or waiving a requirement imposed on the licensee in the suspension order pursuant to clause 30(2).

### **31. Revocation of suspension order**

This clause will set out when the CEO may revoke a suspension order, and when the CEO must revoke a suspension order.

Clause 31(1) will empower the CEO to revoke a suspension order at any time the CEO considers it appropriate to do so.

Clause 31(2) will require the CEO to revoke a suspension order made under clause 30(1)(a), because the licensee was charged with a disqualification offence, if the CEO becomes satisfied that:

- the licensee has complied with a requirement imposed in the suspension order that the licensee undertake specified remedial action; or
- the grounds for making the suspension order no longer exist.

For example, the grounds for making the suspension order will no longer exist if the charge relating to the disqualification offence is withdrawn.

Clause 31(2) will also require the CEO to revoke a suspension order made under clause 30(1)(b), because the CEO has reasonable grounds to believe that the licensee has committed a disqualification offence (as opposed to being charged with one), or that the licensee is not fit and proper to be a licensee, or that the licensee is not medically fit to be a licensee, if:

- the licensee has complied with a requirement imposed in the suspension order that the licensee undertake specified remedial action; or
- the grounds for making the suspension order no longer exist.

For example, the grounds for making the suspension order will no longer exist if the licensee provides a further approved medical report indicating that the licensee has had successful treatment that has addressed the medical issue that gave rise to the CEO making the suspension order.

Clause 31(3) will require the CEO to revoke a suspension order made under clause 30(1)(c)(i), because the licensee failed to comply with a requirement imposed under clause 21(1) to give the CEO an approved medical report, if the

licensee subsequently gives the CEO an approved medical report in compliance with the requirement. The CEO will be required to revoke the suspension order as soon as is reasonably practicable in these circumstances.

Clause 31(4) will require the CEO to revoke a suspension order made under clause 30(1)(c)(ii), because the licensee failed to comply with a requirement imposed under clause 22(4) to complete a training course or test, as soon as is reasonably practicable after either:

- the CEO becomes satisfied that the licensee has subsequently successfully completed the training course or test, or a substantially equivalent training course or test, in compliance with the requirement; or
- the CEO becomes satisfied, by other means, that the licensee holds the competency that was to be demonstrated by the successful completion of the training course or test.

If the CEO revokes a suspension order pursuant to this clause, clause 31(5) will require the CEO to write to the licensee to notify the licensee that the CEO is revoking the suspension order. The written notice will be required to contain the following information:

- that the suspension of the licensee's taxi driver licence is revoked;
- the day on which the suspension is to end;
- the reasons for the revocation of the suspension.

It may also contain other information.

## **Division 2 – Cancellation: by order**

### **32. Cancellation order**

Clause 32(1) will empower the CEO to cancel a taxi driver licence in the following circumstances.

Under clause 32(1)(a), the CEO may take this action if the CEO is satisfied that the licensee is not a fit and proper person to be a licensee.

Without limiting the circumstances in which the CEO might be satisfied that this is the case, the CEO might be so satisfied if, for example, a licensee is convicted of an offence or offences created under this Bill or regulations made under it, and the offence or offences were committed in such circumstances as have led the CEO to determine that the licensee is not a fit and proper person to drive a vehicle as a taxi.

Under clause 32(1)(b), the CEO may take this action if the CEO is satisfied that the licensee is not physically or mentally fit to drive a vehicle as a taxi.

Without limiting the circumstances in which the CEO might be satisfied that this is the case, the CEO might be so satisfied on the basis of information contained

in an approved medical report about the licensee, provided to the CEO in compliance with a requirement to do so under clause 21.

The CEO's powers under this clause differ from the CEO's powers to suspend a taxi driver licence under clause 30.

In order to be empowered to suspend a taxi driver licence, the CEO does not have to be satisfied that a particular matter is the case; it will suffice for the CEO to have reasonable grounds to believe that it is the case.

In order to be empowered to cancel a taxi driver licence under this clause, the CEO must be satisfied that a particular matter is the case; this requires the CEO to have a much higher level of certainty that a particular matter is the case, prior to being empowered to cancel a taxi driver licence.

Clause 32(2) will require the CEO to give written notice to a licensee regarding a cancellation order. The written notice will be required to include the following information:

- (a) that the taxi driver licence is cancelled;
- (b) the day on which the cancellation takes effect;
- (c) why the CEO is cancelling the taxi driver licence;
- (d) advice that the licensee has a right to a review of the CEO's decision pursuant to clause 55.

Clause 32(3) will give effect to the cancellation. Under this subclause, the taxi driver licence will be cancelled on the day that is stipulated, as required by clause 32(2)(b), in the written notice as the day on which the cancellation takes effect.

Clause 32(4) will make it clear that the CEO may make a cancellation order in relation to a taxi driver licence, even if that taxi driver licence is suspended at the time when the CEO determines to make, and makes, the cancellation order.

In other words, it is not necessary for a suspension order to be revoked before a cancellation order may be made.

### **Division 3 – Cancellation and disqualification: conviction of certain offences**

#### **33. Cancellation and disqualification when convicted of offence**

This clause will set out circumstances in which a taxi driver licence will be cancelled, upon the licensee's conviction of an offence that is a disqualification offence.

Clause 33(1)(a) will provide that an offence under clause 8(1), 8(2) or 8(4) will constitute a disqualification offence.

These offences are offences of driving a vehicle as a taxi while not being authorised as required under this Bill to do so. They are considered to be

offences of a serious nature, as they involve driving a vehicle as a taxi, carrying passengers for reward, when the offender:

- does not hold a taxi driver licence and therefore has not satisfied the CEO that the offender is fit and proper, competent and medically fit to be a taxi driver; or
- has had his or her taxi driver licence suspended or cancelled because the CEO is concerned that the offender is not fit and proper, competent or medically fit to be a taxi driver; or
- has committed an offence or offences that have led to the offender's taxi driver licence being cancelled; or
- holds a taxi driver licence but does not hold a driver's licence because the offender's driver's licence has been suspended or cancelled.

Clause 33(1)(b) will empower the making of regulations prescribing other offences as disqualification offences. Offences created under this Bill or another Western Australian law may be prescribed as disqualification offences. Offences created under a law of another Australian jurisdiction (including the Commonwealth) may also be prescribed as disqualification offences.

Disqualification offences are intended to be offences of a serious nature. By contrast, offences that will be prescribed as penalty points offences will be offences of a more minor nature.

An offence that is prescribed as a disqualification offence will not be prescribed as a penalty points offence, and an offence that is prescribed as a penalty points offence will not be prescribed as a disqualification offence.

If a licensee is convicted of an offence that is a disqualification offence, clause 33(2)(a) will act to cancel the licensee's taxi driver licence, with effect immediately upon the court convicting the licensee of the offence.

In addition, under clause 33(2)(b), the former licensee will be disqualified from holding or obtaining a taxi driver licence for the period prescribed in regulation.

If a person's taxi driver licence is cancelled under clause 33(2), because of the person's conviction of a disqualification offence, clause 33(3) will require the CEO to write to the person to notify the person of the cancellation.

The written notice will be required to contain the following information:

- that the taxi driver licence is cancelled;
- that the person is disqualified from holding or obtaining a taxi driver licence;
- the period for which the person is disqualified;
- that the cancellation took effect, and that the period of disqualification commenced, immediately upon the person's conviction by the court of the disqualification offence;
- the grounds for the cancellation and disqualification.

The written notice may also contain other information.

Clause 33(4) will clarify when the relevant period of disqualification begins and ends.

Under clause 33(4)(a), it will begin immediately upon the licensee's conviction of the disqualification offence.

Under clause 33(4)(b), it will end at the end of the day on which the relevant period of disqualification, prescribed in regulation, expires, unless clause 33(7) applies.

Under clause 33(7), if the person's conviction of the disqualification offence is quashed or set aside, then the disqualification will end on the day on which the conviction is quashed or set aside.

Clause 33(5) will empower the making of regulations prescribing the duration of the disqualification period that is to apply following a person's conviction of a disqualification offence. It will permit the making of regulations prescribing a permanent disqualification.

If a person becomes permanently disqualified, the person will never again be eligible to hold or to obtain a taxi driver licence.

Clause 33(6) will permit disqualification periods of differing duration to be prescribed in relation to a disqualification offence, depending upon:

- whether the disqualification offence is a first offence or a subsequent offence;
- the circumstances in which the disqualification offence was committed;
- how long the licensee has been a licensee;
- whether or not the licensee has previously been disqualified because of the licensee's conviction of a disqualification offence.

Clause 33(8) is necessary to clarify how the expiration of a disqualification period is to be calculated.

Because a disqualification will commence under this clause immediately upon a person's conviction of a disqualification offence, clause 33(8) will make it clear that the day on which the person is convicted is to count as a whole day, even though the person's conviction occurs part-way through that day.

Clause 33(9) will make it clear that a taxi driver licence may be cancelled under this clause, even if it is suspended at the time when the licensee is convicted of the disqualification offence.

A person who is convicted of a disqualification offence may already be subject to a disqualification (the first disqualification) under the provisions of this Bill, at the time at which the person is convicted of the disqualification offence and becomes subject to a further disqualification (the latest disqualification).

Clause 33(10) will make it clear that the latest disqualification may be postponed until the first disqualification has been served.

Clause 39 will set out what is to occur when a person becomes subject to more than one period of disqualification at a time.

Clause 33(11) will empower the making of regulations that will set out what is to occur if:

- a person is convicted of a disqualification offence; and
- the person becomes subject to a disqualification, as a consequence; and
- the conviction is subsequently quashed or set aside.

Regulations made pursuant to clause 33(11) will describe the circumstances in which, and the process via which, the person's taxi driver licence will be reinstated.

## **Division 4 – Cancellation and disqualification: penalty points**

### **Subdivision 1 – Penalty points register**

#### **34. Penalty points offences**

Clause 34(1) will provide that regulations may prescribe offences created by or under the provisions of:

- this Bill; or
- the *Taxi Act 1994 (WA)*; or
- the *Transport Co-ordination Act 1966 (WA)*; or
- the *Tobacco Products Control Act 2006 (WA)*,

as penalty points offences.

(The offence under the *Tobacco Products Control Act 2006* that it is intended to prescribe as a penalty points offence is created under the *Tobacco Products Control Regulations 2006 (WA)*, regulations made under that Act, in relation to smoking in a vehicle. Regulation 10 creates an offence of smoking in an enclosed public place. A taxi is a public place. This will mean that penalty points will be recorded against a taxi driver who commits an offence against the *Tobacco Products Control Regulations 2006* regulation 10 of smoking in a taxi.)

The types of offences that will lead to the recording of penalty points against a person will be more minor in nature, however they relate to conduct on the part of a taxi driver that may cause a passenger to suffer inconvenience, distress, a lack of service or poor service. In other words, they are the kinds of low level offences that undermine public confidence in the taxi sector.

A person will have to commit more than one such offence before accumulating an excessive number of penalty points. This will enable any affected taxi drivers to alter their behaviour in order both to improve their service to passengers and

to prevent their taxi driver licences being cancelled due to the accumulation of penalty points.

Offences that are disqualification offences will not be prescribed as penalty points offences. Disqualification offences will be offences of a more serious nature.

Clause 34(2) will require the regulations to prescribe, in relation to offences prescribed under clause 34(1) as penalty points offences, the number of penalty points that are to be recorded against a person in relation to each penalty points offence.

Clause 34(3) will provide that different numbers of penalty points may be prescribed as applying in relation to each prescribed penalty points offence, depending upon whether the offence is a first or subsequent offence and depending upon whether particular circumstances surrounded the commission of the penalty points offence.

For example, one penalty points offence is likely to be the offence of a taxi driver terminating a hiring before reaching the passenger's nominated destination and other than at the request of the passenger.

Where such an offence is committed during the early hours of the morning, the passenger may have few or no alternative transport options. At best, the passenger will be highly inconvenienced and at worst, the passenger's safety could be at risk. These attending circumstances may result in the regulations requiring the CEO to record a higher number of penalty points against the taxi driver for in relation to the penalty points offence.

### **35. Recording, expiry and cancellation of penalty points**

Conduct offences, requiring or prohibiting particular behaviour on the part of taxi drivers, will be created under this Bill. Under clause 34, regulations will be made prescribing particular conduct offences, the commission of which are to result in a prescribed number of penalty points being recorded against the offender.

The accumulation of an excessive number of penalty points will lead to the cancellation of a taxi driver licence and the imposition of a period of disqualification during which the former licensee will be unable to apply for the grant of a taxi driver licence.

This clause will set out the circumstances in which the CEO, who will administer the penalty points regime, will be required to record penalty points against a person or will be required to cancel penalty points recorded against a person. It will also set out when penalty points recorded against a person will expire.

Clause 35(1)(a) will require the CEO to record penalty points against a person who has held a taxi driver licence within the preceding years if the CEO becomes aware that the person:

- has been convicted of an offence that is prescribed as a penalty points offence; or
- has been dealt with by infringement notice in relation to the alleged commission of an offence that is prescribed as a penalty points offence.

The CEO will be required to record against the person the number of penalty points prescribed in relation to the penalty points offence, as well as reference to the relevant penalty points offence.

Reference in this subclause to a person who “has held a licence within the previous 3 years” is included to ensure that penalty points will also be recorded against a person who does not hold a taxi driver licence at a time when the CEO becomes aware of the commission of an alleged penalty points offence.

Such a person may have held a taxi driver licence which has been cancelled or has expired and is likely to have committed the relevant penalty points offence while licensed. As that person may wish to apply again for the grant of a taxi driver licence, it is important to ensure that penalty points continue to be recorded against the person.

Clause 35(2) will provide that penalty points recorded against a person pursuant to clause 35(1) are to expire at the end of the period that is 3 years after the commission or alleged commission of the relevant offence that is prescribed as a penalty points offence.

Clause 35(3) will require the CEO to cancel penalty points recorded against a person when:

- the total number of penalty points recorded reaches an amount that will require the CEO to give the person an excessive penalty points notice under clause 38; and
- the CEO gives the person the excessive penalty points notice.

It is necessary for the penalty points to be cancelled in these circumstances, as the recording of them has already led to the consequence of the person against whom they were recorded being given an excessive penalty points notice.

### **36. Removal of penalty points from register**

Conduct offences, requiring or prohibiting particular behaviour on the part of taxi drivers, will be created under this Bill. Under clause 34, regulations will be made prescribing particular conduct offences, the commission of which are to result in a prescribed number of penalty points being recorded against the offender.

The accumulation of an excessive number of penalty points will lead to the cancellation of a taxi driver licence and the imposition of a period of disqualification during which the former licensee will be unable to apply for the grant of a taxi driver licence.

This clause will set out the circumstances in which the CEO, who will administer the penalty points regime, will be required to remove penalty points, recorded against a person, from the penalty points register.

The different circumstances are listed in clause 36(1).

Clause 36(1)(a) deals with penalty points recorded against a person because the person was convicted by a court of an offence that is prescribed as a penalty points offence. If the conviction is subsequently overturned or set aside, the CEO will be required to remove from the register the penalty points that were recorded against the person because of the conviction.

Clause 36(1)(b) deals with penalty points recorded against a person because of an offence that is prescribed as a penalty points offence, and in respect of which a person has been given an infringement notice that alleges the person committed the offence.

Under clause 36(1)(b)(i), if the infringement notice is subsequently withdrawn, the CEO will be required to remove from the register the penalty points that were recorded against the person relating to the issue of that infringement notice.

Under clause 36(1)(b)(ii), if:

- the modified penalty associated with the infringement notice was not paid; and
- the matter was referred to the Fines Enforcement Registrar under the *Fines, Penalties and Infringement Notices Enforcement Act 1994 (WA)*; and
- the Fines Enforcement Registrar has subsequently withdrawn proceedings under that Act,

then the CEO will be required to remove from the register the penalty points that were recorded against the person relating to the issue of that infringement notice.

Under clause 36(1)(b)(iii), if the alleged offence the subject of the infringement notice has been referred to a court for the court to determine the matter, then the CEO will be required to remove from the register the penalty points that were recorded against the person relating to the issue of that infringement notice.

Clause 36(2) will provide that if the CEO removes penalty points from the penalty points register, pursuant to clause 36(1), then the effect of the removal is to be that it is as if those penalty points were never recorded against the person.

Clause 36(3) will empower the CEO, subsequently, again to record those penalty points against the person, however, if the person is later convicted of the alleged offence.

Penalty points recorded again under clause 36(3) may also be removed from the penalty points register again pursuant to clause 36(1)(a).

Clause 36(4) will empower the making of regulations setting out what is to be the case if penalty points are removed from the penalty points register pursuant to clause 36(1), however prior to their removal, some action was taken that has consequences for the person against whom the penalty points were recorded.

The most common action that would be likely to occur that would have consequences for a person against whom penalty points were recorded, and then removed, would be action in which:

- the number of penalty points recorded led to the person having an excessive number of penalty points; and
- as a result, the CEO gave the person an excessive penalty points notice; and
- the person's taxi driver licence was cancelled and the person became subject to a disqualification of a prescribed duration.

The clause 36(4) regulation-making power is likely to be used to set out the means by which the CEO is to reinstate the taxi driver licence of a person affected in the manner described above.

Under clause 36(5), the clause 36(4) regulation-making power will also empower the making of regulations providing for penalty points that have been cancelled under clause 35(3) to be again recorded against a person.

Clause 35(3) will require the CEO to cancel penalty points recorded against a person when:

- the total number of penalty points recorded reaches an amount that will require the CEO to give the person an excessive penalty points notice under clause 38; and
- the CEO gives the person the excessive penalty points notice.

It is necessary for the penalty points to be cancelled in those circumstances, as the recording of them has already led to the consequence of the person against whom they were recorded being given an excessive penalty points notice.

If penalty points are removed from the penalty points register, however, after:

- the number of penalty points recorded led to the person having an excessive number of penalty points; and
- as a result, the CEO gave the person an excessive penalty points notice; and
- the person's taxi driver licence was cancelled and the person became subject to a disqualification of a prescribed duration; and
- under clause 35(3), the CEO cancelled the relevant penalty points, the accumulation of the total of which led to the giving of the excessive penalty points notice,

it will be necessary for regulations to be made providing for the recording, again, of those penalty points that were cancelled under clause 35(3) (not the penalty points that were removed from the register).

This will form part of the action necessary to reinstate a person's penalty points position to that which would have been the case, if the removed penalty points had never been recorded.

### **37. Penalty points register**

Conduct offences, requiring or prohibiting particular behaviour on the part of taxi drivers, will be created under this Bill. Under clause 34, regulations will be made prescribing particular conduct offences, the commission of which are to result in a prescribed number of penalty points being recorded against the offender.

The accumulation of an excessive number of penalty points will lead to the cancellation of a taxi driver licence and the imposition of a period of disqualification during which the former licensee will be unable to apply for the grant of a taxi driver licence.

Clause 37(1) will require the CEO to establish and to maintain a penalty points register.

Clause 37(2) will set out the matters in relation to which the CEO must keep records in the penalty points register, as follows:

- the name of each person against whom penalty points are recorded (clause 37(2)(a));
- each offence or alleged offence in relation to which penalty points are recorded against a person (clause 37(2)(b)(i));
- the day on which each offence or alleged offence mentioned in clause 37(2)(b)(i) was committed or allegedly committed (clause 37(2)(b)(ii));
- the number of penalty points recorded against the person for each offence or alleged offence mentioned in clause 37(2)(b)(i) (clause 37(2)(b)(iii));
- in a case in which an excessive penalty points notice has been given to a person, the day on which the notice was given, the number of penalty points the notice stated were recorded against the person and the period of disqualification that is to apply as a consequence of the person's taxi driver licence being cancelled as a result (clause 37(2)(b)(iv));
- in a case in which penalty points recorded against a person have expired, because they were recorded 3 years ago or more than 3 years ago, the number of penalty points that have expired and the day on which they expired (clause 37(2)(b)(v));
- if any penalty points recorded against a person have been cancelled, because they formed part of a penalty points tally that has led to a person being given an excessive penalty points notice, the number of penalty points that were cancelled and the day on which they were cancelled (clause 37(2)(b)(vi));
- if any penalty points have been removed, because a person's conviction of an offence that led to the penalty points being recorded has been nullified, or because an infringement notice issued in relation to an alleged offence that led to the penalty points being recorded has been withdrawn or referred to a

- court for determination, the number of penalty points that have been removed (clause 37(2)(b)(vii); and
- any other matter prescribed in the regulations (clause 37(2)(c)).

## **Subdivision 2 – Cancellation and disqualification due to excessive penalty points**

### **38. Excessive penalty points notice**

Conduct offences, requiring or prohibiting particular behaviour on the part of taxi drivers, will be created under this Bill. Under clause 34, regulations will be made prescribing particular conduct offences, the commission of which are to result in a prescribed number of penalty points being recorded against the offender.

The accumulation of an excessive number of penalty points will lead to the cancellation of a taxi driver licence (if a person holds a taxi driver licence) and the imposition of a period of disqualification during which the former licensee will be unable to apply for the grant of a taxi driver licence.

This clause will set out when a person is to be taken to have accumulated an excessive number of penalty points, the CEO's responsibilities with regard to the giving of an excessive penalty points notice in such circumstances, and related matters.

Clause 38(1) will require the CEO to give a person an excessive penalty points notice, as soon as is reasonably practicable, as follows.

Clause 38(1)(a) will apply in the case of a person who has held a taxi driver licence for a continuous period of 12 months or longer.

The CEO will have to give the person an excessive penalty points notice as soon as is reasonably practicable after the number of penalty points recorded against the person reaches a total of at least 12.

Clause 38(1)(b) will apply in the case of a person who has held a taxi driver licence for a continuous period of less than 12 months, or who does not hold a taxi driver licence.

The CEO will have to give the person an excessive penalty points notice as soon as is reasonably practicable after the number of penalty points recorded against the person reaches a total of at least 6.

A new licensee, who has not yet held a taxi driver licence for a continuous period of 12 months, will be subject to a lower penalty points threshold. This is intended to ensure that any propensity to undesirable conduct of this nature, on the part of the licensee, will be quickly identified and addressed, either by a change in conduct on the part of the licensee to avoid the accumulation of an excessive number of penalty points and the resulting cancellation of the taxi driver licence, or by the cancellation of the taxi driver licence because of the accumulation of an excessive number of penalty points within the first 12 months of the licensee being licensed.

Clause 38(2) will set out the information that an excessive penalty points notice must contain, as follows:

- (a) if the person holds a taxi driver licence at the time that the excessive penalty points notice is given, advice that the taxi driver licence is cancelled;
- (b) that the person is disqualified from holding or obtaining a taxi driver licence;
- (c) the period for which the person is disqualified from holding or obtaining a taxi driver licence (which period will be prescribed in regulations made pursuant to clauses 38(4) and (5));
- (d) the day on which the notice is given;
- (e) the total number of penalty points recorded against the person on the day mentioned in clause 38(2)(d);
- (f) the day on which the cancellation of the person's taxi driver licence takes effect, if the person holds a taxi driver licence at the time, and the day on which the period of disqualification mentioned in clause 38(2)(c) commences.

In clause 38(2)(f), reference is made to the cancellation "if any" of a taxi driver licence. This is because an excessive penalty points notice may be given to a person even if the person does not, at that time, hold a taxi driver licence.

Clause 38(3)(a) will act to cancel the person's taxi driver licence, if the person holds a taxi driver licence, on the day that is stated in the excessive penalty points notice as the day on which the cancellation is to take effect (see clause 38(2)(f)).

Clause 38(3)(b) will act to impose the disqualification on the person, which will commence on the day stated in the excessive penalty points notice (see clause 38(2)(f)).

Clause 38(4) will empower the making of regulations prescribing the duration of the disqualification period that is to apply because an excessive number of penalty points have been recorded against the person. It will permit the making of regulations prescribing a permanent disqualification.

If a person becomes permanently disqualified, the person will never again be eligible to hold or to obtain a taxi driver licence.

Clause 38(5) will permit disqualification periods of differing duration to be prescribed, depending upon:

- the number of penalty points that are recorded against the person on the day on which the excessive penalty points notice is given;
- whether or not the person is a licensee and, if so, for what continuous period of time the person has held a taxi driver licence;
- whether or not the person has previously been disqualified because of the accumulation of an excessive number of penalty points.

Clause 38(6) will make it clear that a taxi driver licence may be cancelled under this clause, even if it is suspended at the time when the excessive penalty points notice is given.

A person who is given an excessive penalty points notice, and who becomes subject to a disqualification as a result, may already be subject to a disqualification (the first disqualification) under the provisions of this Bill, at the time at which the person becomes subject to the further disqualification (the latest disqualification) as a result of being given the excessive penalty points notice.

Clause 38(7) will make it clear that the latest disqualification may be postponed until the first disqualification has been served.

Clause 39 will set out what is to occur when a person becomes subject to more than one period of disqualification at a time.

## **Division 5 – General provisions**

### **39. Cumulative effect of disqualification**

Under Part 5 of this Bill, a person's taxi driver licence may be cancelled and the person disqualified from holding or obtaining a taxi driver licence for a prescribed period of time.

This might occur because the person is convicted of an offence that is a disqualification offence.

Clause 33(1)(a) will provide that an offence under clause 8, of driving a taxi while being unauthorised to do so, will constitute a disqualification offence.

Clause 33(1)(b) will provide for other offences, under this Bill or under another written law, to be prescribed as disqualification offences.

Alternatively, a person might be disqualified because the CEO has recorded an excessive number of penalty points against the person, requiring the CEO to give the person an excessive penalty points notice under clause 38. This action will have the effect of cancelling the person's taxi driver licence, and the person will be subject to a disqualification period of a prescribed duration. Longer periods of disqualification will apply if a person has previously been disqualified because of the accumulation of an excessive number of demerit points.

It is possible that a person may become subject, under the provisions of this Bill, to two or more periods of disqualification at once.

This clause will provide that disqualifications are to be served cumulatively, that is, one after another.

Clause 39(1) will make it clear that the provisions of this clause apply when a person becomes subject to a disqualification, pursuant to this Bill, at a time when the person is already subject to another disqualification pursuant to this Bill.

Clause 39(2) will provide that if a person is serving such a disqualification (the first disqualification) when a further disqualification (the second disqualification) is imposed on that person, the second disqualification period will not commence elapsing until the first disqualification period has come to an end.

This is known as a “postponement”.

Clause 39(3) will provide that the postponement of a disqualification period will not affect its duration.

For example, a person is serving a 3-month disqualification and has served one month of the 3-month total when the person becomes subject to a 6-month disqualification.

Clause 39(2) will provide for the commencement of the 6-month disqualification to be postponed for 2 months. Two months later, when the 3-month disqualification ends, the 6-month disqualification will commence.

The person will serve a total of 9 months’ disqualification.

#### **40. Effect of permanent disqualification**

Under Part 5 of this Bill, a person’s taxi driver licence may be cancelled and the person disqualified from holding or obtaining a taxi driver licence.

Clauses 33(5) and 38(4) empower the making of regulations prescribing relevant disqualification periods. They also provide that regulations may prescribe that a disqualification is of permanent duration.

If a person becomes disqualified permanently, the person will never be eligible to hold or obtain a taxi driver licence.

For example, regulations might prescribe that a person will be subject to a permanent disqualification because of the severity of an offence in respect of which the person has been convicted or because of the number of previous occasions on which the person has been subject to a disqualification for the same reasons.

Under Part 5 Division 4 of this Bill, the CEO will be required to take certain action in relation to penalty points.

This clause will provide that, if a person becomes disqualified permanently, the CEO will no longer be required to take any penalty points action in respect of that person.

This is because actions such as the recording of penalty points against a person, or the giving of an excessive penalty points notice to a person, lead or may lead to a person's taxi driver licence being cancelled.

When a person becomes permanently disqualified, any taxi driver licence the person holds immediately before the disqualification is imposed will be cancelled and the person will be ineligible ever again to hold or obtain a taxi driver licence.

The recording of penalty points in relation to a permanently disqualified person is redundant. This clause will absolve the CEO of this unnecessary responsibility.

## **Part 6 – Enforcement**

### **41. Authorised officers**

Pursuant to clause 41(1), a police officer will be an authorised officer. In addition, the CEO will be empowered to designate other persons as authorised officers.

Authorised officers will be responsible for the enforcement of the provisions of this Bill. Persons designated by the CEO as authorised officers will perform a dedicated enforcement role, however, while police officers will perform a limited enforcement function, the need for which is most likely to arise in the course of a police officer's performance of his or her frontline policing responsibilities.

For example, a police officer may stop a vehicle that is being driven as a taxi in order to ensure that the taxi driver is complying, or that the taxi complies, with relevant provisions of the *Road Traffic Act 1974 (WA)*. The police officer may, at the same time, exercise his or her powers as an authorised officer for the purposes of this Bill and request that the taxi driver produce his or her taxi driver licence document so that the police officer can establish that the taxi driver has a valid taxi driver licence.

Clause 41(2) will clarify that the other persons the CEO may designate as authorised officers are to be persons employed or engaged by the Department of Transport.

Clause 41(3) will require the CEO to ensure that each person whom the CEO designates as an authorised officer is issued with an identity card in a form approved by the CEO. The identity card will display the authorised officer's name and photograph and other credentials.

Clause 41(4) will require an authorised officer, who is not a police officer, to carry his or her identity card when performing enforcement functions and to show it when exercising enforcement powers under other provisions of this Bill.

Clause 41(5) will provide that, in any legal proceeding, such as a prosecution, an identity card issued pursuant to clause 41(3) will constitute proof that the person

to whom it was issued has been designated as an authorised officer by the CEO, unless another person tenders evidence that proves otherwise.

## **42. Powers of authorised officers**

Clause 42(1) will set out when an authorised officer may exercise the enforcement powers the subject of clause 44. It will provide that an authorised officer may do so:

- in order to conduct checks to determine whether a person is complying with the provisions of the Bill, even if the authorised officer does not have any reason to believe that a person has contravened the Bill, regulations made under the Bill or a code of conduct for taxi drivers approved by the CEO under clause 29 (clause 42(1)(a));
- to investigate an alleged contravention of the Bill or of regulations made under the Bill (clause 42(1)(b));
- to investigate whether there are grounds for the CEO to suspend or to cancel a licensee's taxi driver licence, because the licensee is not fit and proper, or is not physically or mentally fit, to be a taxi driver (clause 42(1)(c)).

Some of an authorised officer's enforcement activities will take place on roads and at places where vehicles are being driven as taxis. For this reason, clause 42(2) will set out what an authorised officer will be empowered to do in relation to a vehicle that is, or appears to be, being driven as a taxi:

- to cause the vehicle to stop and to remain stopped for as long as is reasonably necessary for the authorised officer to exercise other powers (clause 42(2)(a));
- to direct the person driving the vehicle to produce the person's driver's licence document and/or the person's taxi driver licence document (clause 42(2)(b));
- to direct a person travelling in the vehicle to get out of the vehicle, or to direct a person not to get into the vehicle (clause 42(2)(c));
- to direct the person driving the vehicle, or any passenger travelling in the vehicle, to provide information requested by the authorised officer, answer a question asked by the authorised officer, advise the authorised officer of the person's name and address, or show to the authorised officer a document or a record that the person is capable of showing to the authorised officer (clause 42(2)(d));
- to inspect the vehicle (clause 42(2)(e));
- in relation to any document or record shown to the authorised officer pursuant to clause 42(2)(d), to inspect it, keep it or make a copy of it (clause 42(2)(f)).

Clause 42(3) will provide an authorised officer with general powers in order to monitor compliance with the provisions of this Bill, to investigate a suspected breach of the provisions of the Bill or of regulations made under it, or of a code of conduct, or to investigate whether a licensee is fit and proper or physically or mentally fit to continue to be licensed to drive a vehicle as a taxi.

These will include the power to:

- direct a person referred to in clause 42(5) to answer a question asked by the authorised officer or to provide the authorised officer with information required by the authorised officer (clause 42(3)(a));
- direct a person referred to in clause 42(5) to produce a document or record that the person is capable of producing (clause 42(3)(b));
- inspect, retain or make a copy of such a document or record (clause 42(3)(c)).

Clause 42(4) will provide an authorised officer with powers of entry and search, and related powers, where these powers are necessary in order to monitor compliance with the provisions of this Bill, to investigate a suspected breach of the provisions of the Bill or of regulations made under it, or of a code of conduct, or to investigate whether a licensee is fit and proper or physically or mentally fit to continue to be licensed to drive a vehicle as a taxi.

Clause 42(6) will ensure that these powers may only be exercised if the occupier of the relevant premises consents to the entry or, if the occupier does not consent, pursuant to an entry warrant obtained pursuant to clauses 43 and 44.

An example of a situation in which an authorised officer might need to exercise entry and search powers is when a person has committed an offence of driving a vehicle as a taxi while being unlicensed to do so, and the authorised officer needs to establish whether or not another person has committed an offence against clause 9 of causing or permitting the first person to commit that offence.

For example, a person who is authorised under the *Taxi Act 1994* (WA) or the *Transport Co-ordination Act 1966* (WA) to operate a vehicle as a taxi may have committed an offence against clause 9 by leasing the taxi to the offender without first making reasonable endeavours to determine whether the offender had a taxi driver licence. An authorised officer may require access to information held electronically or on paper by the person, such as lease documentation or other business records.

Clause 42(4) will therefore empower an authorised officer to:

- search premises;
- operate a computer or other thing at the premises;
- make a copy of, take an extract from, download or print out a document or record;
- seize a document, or make a record that the authorised officer is going to retain the document and retain it for as long as is reasonably necessary;
- direct the occupier of the premises, or another person at the premises, to give the authorised officer any assistance that the authorised officer reasonably requires in order to monitor compliance with the provisions of this Bill, to investigate a suspected breach of the provisions of the Bill or of regulations made under it, or of a code of conduct, or to investigate whether a licensee is fit and proper or physically or mentally fit to continue to be licensed to drive a vehicle as a taxi.

Clause 42(5) will clarify that the powers of an authorised officer, set out in clauses 42(3) and (4), may only be exercised in relation to:

- a person who holds, or has held, a taxi driver licence;
- a person whom an authorised officer has reasonable grounds to suspect has driven a vehicle as a taxi;
- a person who is a provider of a taxi dispatch service;
- a person who owns or leases taxi plates under the *Taxi Act 1994 (WA)*, or who holds a taxi-car licence under the *Transport Co-ordination Act 1966 (WA)*, authorising the person to operate a vehicle as a taxi;
- a person who acts as an agent for a person who is authorised to operate a vehicle as a taxi, such as a person who arranges on his or her behalf for a vehicle authorised to be operated as a taxi to be leased to a taxi driver.

An authorised officer will not be empowered to exercise these powers in relation to a person who was a passenger in a vehicle at the time of an alleged offence against the provisions of this Bill or of regulations made under it.

Clause 42(6) will provide that an authorised officer's power, under clause 42(4), to enter premises must be exercised either with the consent of the occupier of the premises or pursuant to an entry warrant. Clause 43 will set out how an authorised officer may apply for an entry warrant. Clause 44 will set out when a Justice of the Peace is empowered to issue an entry warrant.

### **43. Application for entry warrant**

The provisions of this Bill relating to entry warrants replicate provisions in the *Criminal Investigation Act 2006 (WA)* Part 5 Division 3 relating to search warrants; the powers of a police officer or a public officer relating to search warrants under that Act are not available to persons who are designated by the CEO as authorised officers responsible for the enforcement of the provisions of this Bill.

Clause 42(4) will empower an authorised officer to enter and search premises and to exercise other powers in those premises, either with the consent of the occupier of the premises or pursuant to an entry warrant.

This clause will set out how an authorised officer is to apply for an entry warrant.

Clause 43(1) will define what is meant by the term "remote communication", whenever that term is used in this clause. It will mean a way of communicating from a distance by means including by telephone, facsimile transmission, email and radio communication.

Clause 43(2) will provide that, throughout this clause, whenever reference is made to the making of an application, that reference is also to be taken to mean the provision of information in support of the application.

Clause 43(3) will empower an authorised officer to apply to a Justice of the Peace for an entry warrant that will empower an authorised officer to enter a place in order to monitor compliance with the provisions of this Bill, to investigate a suspected breach of the provisions of the Bill or of regulations made under it or of a code of conduct, or to investigate whether a licensee is fit and proper, or physically or mentally fit, to continue to be licensed to drive a vehicle as a taxi.

Clause 43(4) will require an application to be made in accordance with all of the provisions of clause 43. In addition, if regulations are made prescribing information that must be included in an application for an entry warrant, besides the information that is required by this clause to be provided, then an application must also include that prescribed information.

Clause 43(5) will require an applicant for an entry warrant to make the application in person before a Justice of the Peace, unless there is an urgent need for the entry warrant and the applicant reasonably suspects that there is no Justice of the Peace available within a reasonable distance of the applicant.

If this is the case, clause 43(5) will permit an authorised officer to make an application for an entry warrant to a Justice of the Peace via “remote communication”. Pursuant to clause 43(1), this form of communication may include the use of a telephone, a facsimile machine, email or radio communication.

If an application is made via remote communication, the Justice of the Peace to whom it is made may not grant the application, even if satisfied regarding all of the other matters required under clause 43, unless the Justice is also satisfied that there does exist an urgent need for the entry warrant and that the applicant did not reasonably have access to a Justice of the Peace in order to make the application in person.

Clause 43(6) will require an application for an entry warrant to be made in writing, unless the application is being made via remote communication and it is not practicable to send written material to the Justice of Peace to whom the application is being made. For example, if an authorised officer applies for an entry warrant via telephone, because the authorised officer does not have any other means of communication available, the authorised officer will likely have no practicable means of providing written material to the Justice when making the application.

If this is the case, then clause 43(6) will empower the authorised officer to make the application for the entry warrant orally. In such a case, this subclause will require the Justice of the Peace to whom the application is made to make a written record of the application, as well as any information the authorised officer provides orally in support of the application.

Clause 43(7) will require an authorised officer to swear an oath when applying for an entry warrant. This reflects, and will impress upon an authorised officer, the gravity of the request to enter private premises without the consent of the occupier of those premises.

The subclause will provide, however, that it is not necessary for the applicant to swear an oath when making the application if the application is being made by remote communication and, because of the nature of the remote communication, it is not practicable for the Justice of the Peace to whom the application is being made to administer an oath.

If this is the case, clause 43(7) will permit the application to be made without the applicant swearing an oath. In such a case, if the Justice of the Peace determines to issue the entry warrant sought, the applicant must, as soon as is reasonably practicable after the issue of the entry warrant, send to the Justice an affidavit that verifies the application and any information provided in support of the application.

Clause 43(8) will set out what is to occur if a Justice of the Peace issues an entry warrant, when the application has been made via remote communication.

It will require the Justice to send a copy of the warrant to the applicant by remote communication (for example, by email or via facsimile transmission) if this is practicable.

If this is not practicable, then the Justice is to send the applicant, by remote communication, any information that the warrant must contain. The applicant is then to transcribe the information provided by the Justice into a form devised by the applicant, and to give the Justice a copy of that form as soon as is practicable after completing the form.

The Justice is then to attach a copy of that form to the original warrant, together with any affidavit that the applicant provides to the Justice pursuant to clause 43(7) (required if it is not possible for the applicant to swear an oath when making the application). The Justice is to make sure that these documents are made available for the applicant to collect.

Clause 43(9) will provide that an entry warrant, filled out in a form devised by the applicant pursuant to clause 43(8), will have the same force and effect as the original warrant issued by the Justice of the Peace.

Clause 43(10) will provide that any evidence obtained by an authorised officer who executes the entry warrant will be inadmissible in any proceedings either in a court or in the State Administrative Tribunal, if the authorised officer who applied for the entry warrant fails to comply with an obligation under this clause to:

- send the Justice of the Peace an affidavit, in a situation in which the application was made via remote communication and it was not practicable for the applicant to swear an oath when making the application (see clause 43(7)(d)); or
- provide the Justice of the Peace with a copy of the form of warrant completed by the applicant, containing information provided by the Justice via remote communication, where it was not practicable for the Justice to send the

applicant a copy of the original warrant by remote communication (see clause 43(8)(b)).

#### **44. Issue and content of entry warrant**

The provisions of this Bill relating to entry warrants replicate provisions in the *Criminal Investigation Act 2006 (WA)* Part 5 Division 3 relating to search warrants; the powers of a police officer or a public officer relating to search warrants under that Act are not available to persons who are designated by the CEO as authorised officers responsible for the enforcement of the provisions of this Bill.

Clause 44(1) will empower a Justice of the Peace to issue an entry warrant to an authorised officer who has applied for one pursuant to clause 43, provided the Justice of the Peace is satisfied that an authorised officer needs to enter a place in order to monitor compliance with the provisions of this Bill, to investigate a suspected breach of the provisions of the Bill or of regulations made under it, or of a code of conduct, or to investigate whether a licensee is fit and proper or physically or mentally fit to continue to be licensed to drive a vehicle as a taxi.

An entry warrant issued by a Justice of the Peace will need to be shown to the occupier of a place that an authorised officer intends to enter. For this reason, clause 44(2) will set out what information an entry warrant must contain:

- a description of the place to which it relates (clause 44(2)(a));
- the purpose or purposes for which entry to the place is required (clause 44(2)(b));
- details of the relevant provision or provisions of the Bill or regulations, if entry is required because it is suspected that there has been a breach of those provisions (clause 44(2)(c));
- the period of validity of the entry warrant, which cannot be longer than 14 days following the date of issue of the entry warrant (clause 44(2)(d));
- the name of the Justice of the Peace who issued it (clause 44(2)(e));
- the date on which and time at which the Justice of the Peace issued the entry warrant (clause 44(2)(f)).

Under clause 44(3), an entry warrant will only be valid if it is made in a form that is in accordance with a form prescribed in regulation for this purpose.

Clause 44(4) will provide that, if a Justice of the Peace refuses an application made by an authorised officer for the issue of an entry warrant, the Justice must make a record of the refusal, the Justice's reasons for the refusal and the date and time of the refusal.

#### **45. Effect of entry warrant**

The provisions of this Bill relating to entry warrants replicate provisions in the *Criminal Investigation Act 2006 (WA)* Part 5 Division 3 relating to search warrants; the powers of a police officer or a public officer relating to search warrants under that Act are not available to persons who are designated by the

CEO as authorised officers responsible for the enforcement of the provisions of this Bill.

Clause 45(1) will clarify that an entry warrant will have effect in accordance with its contents, and in accordance with clauses 45(2) and 45(3).

Clause 45(2) will make it clear that an entry warrant will have force immediately it is issued by a Justice of the Peace.

Clause 45(3) will make it clear that once an entry warrant has been issued by a Justice of the Peace, it may be executed by any person who is an authorised officer for the purposes of this Bill. The authorised officer who applied for the entry warrant need not be the authorised officer who enters premises pursuant to the entry warrant.

#### **46. Obstructing authorised officer or not complying with direction**

Clause 46(1) will provide that it will constitute an offence for a person to fail to obey a direction given by an authorised person. The maximum penalty that a court may impose for such an offence will be \$2,500.

Clause 46(2) will provide that it will constitute an offence for a person to interfere when an authorised officer is performing, or trying to perform, an enforcement function. The maximum penalty that a court may impose for such an offence will be \$2,500.

### **Part 7 – Exchange of information**

#### **47. Terms used**

This clause will define various terms that are used throughout Part 7 of this Bill.

The term ***disclose***, in relation to the disclosure of information under this Part, is to include providing the information, releasing the information or giving access to the information.

The term ***driver's licence information*** is to mean information about driver's licences, and is to include:

- details of persons who have made application for or in relation to a driver's licence;
- details of persons who hold or who have held a driver's licence;
- information contained in a driver's licence register maintained pursuant to the *Road Traffic Act 1974 (WA)* or, when the *Road Traffic (Authorisation to Drive) Act 2008 (WA)* comes into force, the *Road Traffic (Authorisation to Drive) Act 2008* ;
- information about driver's licences granted in other Australian jurisdictions or in other countries.

The term is not to mean photographs or signatures provided to the Director General under the *Road Traffic Act 1974* or, when it commences operation, the *Road Traffic (Authorisation to Drive) Act 2008*, for use in the production of driver's licence documents.

The term ***infringement notice information*** is to mean information about infringement notices, and is to include information about:

- an infringement notice given to a person;
- the payment by a person of the modified penalty associated with an infringement notice;
- the withdrawal of an infringement notice;
- an alleged offence the subject of an infringement notice being referred to a court for determination;
- the registration of an infringement notice with the Fines Enforcement Registrar under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* (WA), because of non-payment of the modified penalty associated with the infringement notice;
- any withdrawal of proceedings under the *Fines, Penalties and Infringement Notices Enforcement Act 1994*, where an infringement notice has been registered with the Fines Enforcement Registrar under that Act because of the non-payment of the modified penalty associated with the infringement notice.

The term ***interstate taxi authority*** is to mean a person, agency or authority of another Australian jurisdiction that administers or performs functions under a law of that jurisdiction relating to taxis or the authorisation of persons to carry on the occupation of taxi driver.

The term ***interstate taxi law*** is to mean a law of another Australian jurisdiction that deals with taxis or with the authorisation of persons to carry on the occupation of taxi driver.

The term ***law enforcement official*** is to mean a person who is prescribed in regulation, or a person of a class prescribed in regulation, as a ***law enforcement official***.

The term ***offence information*** is to mean:

- details of any offence with which a person has been charged, or of which a person has been convicted, in Western Australia;
- details of any penalty suspension, cancellation or disqualification arising from such a conviction;
- details held by the Commissioner of Police, if any, of any offence with which a person has been charged, or of which a person has been convicted, elsewhere than in Western Australia;
- details held by the Commissioner of Police, if any, of any penalty, suspension, cancellation or disqualification arising from such a conviction.

The term **relevant person** is to mean a person who has applied for, who holds or who has held a taxi driver licence. This Part will provide for the disclosure of information about relevant persons, in certain circumstances, in order to enable the administration and enforcement of the provisions of this Bill or of another written law.

The term **road law** is to mean:

- the *Road Traffic Act 1974 (WA)*;
- the *Road Traffic (Administration) Act 2008 (WA)*;
- the *Road Traffic (Authorisation to Drive) Act 2008 (WA)*;
- the *Road Traffic (Vehicles) Act 2012 (WA)*.

The term **road traffic Director General** is to mean:

- the Director General as defined in the *Road Traffic Act 1974 (WA)* section 5(1), until the *Road Traffic (Administration) Act 2008 (WA)* section 4 commences operation; and
- when the *Road Traffic (Administration) Act 2008 (WA)* section 4 commences operation, the CEO as defined in that section.

The term **taxi driver licence information** is to mean information about taxi driver licences pursuant to this Bill. The term is to include, but is not to be limited to:

- details of persons who have made applications for the grant, renewal or variation of a taxi driver licence;
- details of persons who hold or who have previously held taxi driver licences;
- details of the suspension and cancellation of taxi driver licences, and of related disqualifications to which persons are subject as a result;
- details of charges and convictions for offences created under the provisions of this Bill or of regulations made under it.

The term **traffic infringement notice information** is to mean details of the instances in which a person:

- has been issued with an infringement notice in relation to an alleged offence against a **road law**, and
- has paid the modified penalty associated with the infringement notice,

and is to mean information that has been provided by the Commissioner of Police to the **road traffic Director General**.

#### **48. Use of and access to information**

This Part will impose obligations on different persons to disclose information that it is considered is relevant or necessary to disclose in order to enable the effective enforcement of the provisions of this Bill or of another written law.

The disclosure of an individual's personal information, to a person other than the person to whom it was provided by the individual and for a purpose other than the purpose for which the individual provided it, is a significant matter.

This clause will make it clear that information disclosed to the CEO under this Part, and photographs disclosed to the CEO under this Part for the CEO to use in the production of taxi driver licence documents, may only be used by the CEO for the purpose for which that information was, or those photographs were, disclosed and may not be used for any other purpose.

#### **49. Use of photographs**

Clause 20 will require the CEO to give a licensee a taxi driver licence document.

A taxi driver licence document is expected to be a plasticised card, similar in size to a driver's licence document. It will bear the licensee's photograph, name and taxi driver licence number. It may also bear other information, such as the type of vehicle the licensee is authorised to drive as a taxi or the designated area in which the licensee is authorised to drive a taxi.

This clause will authorise the CEO to use a photograph, previously provided by a licensee to the Director General under the *Road Traffic Act 1974* for use in the production of a driver's licence document, in the production of the licensee's taxi driver licence document.

The taxi driver licence document will serve two important purposes.

Clause 24 will require a licensee to display the taxi driver licence document in a prominent position in the taxi. Seeing it in the taxi will provide a passenger, or prospective passenger, with some assurance that a taxi driver is appropriately authorised. It may also aid a passenger to identify his or her taxi driver by name or by taxi driver licence number, in the event that the passenger has a subsequent query or complaint.

In addition, a taxi driver licence document may assist in the enforcement of the provisions of the Bill. It may be tendered by a licensee to an enforcement officer, to a taxi dispatch service provider or to a plate holder from whom the taxi driver wishes to lease a taxi, in an endeavour to establish the licensee's authorisation to carry on the occupation of taxi driver.

#### **50. Disclosure of information by CEO to Commissioner of Police or other authorities**

This Part will impose obligations on different persons to disclose information that it is considered is relevant or necessary to disclose in order to enable the effective enforcement of the provisions of this Bill or of another written law.

The disclosure of an individual's personal information, to a person other than the person to whom it was provided by the individual and for a purpose other than the purpose for which the individual provided it, is a significant matter.

Clause 50(1) will require the CEO to disclose the following information to the Western Australian Commissioner of Police:

- details of persons who have made applications for the grant, renewal or variation of a taxi driver licence;
- details of persons who hold or who have previously held taxi driver licences;
- details of the suspension and cancellation of taxi driver licences, and of related disqualifications to which persons are subject as a result;
- details of charges and convictions for offences created under the provisions of this Bill or of regulations made under it.

Clause 50(1)(b) will also empower the making of regulations prescribing other information that the CEO must disclose to the Commissioner of Police, if the need for the disclosure of such information is identified.

Clause 50(2)(a) will empower the Commissioner of Police to use information disclosed under clause 50(1) in the performance of the Commissioner's functions under a written law, but not for any other purpose.

Clause 50(2)(b) will empower the Commissioner of Police to disclose information, that was disclosed to the Commissioner by the CEO under clause 50(1), to a police officer for use in the performance of the police officers under this Bill or under another written law, but not for any other purpose.

Pursuant to clause 41, a police officer will be an authorised officer. In addition, the CEO will be empowered to designate relevant officers of the Department of Transport as authorised officers.

Authorised officers will be responsible for the enforcement of the provisions of this Bill. Persons designated by the CEO as authorised officers will perform a dedicated enforcement role, however, while police officers will perform a limited enforcement function, the need for which is most likely to arise in the course of a police officer's performance of his or her frontline policing responsibilities.

For example, a police officer may stop a vehicle that is being driven as a taxi in order to ensure that the taxi driver is complying, or that the taxi complies, with relevant provisions of the *Road Traffic Act 1974* (WA). The police officer may, at the same time, exercise his or her powers as an authorised officer for the purposes of this Bill and request that the taxi driver produce his or her taxi driver licence document so that the police officer can establish that the taxi driver has a valid taxi driver licence.

A police officer will be authorised to use information disclosed to the police officer by the Commissioner of Police both in the performance of enforcement functions under this Bill and in the performance of other law enforcement functions, where relevant.

Clause 50(3) will empower the CEO to disclose particular information to a body or person with whom the CEO has entered into an agreement under clause 58.

Clause 58 will empower the CEO to enter into an agreement with a third party, under which agreement the third party will, on behalf of the CEO, perform a function or functions of the CEO under this Bill that is or are the subject of the agreement, in accordance with the terms of the agreement.

Clause 50(3) will empower the CEO to disclose to the body or person:

- details of persons who have made applications for the grant, renewal or variation of a taxi driver licence;
- details of persons who hold or who have previously held taxi driver licences;
- details of the suspension and cancellation of taxi driver licences, and of related disqualifications to which persons are subject as a result;
- details of charges and convictions for offences created under the provisions of this Bill or of regulations made under it;
- details of infringement notices issued in relation to alleged offences under the provisions of this Bill or of regulations made under it, including information about the payment of modified penalties associated with them, the withdrawal of those infringement notices and any proceedings under the *Fines, Penalties and Infringement Notices Act 1994* (WA) in relation to those infringement notices;
- any information disclosed to the CEO by the Commissioner of Police or by another authority pursuant to clause 51, or by an interstate taxi authority,

if the CEO considers the body or person requires this information in order to be able to perform the function or functions the subject of the clause 58 agreement.

Clause 50(3)(d) will also empower the making of regulations prescribing other information that the CEO may disclose to such a body or person.

Clause 50(4) will empower the CEO to disclose certain information to a person who is a “law enforcement official”.

Under clause 47, a law enforcement official will be a person, or belong to a class of person, prescribed in regulations as a law enforcement official.

For example, Commissioners of Police in other Australian jurisdictions may be prescribed as law enforcement officials.

Under clause 50(4), the CEO will be empowered to disclose to a law enforcement official:

- details of persons who have made applications for the grant, renewal or variation of a taxi driver licence;
- details of persons who hold or who have previously held taxi driver licences;
- details of the suspension and cancellation of taxi driver licences, and of related disqualifications to which persons are subject as a result;
- details of charges and convictions for offences created under the provisions of this Bill or of regulations made under it;

- any other information prescribed by the regulations for this purpose,

if the CEO considers the law enforcement official requires this information in order to be able to perform the law enforcement official's functions.

## **51. Disclosure of information to CEO by Commissioner of Police or other authorities**

This Part will impose obligations on different persons to disclose information that it is considered is relevant or necessary to disclose in order to enable the effective enforcement of the provisions of this Bill or of another written law.

The disclosure of an individual's personal information, to a person other than the person to whom it was provided by the individual and for a purpose other than the purpose for which the individual provided it, is a significant matter.

Clause 51(1) will require the Western Australian Commissioner of Police to disclose the following information, about a person who has applied for, who holds or who has held a taxi driver licence, to the CEO:

- details of any offence with which the person has been charged, or of which a person has been convicted, in Western Australia;
- details of any penalty suspension, cancellation or disqualification arising from such a conviction;
- details held by the Commissioner of Police, if any, of any offence with which the person has been charged, or of which a person has been convicted, elsewhere than in Western Australia;
- details held by the Commissioner of Police, if any, of any penalty, suspension, cancellation or disqualification arising from such a conviction.

Clause 51(1)(b) will also empower the making of regulations prescribing other relevant information that the Commissioner of Police must disclose to the CEO.

Clause 51(2) will require the Director General, under the *Road Traffic Act 1974* (WA), to disclose driver's licence information and traffic infringement notice information to the CEO in relation to a person who has applied for, who holds or who has held a taxi driver licence.

Clause 51(2)(c) will also empower the making of regulations prescribing other relevant information that the Director General must disclose to the CEO.

When the *Road Traffic (Administration) Act 2008* (WA) commences operation, responsibility to disclose driver's licence information and traffic infringement notice information under clause 51(2) will be assumed by the Director General for the purposes of that Act.

Clause 51(3) will require the Director General, for the purposes of the *Taxi Act 1994* (WA), to disclose the following information to the CEO about a person who has applied for, who holds or who has held a taxi driver licence:

- details of any offence with which the person has been charged under the *Taxi Act 1994*;
- details of infringement notices given for alleged offences under the *Taxi Act 1994*, including whether the modified penalties associated with those infringement notices were paid or any infringement notices withdrawn or any matter associated with an infringement notice referred to the Fines Enforcement Registrar under the *Fines, Penalties and Infringement Notices Act 1994 (WA)*;
- any other information prescribed in regulations for this purpose.

Clause 51(4) will require the Director General, for the purposes of the *Transport Co-ordination Act 1966 (WA)*, to disclose the following information to the CEO about a person who has applied for, who holds or who has held a taxi driver licence:

- details of any offence with which the person has been charged under the *Transport Co-ordination Act 1966*;
- details of infringement notices given for alleged offences under the *Transport Co-ordination Act 1966*, including whether the modified penalties associated with those infringement notices were paid or any infringement notices withdrawn or any matter associated with an infringement notice referred to the Fines Enforcement Registrar under the *Fines, Penalties and Infringement Notices Act 1994*;
- any other information prescribed in regulations for this purpose.

## **52. Exchange of information between CEO and interstate taxi authorities**

This Part will impose obligations on different persons to disclose information that it is considered is relevant or necessary to disclose in order to enable the effective enforcement of the provisions of this Bill or of another written law.

The disclosure of an individual's personal information, to a person other than the person to whom it was provided by the individual and for a purpose other than the purpose for which the individual provided it, is a significant matter.

Other Australian jurisdictions also regulate the occupation of taxi driving. This clause will empower the disclosure by the CEO of relevant information to authorities in other jurisdictions who are responsible for regulating taxi drivers, and will empower the CEO to seek information from those authorities if the CEO considers the information necessary to enable the CEO to perform his or her functions under the provisions of this Bill.

Clause 52(1) will empower the CEO to disclose to another authority information about:

- persons who have applied for, who hold or who have held a taxi driver licence, including information about any suspension or cancellation of a licensee's taxi driver licence;
- any charges or convictions for offences under provisions of this Bill or regulations made under this Bill;

- any infringement notices given for alleged offences under provisions of this Bill or regulations made under this Bill and whether the modified penalties associated with those infringement notices were paid or any infringement notices withdrawn,

if the CEO considers that information is necessary to enable the authority to perform its functions.

Clause 52(2) will require the CEO to disclose to the other authority further advice if, following the disclosure of information under clause 52(1):

- the conviction is subsequently quashed or set aside; or
- the infringement notice is withdrawn; or
- the matter the subject of the infringement notice was referred to the Fines Registrar under the *Fines, Penalties and Infringement Notices Act 1994* (WA), however those proceedings have subsequently been withdrawn; or
- the CEO becomes aware of any other matter, relevant to the offence or the alleged offence, the disclosure of which is likely to be favourable to the person,

Clause 52(3) will empower the CEO to request information from a relevant authority in another jurisdiction, if the CEO considers the information is necessary to enable the CEO to perform his or her functions under the provisions of this Bill.

This subclause will not require the authority to disclose the requested information to the CEO.

### **53. Disclosures under this Part free of charge**

This Part will impose obligations on different persons to disclose information that it is considered is relevant or necessary to disclose in order to enable the effective enforcement of the provisions of the Bill or of another written law.

This clause will require persons responsible for those disclosures to make them free of charge.

### **54. Regulations may exempt information**

This Part will impose obligations on different persons to disclose information that it is considered is relevant or necessary to disclose in order to enable the effective enforcement of the provisions of the Bill or of another written law.

If, in future, it is determined that the continued provision of particular information under this Part is redundant and that, as a result, it is not appropriate to continue to require its disclosure, this clause will empower the making of regulations that will exempt the relevant person from the requirement to disclose that information.

## **Part 8 – Miscellaneous**

## **55. Reviewable decisions**

This clause will empower a person affected by a decision made by the CEO to seek a review of the decision.

Clause 55(1) sets out the decisions in respect of which an affected person has a right of review.

Clause 55(1)(a) will provide a right of review to a person who applied for the grant or the renewal of a taxi driver licence and whose application was refused by the CEO.

Clause 55(1)(b) will provide a licensee with a right of review in relation to the imposition by the CEO of a condition on the licensee's taxi driver licence. A review might be sought because the CEO has refused to impose a particular condition sought by the licensee, or because the CEO has imposed a condition with which the licensee is aggrieved.

Clause 55(1)(c) will provide a right of review to a person who has applied for a variation to the person's taxi driver licence conditions and whose application was refused by the CEO.

Clause 55(1)(d) will provide a licensee with a right of review in relation to the variation by the CEO of a condition or conditions on the licensee's taxi driver licence where the variation is made at the CEO's instigation and not as a result of an application by the licensee.

Clause 55(1)(e) will provide a licensee with a right of review when the CEO gives a licensee a written notice that requires the licensee to provide the CEO with an approved medical report, because the CEO suspects on reasonable grounds that the licensee is affected by a medical condition likely to affect, or treatment for which is likely to affect, the licensee's medical fitness to be a taxi driver.

Clause 55(1)(f) will provide a licensee with a right of review when the CEO varies a written notice that requires the licensee to provide the CEO with an approved medical report because the CEO suspects on reasonable grounds that the licensee is affected by a medical condition likely to affect, or treatment for which is likely to affect, the licensee's medical fitness to be a taxi driver.

Clause 55(1)(g) will provide a licensee with a right of review when the CEO gives the licensee written notice that the licensee must complete successfully an approved training course or test.

Clause 55(1)(h) will provide a person with a right of review when the CEO makes a suspension order that suspends the person's taxi driver licence.

Clause 55(1)(i) will provide a person with a right of review when the CEO makes a cancellation order that cancels the person's taxi driver licence.

Clause 55(2) will provide that a person aggrieved by a decision referred to in clause 55(1) may provide the CEO with a written request that the CEO reconsider the decision.

Clause 55(3) will require a person wishing to seek a review of a decision to make that request within 28 days after the day on which the CEO gives the person notice of the decision.

If a person writes to CEO under clause 55(2) within 28 days of the CEO notifying the person of a decision, requesting the CEO reconsider that decision, clause 55(4) will require the CEO to reconsider the decision.

The CEO will be empowered to confirm that the decision stands, or to alter the decision, or to revoke the decision.

If a person requests that the CEO reconsider a decision and the CEO does so, however the person is dissatisfied with the outcome of the reconsideration, clause 55(5) will entitle the person to apply to the State Administrative Tribunal to ask that the State Administrative Tribunal review the CEO's decision.

## **56. Training courses and tests**

This clause will empower the CEO to approve of training courses and tests for various purposes under this Bill.

Clause 56(1) will empower the CEO to approve of one or more training courses and/or one or more tests for the purposes of:

- determining whether an applicant for the grant of a taxi driver licence possesses the necessary competencies (see clause 12(1)(f));
- determining whether a licensee applying for a variation of his or her taxi driver licence conditions possesses the necessary competencies, if any (see clause 18(1)(b));
- ensuring that a licensee maintains the necessary competencies and knowledge, and gains further competencies and knowledge that may be identified as required, to carry on the occupation of taxi driver (see clause 22(1)).

The CEO's approval must be in writing.

Clause 56(2) will require the approval to:

- describe the training course or test;
- specify the classes of person to whom the training course or test applies;
- specify, if the approval relates to an application for the grant of a taxi driver licence or an application to vary the conditions imposed on a taxi driver licence, for how long following the successful completion of the training course or test the person who completed it is to be deemed to possess the competency or competencies intended to be demonstrated by the successful completion of the training course or test.

Clause 56(3) is intended to empower the CEO to approve of different training courses or tests, applying to different classes of person, depending upon any relevant matter, including the particular matters set out in clause 56(3).

Clause 56(3)(a) will empower the CEO to approve of a training course or test applying to a person whose taxi driver licence is subject to a particular condition, or who wishes his or her taxi driver licence to be subject to a particular condition.

For example, a licensee may apply to the CEO, requesting that the CEO vary the licensee's taxi driver licence conditions to authorise the licensee to drive multi purpose taxis.

The CEO might approve of a training course that applies to a licensee making such an application. It might be a training course that covers disability awareness, as well as practical training regarding the operation of the hoists and restraints with which a multi purpose taxi is fitted.

Clause 56(3)(b) will empower the CEO to approve of a training course or test that will apply to an applicant for the grant of a taxi driver licence, where the applicant previously held a taxi driver licence that was cancelled under Part 5 and was, as a consequence, subject to a disqualification.

For example, a person's taxi driver licence may have been cancelled because of the accumulation of an excessive number of penalty points, arising from a number of offences of failing to take a passenger to the passenger's destination via the most economical route possible. After serving the applicable disqualification period, the person might wish to apply for the grant of another taxi driver licence.

Pursuant to clause 56(3)(b), the CEO might approve of a particular training course for a person seeking to apply for the grant of another taxi driver licence, in these circumstances. The training course might be intended to improve a person's knowledge of the road network in the designated area in which the person wishes to be authorised to drive a vehicle as a taxi.

Clause 56(3)(c) will empower the CEO to approve of a training course or test that will apply to a person, depending upon the length of time during which that person has continuously held a taxi driver licence.

For example, the CEO might approve of a particular test that will apply to a new licensee at the end of the 12-month period following the grant of his or her taxi driver licence.

The test might be intended to ensure that the licensee's competencies, gained in the successful completion of an entry-level approved training course, are being applied successfully by the licensee on the job.

Clause 56(4) will ensure that the CEO is empowered to approve of any training course or test that the CEO considers appropriate for the relevant purpose, whether it is:

- a training course that the CEO will deliver, or cause to be delivered;
- a test that the CEO will administer or cause to be administered;
- a training course that will be delivered by a third party;
- a test that will be administered by a third party.

Clause 56(6) will make it clear that the CEO may administer, or cause another person to administer, a training course or test that the CEO approves for the purposes of this clause.

Clause 56(5) will empower the CEO to revoke an approval given under this clause at any time.

## **57. Delegation**

Clause 57(1) will empower the CEO to delegate any of the CEO's powers or duties, conferred on the CEO under another provision of the Bill, to another person.

Clause 57(2) will require any delegation under clause 57(1) to be made by the CEO in writing, in order for that delegation to be valid. A delegation may stipulate specific circumstances in which a power the subject of the delegation may be exercised or a duty the subject of the delegation may be performed. (Please see also clause 57(4), which contemplates the CEO making the delegation subject to terms that the CEO considers appropriate or necessary.)

The power of delegation is necessary as the CEO will be unable personally to perform all of the duties and exercise all of the powers conferred on the CEO. Using this power, the CEO will be able to delegate relevant powers and duties to appropriate persons.

Clause 57(3) makes it clear that a person to whom the CEO has delegated a power or duty is not permitted to delegate that power or duty to another person. This provision will ensure that the CEO retains control over who may perform a duty or exercise a power of the CEO.

Clause 57(4) contemplates the CEO making a delegation subject to terms that the CEO considers appropriate or necessary. It will create a legal presumption that, unless proven otherwise, the delegate has exercised the power the subject of the delegation or performed the duty the subject of the delegation in accordance with the terms of the delegation.

This is necessary in the event that a delegate's actions require consideration, for example, in the course of the review of a reviewable decision by the State Administrative Tribunal or of other legal proceedings. It will mean that a delegate does not have to prove that his or her actions occurred in accordance with the terms of the delegation, however will entitle an aggrieved party to tender

evidence that may prove that the actions occurred otherwise than in accordance with the terms of the delegation.

Clause 57(5) makes it clear that, even if the CEO has delegated a particular power or duty to a person pursuant to clause 57(1), the CEO may still exercise that same power or perform that same duty by:

- authorising an officer working in the Department of Transport to do so on the CEO's behalf; or
- entering into an agreement pursuant to clause 58 with another party, under which agreement the other party will do so on behalf of the CEO as an agent of the CEO.

## **58. Agreements for performance of functions**

This Bill will provide that the CEO is the authority responsible for taxi driver licensing. It will confer many powers and duties on the CEO.

The CEO may exercise those powers or perform those duties himself or herself.

In addition, clause 57 will empower the CEO to determine when it is appropriate for another person to exercise some of those powers or to perform some of those duties and to delegate those powers or duties accordingly.

This clause will provide the CEO with a further means of ensuring that the CEO's powers are exercised and the CEO's duties are performed appropriately.

Clause 58(1) will empower the CEO to enter into an agreement with a third party, under which agreement the third party will, on behalf of the CEO, perform a function or functions of the CEO that is or are the subject of the agreement, in accordance with the terms of the agreement.

The CEO is at liberty to determine when this is appropriate. For example, clause 20 will require the CEO to give a licensee a taxi driver licence document. This will be a plasticised card that a licensee will be required to display in the taxi, pursuant to clause 24. The CEO may consider that it is more economical to enter into an agreement, under this clause, pursuant to which a third party will produce these taxi driver licence documents, instead of the CEO purchasing card production equipment and employing officers to perform this function.

Clause 58(2) will make it clear that there is no restriction upon with whom the CEO may enter into such an agreement. It contemplates an agreement being entered into with a commercial entity, a local government, the Commissioner of Police or any other person or body of a statutory or commercial nature.

Clause 58(3) contemplates the CEO stipulating, in such an agreement, how a function the subject of the agreement is to be performed and setting out terms and conditions to which the agreement is subject.

Clause 58(4) will make it clear that if, in order to perform a function the subject of an agreement, the CEO would be required to form an opinion about a matter, it is valid for the agent performing the function on the CEO's behalf to form that opinion when performing the function, provided this occurs in accordance with the terms and conditions of the agreement.

Clause 58(5) will make it clear that the effect of a function being performed by an agent pursuant to an agreement is no different than the effect of that same function being performed by the CEO himself or herself.

## **59. Protection from personal liability**

Under clause 59(1), a person, such as a person employed or engaged by the Department of Transport, who performs a function under the provisions of this Bill will not be able to be sued for damages arising from a loss suffered by another person as a result, provided the person performed the function in good faith.

Performing a function in good faith involves doing it honestly and sincerely.

Similar protections are commonly provided in other similar statutes in Western Australia. Without them, employees and contractors of State Government agencies would be reluctant or unwilling to undertake responsibilities that could lead to them being personally sued.

Clause 59(1) will not prevent a person employed or engaged in the performance of a function under this Bill from being held criminally responsible, however, in the event that the person's actions, or inaction, constitute a criminal offence.

Clause 59(2) will extend the protection from liability that is the subject of clause 59(1) to the Minister responsible for the administration of this Bill and to the State of Western Australia. It will provide that, where a person employed or engaged in the performance of a function under the provisions of this Bill performs that function in good faith, neither the Minister nor the State of Western Australia may be held vicariously liable for any loss suffered by another person as a result of the performance of that function.

Vicarious liability concerns circumstances in which, for example, an employer may be held responsible for the actions of an employee and ordered to pay damages arising from those actions.

Similar protections are commonly provided in other similar statutes in Western Australia. They are intended to protect the community by preventing civil claims, in circumstances in which an employee or contractor acted honestly and sincerely. Without such protection, the State's capacity to ensure the provision of services and facilities required by the Western Australian community, at a reasonable cost, would be uncertain and precarious.

Clause 59(3) will make it clear that the protections provided pursuant to this clause will apply, even if the actions of the person employed or engaged by the

Department of Transport could have been done, regardless of whether the provisions of this Bill existed or not.

This will ensure that protection will exist in the unlikely event that, in the case of an action performed by such a person, there also exists in another enactment a power to undertake the same action, or the action did not require legislative authority.

Clause 59(4) will make it clear that the protections provided pursuant to this clause will apply, whether as a result of a person's action or inaction, provided the person's action or inaction occurred in good faith.

Clause 59(5) will make it clear that the protections provided pursuant to this clause will also apply where a function is performed pursuant to an agreement made under clause 58 between the CEO and another party.

Clause 58 will empower the CEO to enter into an agreement with a third party, under which agreement the third party will, on behalf of the CEO, perform a function or functions of the CEO that are the subject of the agreement, in accordance with the terms of the agreement.

## **60. Protection of people testing or examining or giving certain information**

Clause 59 will provide a general immunity from civil liability to a person, such as a person employed or engaged by the Department of Transport, who performs a function under the provisions of this Bill. The immunity will ensure that the person will not be able to be sued for damages arising from a loss suffered by another person as a result, provided the person performed the function in good faith.

This clause will provide a more specific immunity, which will apply in the case of persons administering training courses or tests or providing information to the CEO that may suggest that a licensee ought not to hold a taxi driver licence.

Clause 60(1) will make it clear that the immunity the subject of this clause is to be in addition to the immunity the subject of clause 59. In other words, a person might be protected under both clauses 59 and 60.

Clause 60(2) will provide that a person will not be able to be charged with any offence, whether it is an offence that is currently in existence or an offence which may come into existence at a future time, as a result of providing to the CEO an opinion which the person has formed as a result of the person administering a training course or test for the purposes of this Bill.

This protection will be available if the person formed and expressed the opinion in good faith. Doing something in good faith involves doing it honestly and sincerely.

Clause 60(3) will provide that a person will not be able to be sued, or to be charged with any offence, for giving or for reporting to the CEO, in good faith, information that discloses or suggests that:

- another person may be medically unfit to hold a taxi driver licence; or
- another person may not be a fit and proper person to hold a taxi driver licence; or
- it may be dangerous to grant another person a taxi driver licence, to allow another person to continue to hold a taxi driver licence, or to vary, or not to vary, the conditions of a taxi driver licence.

The protection the subject of clause 60(3) might, for example, be relied upon by a family member or medical practitioner of a licensee who provides information to the CEO regarding the licensee's physical or mental fitness.

Similar protections are commonly provided in other similar statutes in Western Australia. Without them, people would be reluctant or unwilling to perform responsibilities relating to the administration of training courses or tests or to provide information to the CEO that might be in the public interest for the CEO to possess, however that might lead to the CEO being obliged to take action to suspend or cancel a taxi driver licence or to vary the conditions of a taxi driver licence.

## 61. Publication of certain approvals

Some of the clauses contained in this Bill will empower the CEO to approve of the manner in which certain things must be done.

This clause will require the CEO to publish the details of particular approvals on a website maintained by the Department of Transport.

This is intended to ensure that persons who must comply with matters that are the subject of the CEO's approvals will have ready access to relevant information in order to be able to comply.

In particular, the CEO will be required to publish details of the following approvals.

Clause 61(a) concerns the CEO's approval the subject of clause 24(1). Clause 24(1) will require a licensee to display the licensee's taxi driver licence document in the taxi "*in a prominent position [in the taxi] and in the approved manner*".

Clause 61(b) concerns the requirement, under clauses 25(1)(b) and 25(2), for a person to surrender his or her taxi driver licence document to the CEO "*in the approved manner*", when the person's taxi driver licence has been suspended or cancelled under Part 5 of the Bill.

Clause 61(c) concerns the requirement, under clause 26, for a licensee to notify the CEO “***in the approved manner***”, if the licensee’s residential address changes.

Clause 61(d) concerns the requirement, under clauses 27(1) and 27(2), for a licensee to notify the CEO “***in the approved manner***” if the licensee becomes affected by a notifiable medical condition or, if the licensee has already notified the CEO regarding a medical condition affecting the licensee, to notify the CEO if there is a change in the licensee’s medical condition.

Clause 61(e) concerns the requirement under clause 56(1) to “***approve in writing***” the details of one or more training courses or one or more tests for the purposes of clauses 12(1)(f), 18(1)(b) and 22(1).

An applicant for the grant of a taxi driver licence will be required, under clause 12(1)(f), to complete successfully any training courses or tests approved by the CEO for the purpose of demonstrating that the applicant has the necessary competencies to be authorised to drive a vehicle as a taxi.

A licensee seeking a variation to his or her taxi driver licence conditions may be required, under clause 18(1)(b), to complete successfully any training courses or tests approved by the CEO for the purpose of demonstrating that the licensee has the necessary competencies to warrant the variation.

A licensee may be required, under clause 22(1), to complete successfully any training courses or tests approved by the CEO for the purpose of maintaining the licensee’s competencies to carry on the occupation of taxi driver.

## **62. Regulations**

Clause 62(1) will provide a general regulation-making power, empowering the making of any regulations that are necessary or convenient to support the operation of this Bill.

Clause 62(2) will provide more specific regulation-making powers.

Clause 62(2)(a) will empower the making of regulations prescribing different classes of vehicle that a licensee may be authorised to drive as a taxi.

Clause 16(1)(a) will require the CEO to impose a condition on each taxi driver licence that indicates which class or classes of vehicle the licensee is authorised to drive as a taxi.

This is because it may be necessary to differentiate between the competencies required by a person who wishes to drive one class of vehicle as a taxi, compared to the competencies required by a person who wishes to drive another class of vehicle as a taxi.

Clause 62(2)(b) will empower the making of regulations relating to applications made under the Bill for the grant or renewal of a taxi driver licence or for a

variation to the conditions imposed on a taxi driver licence, including the manner in which such applications may be made.

Clause 62(2)(c) will empower the making of regulations that will authorise the CEO to conduct any checks that the CEO considers appropriate in order to determine whether a person is a fit and proper person to hold a taxi driver licence.

For example, a taxi driver licence will be valid for 2 years. When a licensee applies to renew his or her taxi driver licence, the licensee may be required to provide a National Police Clearance certificate to confirm that the licensee has not been convicted of any offences in another Australian jurisdiction since the licensee's previous renewal.

Regulations might be made under this subclause authorising the CEO to conduct a National Police Clearance check relating to a licensee one year after a taxi driver renewal is granted, that is, one year prior to the next renewal. This would enable the CEO to enquire into a licensee's criminal conviction history on an annual basis, if the CEO considers this is appropriate.

Clause 62(2)(d) will empower the making of regulations requiring an applicant for the grant of a taxi driver licence to provide any documentation or information prescribed that is relevant to enable the CEO to determine whether the applicant is a fit and proper person to hold a taxi driver licence.

For example, regulations might be made pursuant to this subclause requiring an applicant to provide the CEO with a National Police Clearance certificate.

Clause 62(2)(e) will empower the making of regulations requiring a licensee, who has applied for a variation to the licensee's taxi driver licence conditions, to provide any documentation or information prescribed that is relevant to enable the CEO to determine whether or not to grant the variation.

For example, a licensee might wish to apply for a licence variation that will authorise the licensee to carry unaccompanied minor passengers. Regulations might be made under clause 62(2)(e) requiring the licensee's application for the variation to be accompanied by a "Working with Children Check" obtained under the *Working with Children (Criminal Record Checking) Act 2004 (WA)*.

Clause 62(2)(f) will empower the making of regulations requiring a licensee to provide any documentation or information prescribed, from time to time, that is relevant to enable the CEO to determine that the licensee continues to be a fit and proper person to hold a taxi driver licence.

For example, regulations might be made under this subclause requiring a licensee to provide the CEO with a National Police Clearance certificate every 12 months, unless the licensee has provided one to the CEO in connection with the renewal of the licensee's taxi driver licence.

Clause 62(2)(g) will empower the making of regulations setting out the circumstances in which, and the manner in which, a licensee will be able to apply for the replacement of a lost or stolen taxi driver licence document or additional identification document. (Additional identification documents are contemplated under clause 24(1)(b).)

Clause 62(2)(h) will empower the making of regulations requiring a licensee to surrender any document issued to the licensee in connection with his or her taxi driver licence.

Clause 62(2)(i) will empower the making of regulations that exempt a person from the application of a provision of this Bill.

Although no regulations are presently contemplated pursuant to this subclause, its inclusion will ensure that a person will be able to be exempted from a requirement to which the person is subject that is unnecessary or that applies to the person, despite it not being intended to apply to the person, in the particular circumstance.

Clause 62(2)(j) will empower the making of regulations requiring persons to keep particular records relevant to the administration of, or compliance with, the provisions of this Bill.

For example, regulations may be made requiring the provider of a taxi dispatch service to maintain records in relation to its procedures for ensuring that a taxi driver, who wishes to use its services, is authorised to drive a vehicle as a taxi under this Bill.

Clause 62(2)(k) will empower the making of regulations regarding how notices or other documents contemplated under this Bill are to be given and the circumstances in which they are to be deemed to have been given.

For example, regulations might be made under this subclause providing that suspension notices may be given personally or via a form of post that involves the recipient signing for the postal delivery. Regulations might also be made deeming that if an authorised officer personally gives a person a suspension notice and immediately after the giving of the suspension notice completes and signs a document recording the service, the person is to be considered to have been given the suspension notice.

Clause 62(2)(l) will empower the making of regulations imposing fees and charges payable in relation to various matters the subject of this Bill, including fees for:

- the making of any applications made under the Bill;
- the grant of a taxi driver licence or for the renewal of a taxi driver licence;
- the delivery of a training course or for the administration of a test by the CEO, including a fee for the failure to attend a training course or test;
- the variation of a taxi driver licence condition;

- the issue or replacement of a taxi driver licence document or an additional identification document.

Clause 62(2)(m) will empower the making of regulations creating offences and imposing penalties of not more than \$2,500 for those offences.

## Part 9 – Transitional provisions

### 63. Terms used

Currently, persons wishing to undertake the occupation of taxi driver obtain authorisation to do so from the Director General under the provisions of the *Road Traffic Act 1974* (WA) (RTA). The mechanism for the conferral of authorisation is the endorsement of a person's driver's licence with an extension "T".

When the provisions of this Bill are passed by the Parliament and commence operation, authority to be a taxi driver will cease to be conferred under the RTA and taxi drivers will instead be regulated under this Bill.

The criteria that a person will be required to meet to be eligible for the grant of a taxi driver licence under this Bill will be the same as the criteria that a person must meet to be eligible to have his or her driver's licence endorsed with an extension "T".

For this reason, persons who are currently authorised under the RTA to carry on the occupation of taxi driver will be eligible for the grant of a taxi driver licence under this Bill, provided there has been no change regarding the person's status or eligibility under the RTA.

This Part will set out how a person who is currently authorised under the RTA will be able to apply, by a simplified application process, for a taxi driver licence, the CEO's powers to grant such applications and related matters.

This Bill has been drafted so as to commence operation in two parts.

There will be a 6-month transitional period, during which some of the provisions of this Bill will commence operation. The provisions that will commence operation will be those that will permit the CEO under clause 64 to grant taxi driver licences to persons authorised to be taxi drivers pursuant to the RTA. At the end of the transitional period, all of the Bill's remaining provisions will come into force.

This clause will define terms that will be used throughout this Part.

The term **commencement day** is to mean the day on which Part 2 of this Bill will commence operation under clause 2(f). This will be the day on which the 6-month transitional period ends and all of the Bill's remaining provisions commence operation. On this day, the Bill will come into force in its entirety.

The term **endorsed with extension T**, in relation to a driver's licence, is to mean that the driver's licence has been endorsed with an extension "T" under the *Road Traffic (Authorisation to Drive) Regulations 2008* (WA) regulation 11, which authorises the holder of the driver's licence to drive a vehicle as a taxi.

The term **pre-commencement licence** is to mean a taxi driver licence granted under the provisions of clause 12 or clause 64 of this Bill, during the 6-month transitional period.

The term **pre-commencement period** is to mean the 6-month transitional period.

The term **proclamation day** is to mean the day on which the first part of the Bill commences operation, that is, the day on which the 6-month transitional period begins.

#### **64. Grant of licences during pre-commencement period to person holding driver's licences endorsed with extension T**

Currently, persons wishing to undertake the occupation of taxi driver obtain authorisation to do so from the Director General under the provisions of the *Road Traffic Act 1974* (WA) (RTA). The mechanism for the conferral of authorisation is the endorsement of a person's driver's licence with an extension "T".

When the provisions of this Bill are passed by the Parliament and commence operation, authority to be a taxi driver will cease to be conferred under the RTA and taxi drivers will instead be regulated under this Bill.

The criteria that a person will be required to meet to be eligible for the grant of a taxi driver licence under this Bill will be the same as the criteria that a person must meet to be eligible to have his or her driver's licence endorsed with an extension "T".

For this reason, persons who are currently authorised under the RTA to carry on the occupation of taxi driver will be eligible for the grant of a taxi driver licence under this Bill, provided there has been no change regarding the person's status or eligibility under the RTA.

This clause will set out how a person who is currently authorised under the RTA will be able to apply, by a simplified application process, for a taxi driver licence, and the CEO's powers to grant such applications.

Clause 64(1) will empower a person who holds a driver's licence that is endorsed with an extension "T" to apply to the CEO for the grant of a taxi driver licence.

Clause 64(2) will require an application under this Part to be made in the following way.

This Bill has been drafted so as to commence operation in two parts. There will be a 6-month transitional period, during which some of the provisions of this Bill

will commence operation. The provisions that will commence operation will be those that will permit the CEO to grant taxi driver licences to persons authorised to be taxi drivers pursuant to the RTA. At the end of the transitional period, all of the Bill's remaining provisions will come into force.

Clause 64(2)(a) will require applications to be made to the CEO during the first 5 months of the 6-month transitional period. This is necessary because the CEO will not be in a position to grant a person a taxi driver licence if an application is made on, for example, the last day of the transitional period. If all applications are made to the CEO within the first 5 months of the transitional period, the CEO will be able to assess and grant, as appropriate, all applications by the end of the transitional period.

Clause 64(2)(b) will require applications to be made in a form approved by the CEO for this purpose.

Clause 64(2)(c) will require applications to specify each class of vehicle the applicant wishes to be authorised to drive as a taxi and each designated area in which the applicant wishes to be authorised to drive a vehicle as a taxi.

Clause 64(2)(d) will require the applicant to pay the applicable application fee at the time of making the application. It will permit the CEO to determine not to charge an application fee, if the CEO considers this is appropriate.

Clause 64(3) will require the CEO to grant an application made under this Part, if the CEO is satisfied that:

- the applicant holds a driver's licence that is endorsed with an extension "T" (clause 64(3)(a));
- the applicant has complied with any requirements imposed by the Director General under the RTA to provide a medical report that confirms that the applicant is physically and mentally fit to be a taxi driver (clause 64(3)(b));
- the applicant has successfully completed any training course or test approved by the CEO for the purpose of being satisfied that an applicant has the necessary competencies to be licensed to drive a vehicle as a taxi (clause 64(3)(c));
- the applicant meets any other criteria prescribed in regulation (clause 64(3)(d)).

If the CEO refuses to grant an application made under this Part, clause 64(4) will require the CEO to write to the unsuccessful applicant advising him or her of the decision and of the CEO's reasons for the decision. It will also empower the unsuccessful applicant to seek a review of the decision.

Clause 55 will set out the entitlement to the review, how, to whom and within what timeframe the review may be requested and related matters.

Clause 64(5) is necessary because clause 64(3)(c) will require an applicant for a taxi driver licence, via this simplified process, to have successfully completed any applicable training course or test.

It is not intended that an applicant will be required to comply with further training or testing requirements in order to continue to be authorised, via the grant of a taxi driver licence, to the same extent as the applicant is currently authorised via the endorsement of the applicant's driver's licence with an extension "T".

Clause 64(5) will empower the CEO to approve of training courses or tests for the purposes of the simplified application process under this clause.

## **65. Section 64 licence taken to be taxi driver licence**

Currently, persons wishing to undertake the occupation of taxi driver obtain authorisation to do so from the Director General under the provisions of the *Road Traffic Act 1974* (WA) (RTA). The mechanism for the conferral of authorisation is the endorsement of a person's driver's licence with an extension "T".

When the provisions of this Bill are passed by the Parliament and commence operation, authority to be a taxi driver will cease to be conferred under the RTA and taxi drivers will instead be regulated under this Bill.

The criteria that a person will be required to meet to be eligible for the grant of a taxi driver licence under this Bill will be the same as the criteria that a person must meet to be eligible to have his or her driver's licence endorsed with an extension "T".

For this reason, persons who are currently authorised under the RTA to carry on the occupation of taxi driver will be eligible for the grant of a taxi driver licence under this Bill, provided there has been no change regarding the person's status or eligibility under the RTA.

Clause 64 will set out how a person who is currently authorised under the RTA will be able to apply, by a simplified application process, for a taxi driver licence, and empower the CEO to grant such applications.

This Bill has been drafted so as to commence operation in two parts.

There will be a 6-month transitional period, during which some of the provisions of this Bill will commence operation. The provisions that will commence operation will be those that will permit the CEO under clause 64 to grant taxi driver licences to persons authorised to be taxi drivers pursuant to the RTA. At the end of the transitional period, all of the Bill's remaining provisions will come into force.

This clause will provide that on the day on which all of the Bill's remaining provisions comes into force, a taxi driver licence that was granted during the transitional period under clause 64 is to be deemed to be a taxi driver licence, as if it was granted under clause 12 of this Bill.

Once the transitional period is over, the CEO will be empowered to grant applications for taxi driver licences under clause 12 only, on application made under clause 11. This will be the unabridged application process.

**66. Section 64 licence of no effect unless driver's licence endorsed with extension T at commencement day**

Currently, persons wishing to undertake the occupation of taxi driver obtain authorisation to do so from the Director General under the provisions of the *Road Traffic Act 1974 (WA)* (RTA). The mechanism for the conferral of authorisation is the endorsement of a person's driver's licence with an extension "T".

When the provisions of this Bill are passed by the Parliament and commence operation, authority to be a taxi driver will cease to be conferred under the RTA and taxi drivers will instead be regulated under this Bill.

The criteria that a person will be required to meet to be eligible for the grant of a taxi driver licence under this Bill will be the same as the criteria that a person must meet to be eligible to have his or her driver's licence endorsed with an extension "T".

For this reason, persons who are currently authorised under the RTA to carry on the occupation of taxi driver will be eligible for the grant of a taxi driver licence under this Bill, provided there has been no change regarding the person's status or eligibility under the RTA.

Clause 64 will set out how a person who is currently authorised under the RTA will be able to apply, by a simplified application process, for a taxi driver licence, and empower the CEO to grant such applications.

This Bill has been drafted so as to commence operation in two parts.

There will be a 6-month transitional period, during which some of the provisions of this Bill will commence operation. The provisions that will commence operation will be those that will permit the CEO under clause 64 to grant taxi driver licences to persons authorised to be taxi drivers pursuant to the RTA. At the end of the transitional period, all of the Bill's remaining provisions will come into force.

Clause 65 will provide that on the day on which all of the Bill's remaining provisions comes into force, a taxi driver licence that was granted during the transitional period under clause 64 is to be deemed to be a taxi driver licence, as if it was granted under clause 12 of this Bill. A taxi driver licence will not come into force until that day.

This clause will provide that a taxi driver licence granted by the CEO under clause 64 will not come into force, however, if the person to whom it was granted does not have a driver's licence endorsed with an extension "T", immediately before all of the Bill's remaining provisions commence operation.

## 67. Special provisions about pre-commencement licences

Currently, persons wishing to undertake the occupation of taxi driver obtain authorisation to do so from the Director General under the provisions of the *Road Traffic Act 1974* (WA) (RTA). The mechanism for the conferral of authorisation is the endorsement of a person's driver's licence with an extension "T".

When the provisions of this Bill are passed by the Parliament and commence operation, authority to be a taxi driver will cease to be conferred under the RTA and taxi drivers will instead be regulated under this Bill.

The criteria that a person will be required to meet to be eligible for the grant of a taxi driver licence under this Bill will be the same as the criteria that a person must meet to be eligible to have his or her driver's licence endorsed with an extension "T".

For this reason, persons who are currently authorised under the RTA to carry on the occupation of taxi driver will be eligible for the grant of a taxi driver licence under this Bill, provided there has been no change regarding the person's status or eligibility under the RTA.

Clause 64 will set out how a person who is currently authorised under the RTA will be able to apply, by a simplified application process, for a taxi driver licence, and empower the CEO to grant such applications.

This Bill has been drafted so as to commence operation in two parts.

There will be a 6-month transitional period, during which some of the provisions of this Bill will commence operation. The provisions that will commence operation will be those that will permit the CEO under clause 64 to grant taxi driver licences to persons authorised to be taxi drivers pursuant to the RTA. At the end of the transitional period, all of the Bill's remaining provisions will come into force.

Clause 65 will provide that on the day on which all of the Bill's remaining provisions come into force, a taxi driver licence that was granted during the transitional period under clause 64 is to be deemed to be a taxi driver licence, as if it was a taxi driver licence granted under clause 12 of this Bill. A taxi driver licence will not come into force until that day.

This clause will set out other matters that are to be the case with regard to a taxi driver licence granted under clause 64, after it is granted by the CEO but before all of the Bill's provisions commence operation.

Clause 67(a)(i) will provide that a taxi driver licence granted under clause 64 will come into force on the day on which all of the Bill's remaining provisions come into force.

Clause 67(a)(ii) will provide that a taxi driver licence granted under clause 64 will be of between one year's and 2 year's duration, as determined by the CEO.

The ability to grant taxi driver licences, during the transitional period, with differing durations is necessary to ensure that all of these taxi driver licences do not all expire at the same time, creating an unreasonable administrative burden on the CEO when applications for renewal are made.

Clause 67(b) will permit a person who has been granted a taxi driver licence under clause 64 to apply, during the transitional period, for a variation to conditions imposed on that licence.

The Bill will provide that the CEO must impose at least two conditions on a taxi driver licence: one relating to the class or classes of vehicle that the licensee is authorised to drive as a taxi, and one relating to the designated area or areas in which the licensee is authorised to drive a vehicle as a taxi.

A licensee may wish to be authorised to drive a further class of vehicle as a taxi or to drive in a further designated area. The mechanism by which the licensee may obtain such authorisation is by applying to the CEO under clause 17 for a variation to the licensee's licence conditions.

Although, under clause 67(a)(i), a taxi driver licence granted under clause 64 during the transitional period will not have force until all of the provisions of the Bill commence operation, clause 67(b) will enable the licensee to apply for, and will empower the CEO to grant, a licence variation.

Clause 67(c) is necessary because of clause 21(1)(b), which will require a licensee to provide the CEO with an approved medical report every 5 years, in order to confirm that the licensee remains medically fit to be a taxi driver.

Clause 67(c) will provide that a medical report previously provided to the Director General, as a requirement relating to an extension "T" endorsement, is to be regarded as an approved medical report for the purposes of compliance with clause 21(1)(b).

This will mean that a person who is granted a taxi driver licence under clause 64 will be required to provide the CEO with an approved medical report no later than 5 years following the day on which the person provided the Director General with a medical report in relation to the person's extension "T" endorsement.

Clause 67(d) will provide that if:

- a person is granted a taxi driver licence under clause 64; and
- there is no break in the period during which the person has a driver's licence endorsed with an extension "T" and the person holds a taxi driver licence,

the period during which the person held a driver's licence endorsed with an extension "T" will be considered as a period during which the person held a taxi driver licence, for the purposes of clauses 33(6)(c), 38(1) and 38(5)(b).

This is because, under some clauses of this Bill, the length of time during which a person has been a licensee will be a relevant matter.

Under clauses 38(1) and 38(5), it will be relevant to determine how many penalty points may be recorded against a person before the CEO must give the person an excessive penalty points notice. A new licensee, who has not yet held a taxi driver licence for a continuous period of 12 months, will be subject to a lower penalty points threshold.

It will be similarly relevant if regulations made under clause 33(6)(c) prescribe differing durations of disqualification period, dependent upon how long a licensee has held a taxi driver licence.

**68. Driver's licence may be endorsed with extension T if pre-commencement licence granted**

Currently, persons wishing to undertake the occupation of taxi driver obtain authorisation to do so from the Director General under the provisions of the *Road Traffic Act 1974* (WA) (RTA). The mechanism for the conferral of authorisation is the endorsement of a person's driver's licence with an extension "T".

When the provisions of this Bill are passed by the Parliament and commence operation, authority to be a taxi driver will cease to be conferred under the RTA and taxi drivers will instead be regulated under this Bill.

The criteria that a person will be required to meet to be eligible for the grant of a taxi driver licence under this Bill will be the same as the criteria that a person must meet to be eligible to have his or her driver's licence endorsed with an extension "T".

This Bill has been drafted so as to commence operation in two parts.

There will be a 6-month transitional period, during which some of the provisions of this Bill will commence operation. The provisions that will commence operation will be those that will permit the CEO under clause 64 to grant taxi driver licences to persons authorised to be taxi drivers pursuant to the RTA. Provisions that will empower new applicants, who are not presently taxi drivers, to apply will also commence operation, as will provisions empowering the CEO to grant taxi driver licences to these persons during the transitional period.

At the end of the transitional period, all of the Bill's remaining provisions will come into force. The key provisions that will commence operation at this time will be those that impose the requirement for persons carrying on the occupation of taxi driver to be licensed under the Bill.

This clause will put in a place a common sense approach for managing applications made, during the transitional period, by persons wishing to enter the taxi industry to be authorised to drive a vehicle as a taxi.

Rather than requiring such a person to make application twice, both:

- under the RTA, for his or her driver's licence to be endorsed with an extension "T"; and
- under this Bill, for a taxi driver licence,

this clause will enable such an applicant, during the transitional period, to apply only to the CEO for the grant of a taxi driver licence under this Bill.

If the application is successful, the CEO will grant the applicant a taxi driver licence which, pursuant to clause 65, will come into effect on the day on which all of the remaining provisions of this Bill commence operation.

In the meantime, if the CEO grants the applicant a taxi driver licence, this clause will empower the Director General to endorse that applicant's driver's licence with an extension "T".

This will enable the applicant to carry on the occupation of taxi driver, under authorisation conferred by the RTA, until the end of the transitional period.

The day after the day on which the transitional period ends, the applicant's taxi driver licence will come into force.

There will be no disruption to the applicant's authority to carry on the occupation of taxi driver.

#### **69. Application for extension T endorsement made before proclamation day**

Currently, persons wishing to undertake the occupation of taxi driver obtain authorisation to do so from the Director General under the provisions of the *Road Traffic Act 1974 (WA)* (RTA). The mechanism for the conferral of authorisation is the endorsement of a person's driver's licence with an extension "T".

When the provisions of this Bill are passed by the Parliament and commence operation, authority to be a taxi driver will cease to be conferred under the RTA and taxi drivers will instead be regulated under this Bill.

The criteria that a person will be required to meet to be eligible for the grant of a taxi driver licence under this Bill will be the same as the criteria that a person must meet to be eligible to have his or her driver's licence endorsed with an extension "T".

This Bill has been drafted so as to commence operation in two parts.

There will be a 6-month transitional period, during which some of the provisions of this Bill will commence operation. The provisions that will commence operation will be those that will permit the CEO under clause 64 to grant taxi driver licences to persons authorised to be taxi drivers pursuant to the RTA. Provisions that will empower new applicants, who are not presently taxi drivers, to apply will also commence operation, as will provisions empowering the CEO to grant taxi driver licences to these persons during the transitional period.

At the end of the transitional period, all of the Bill's remaining provisions will come into force. The key provisions that will commence operation at this time will be those that impose the requirement for persons carrying on the occupation of taxi driver to be licensed under the Bill.

Clause 68 will put in a place a common sense approach for managing applications made, during the transitional period, by persons wishing to enter the taxi industry to be authorised to drive a vehicle as a taxi.

Rather than requiring such a person to make application twice, both:

- under the RTA, for his or her driver's licence to be endorsed with an extension "T"; and
- under this Bill, for a taxi driver licence,

clause 68 will enable such an applicant, during the transitional period, to apply only to the CEO for the grant of a taxi driver licence under this Bill.

If the application is successful, the CEO will grant the applicant a taxi driver licence which, pursuant to clause 65, will come into effect on the day on which all of the remaining provisions of this Bill commence operation.

In the meantime, if the CEO grants the applicant a taxi driver licence, clause 68 will empower the Director General to endorse that applicant's driver's licence with an extension "T".

This will enable the applicant to carry on the occupation of taxi driver, under authorisation conferred under the RTA, until the end of the transitional period.

This clause will enable an application, made to the Director General either prior to the commencement of or during the transitional period, for an extension "T" endorsement, to be deemed to be an application for a taxi driver licence under clause 11 of this Bill once the transitional period commences.

This will mean that the application will be able to be treated in the manner contemplated under clause 68.

The effect will be that, if successful, the applicant will be granted a taxi driver licence by the CEO for the purposes of this Bill *and* will have his or her driver's licence document endorsed by the Director General with an extension "T".

The applicant will then be authorised to carry on the occupation of taxi driver, under authorisation conferred under the RTA, until the end of the transitional period, the day after which the applicant's taxi driver licence will come into force.

There will be no disruption to the applicant's authority to carry on the occupation of taxi driver.

## **Part 10 – Consequential amendments**

### **Division 1 – *Road Traffic Act 1974* amended**

#### **70. Act amended**

This clause confirms that the provisions of Part 10 Division 1 of this Bill will amend the *Road Traffic Act 1974* (WA) (RTA).

The RTA regulates the licensing of drivers, the licensing of vehicles (including vehicle equipment, mass, dimension and loading standards) and the behaviour of drivers on roads.

Unless and until the provisions of this Bill are enacted, subsidiary legislation made under the RTA confers authority on a person to drive a vehicle as a taxi carrying passengers for reward.

The amendments to the RTA contained in this Division are necessary as a consequence of the introduction of the taxi driver licensing regime the subject of the Bill.

#### **71. Section 42E amended**

This clause is necessary because of clauses 20, 49 and 73 of this Bill.

If the CEO grants an application for a taxi driver licence, clause 20(1) will require the CEO to give the successful applicant a taxi driver licence document.

Clause 20(2) will empower the CEO to determine the size, form and content of the taxi driver licence document. It is expected to be a plasticised card, similar in size to a driver's licence document. It will bear the licensee's photograph, name and taxi driver licence number. It may also bear other information, such as the type of vehicle the licensee is authorised to drive as a taxi or the designated area in which the licensee is authorised to drive a taxi.

Clause 49 will authorise the CEO to use a photograph, previously provided by a licensee to the Director General under the *Road Traffic Act 1974* (RTA) for use in the production of a driver's licence document, in the production of the licensee's taxi driver licence document.

To enable this to occur, clause 73 will amend the RTA to empower the Director General to disclose those photographs to the CEO for use for that purpose.

Photographs are provided to the Director General, for use in the production of driver's licence documents, under the RTA section 42E. To ensure that the Director General stores those photographs securely and that they are used only for the purpose for which they have been provided, section 42E creates relevant offences, the penalty for breaches of which is imprisonment.

The RTA subsection 42E(6) creates an offence of “*reproduc[ing], by any means, a photograph ... provided under [section 42E], or caus[ing] or permit[ting] another person to do so*”, except for the purposes of performing functions under the RTA.

This clause is needed to amend section 42E to provide that it will not constitute an offence under subsection 42E(6) for the CEO to use, or to cause or permit another person to use, a photograph provided to the Director General under section 42E in order to produce a taxi driver licence document.

## **72. Section 44AA amended**

This clause is necessary because of clauses 20, 49 and 73 of this Bill.

If the CEO grants an application for a taxi driver licence, clause 20(1) will require the CEO to give the successful applicant a taxi driver licence document.

Clause 20(2) will empower the CEO to determine the size, form and content of the taxi driver licence document. It is expected to be a plasticised card, similar in size to a driver’s licence document. It will bear the licensee’s photograph, name and taxi driver licence number. It may also bear other information, such as the type of vehicle the licensee is authorised to drive as a taxi or the designated area in which the licensee is authorised to drive a taxi.

Clause 49 will authorise the CEO to use a photograph, previously provided by a licensee to the Director General under the *Road Traffic Act 1974* (RTA) for use in the production of a driver’s licence document, in the production of the licensee’s taxi driver licence document.

To enable this to occur, clause 73 will amend the RTA to empower the Director General to disclose those photographs to the CEO for use for that purpose. It will do this by inserting a new section 44AD in the RTA that will empower the Director General to disclose photographs to the “CEO (taxi drivers licensing)” for this purpose.

This clause will insert a definition in the RTA section 44AA that will explain what is meant by the term “CEO (taxi drivers licensing)”. It will mean the person who is the CEO pursuant to this Bill.

## **73. Section 44AD inserted**

This clause is necessary because of clauses 20, 49 and 73 of this Bill.

If the CEO grants an application for a taxi driver licence, clause 20(1) will require the CEO to give the successful applicant a taxi driver licence document.

Clause 20(2) will empower the CEO to determine the size, form and content of the taxi driver licence document. It is expected to be a plasticised card, similar in size to a driver’s licence document. It will bear the licensee’s photograph, name and taxi driver licence number. It may also bear other information, such as the

type of vehicle the licensee is authorised to drive as a taxi or the designated area in which the licensee is authorised to drive a taxi.

Clause 49 will authorise the CEO to use a photograph, previously provided by a licensee to the Director General under the *Road Traffic Act 1974* (RTA) for use in the production of a driver's licence document, in the production of the licensee's taxi driver licence document.

To enable this to occur, this clause will amend the RTA to empower the Director General to disclose those photographs to the CEO for use for that purpose. It will do this by inserting a new section 44AD in the RTA that will empower the Director General to disclose photographs to the "CEO (taxi drivers licensing)" for this purpose.

Clause 72 will insert a definition in the RTA section 44AA that will explain what is meant by the term "CEO (taxi drivers licensing)". It will mean the person who is the CEO pursuant to this Bill.

## **Division 2 – Road Traffic (Authorisation to Drive) Act 2008 amended**

### **74. Act amended**

This clause confirms that the provisions of Part 10 Division 2 of this Bill will amend the *Road Traffic (Authorisation to Drive) Act 2008* (WA).

The *Road Traffic (Authorisation to Drive) Act 2008* has yet to commence operation. It forms part of a suite of legislation for the reform of the *Road Traffic Act 1974* (WA) (RTA) comprising the:

- *Road Traffic (Administration) Act 2008* (WA);
- *Road Traffic (Authorisation to Drive) Act 2008* (WA);
- *Road Traffic (Vehicles) Act 2012* (WA); and
- *Road Traffic Legislation Amendment Act 2012* (WA).

All four pieces of legislation are drafted so as to commence operation simultaneously. Work is currently underway to draft the extensive supporting regulations required and to make the necessary administrative preparations for their commencement.

Pursuant to these reforms, the provisions of the RTA dealing with authorisation to drive will be transferred to the *Road Traffic (Authorisation to Drive) Act 2008*.

The amendments contained in Part 10 Division 2 of this Bill are necessary to ensure that, when the reform legislation commences operation, amendments to provisions of the RTA made by Part 10 Division 1 of this Bill will not be lost. In order to provide for their continuation, Part 10 Division 2 contains corresponding amendments to the relevant provisions of the *Road Traffic (Authorisation to Drive) Act 2008*.

## 75. Section 9 amended

When it commences operation, the *Road Traffic (Authorisation to Drive) Act 2008* will regulate driver licensing.

In particular, section 9 will empower the *Road Traffic (Authorisation to Drive) Act 2008* CEO (RTATD CEO) to require the provision of photographs for use in the production of driver licence documents.

This clause is necessary because of clauses 20, 49 and 77 of this Bill.

If the CEO grants an application for a taxi driver licence, clause 20(1) will require the CEO to give the successful applicant a taxi driver licence document.

Clause 20(2) will empower the CEO to determine the size, form and content of the taxi driver licence document. It is expected to be a plasticised card, similar in size to a driver's licence document. It will bear the licensee's photograph, name and taxi driver licence number. It may also bear other information, such as the type of vehicle the licensee is authorised to drive as a taxi or the designated area in which the licensee is authorised to drive a taxi.

Clause 49 will authorise the CEO to use a photograph, previously provided by a licensee to the RTATD CEO for use in the production of a driver's licence document, in the production of the licensee's taxi driver licence document.

To enable this to occur, clause 77 will amend the *Road Traffic (Authorisation to Drive) Act 2008* to empower the RTATD CEO to disclose those photographs to the CEO for use for that purpose.

Photographs will be provided to the RTATD CEO, for use in the production of driver's licence documents, under the *Road Traffic (Authorisation to Drive) Act 2008* section 9. To ensure that the RTATD CEO stores those photographs securely and that they are used only for the purpose for which they have been provided, section 9 will create relevant offences, the penalty for breaches of which is imprisonment.

The *Road Traffic (Authorisation to Drive) Act 2008* subsection 9(7) will create an offence of "*reproduc[ing], by any means, a photograph ... that appears, or is to appear, on a driver's licence document, or caus[ing] or permit[ting] another person to do so*", except for the purposes of performing functions under the *Road Traffic (Authorisation to Drive) Act 2008*.

This clause is needed to amend section 9 to provide that it will not constitute an offence under subsection 9(7) for the CEO to use, or to cause or permit another person to use, a photograph provided to the RTATD CEO under section 9 in order to produce a taxi driver licence document.

## **76. Section 11B amended**

When it commences operation, the *Road Traffic (Authorisation to Drive) Act 2008* will regulate driver licensing.

In particular, it will empower the *Road Traffic (Authorisation to Drive) Act 2008* CEO (RTATD CEO) to require the provision of photographs for use in the production of driver licence documents.

This clause is necessary because of clauses 20, 49 and 77 of this Bill.

If the CEO grants an application for a taxi driver licence, clause 20(1) will require the CEO to give the successful applicant a taxi driver licence document.

Clause 20(2) will empower the CEO to determine the size, form and content of the taxi driver licence document. It is expected to be a plasticised card, similar in size to a driver's licence document. It will bear the licensee's photograph, name and taxi driver licence number. It may also bear other information, such as the type of vehicle the licensee is authorised to drive as a taxi or the designated area in which the licensee is authorised to drive a taxi.

Clause 49 will authorise the CEO to use a photograph, previously provided by a licensee to the RTATD CEO under the *Road Traffic (Authorisation to Drive) Act 2008* for use in the production of a driver's licence document, in the production of the licensee's taxi driver licence document.

To enable this to occur, clause 77 will amend the *Road Traffic (Authorisation to Drive) Act 2008* to empower the RTATD CEO to disclose those photographs to the CEO for use for that purpose. It will do this by inserting a new section 11E in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the RTATD CEO to disclose photographs to the "CEO (taxi drivers licensing)" for this purpose.

This clause will insert a definition in the *Road Traffic (Authorisation to Drive) Act 2008* section 11B that will explain what is meant by the term "CEO (taxi drivers licensing)". It will mean the person who is the CEO pursuant to this Bill.

## **77. Section 11E inserted**

When it commences operation, the *Road Traffic (Authorisation to Drive) Act 2008* will regulate driver licensing.

In particular, it will empower the *Road Traffic (Authorisation to Drive) Act 2008* CEO (RTATD CEO) to require the provision of photographs for use in the production of driver licence documents.

This clause is necessary because of clauses 20, 49 and 77 of this Bill.

If the CEO grants an application for a taxi driver licence, clause 20(1) will require the CEO to give the successful applicant a taxi driver licence document.

Clause 20(2) will empower the CEO to determine the size, form and content of the taxi driver licence document. It is expected to be a plasticised card, similar in size to a driver's licence document. It will bear the licensee's photograph, name and taxi driver licence number. It may also bear other information, such as the type of vehicle the licensee is authorised to drive as a taxi or the designated area in which the licenses is authorised to drive a taxi.

Clause 49 will authorise the CEO to use a photograph, previously provided by a licensee to the RTATD CEO under the *Road Traffic (Authorisation to Drive) Act 2008* for use in the production of a driver's licence document, in the production of the licensee's taxi driver licence document.

To enable this to occur, this clause will amend the *Road Traffic (Authorisation to Drive) Act 2008* to empower the RTATD CEO to disclose those photographs to the CEO for use for that purpose. It will do this by inserting a new section 11E in the *Road Traffic (Authorisation to Drive) Act 2008* that will empower the RTATD CEO to disclose photographs to the "CEO (taxi drivers licensing)" for this purpose.

Clause 76 will insert a definition in the *Road Traffic (Authorisation to Drive) Act 2008* section 11B that will explain what is meant by the term "CEO (taxi drivers licensing)". It will mean the person who is the CEO pursuant to this Bill.

### **Division 3 – Road Traffic Legislation Amendment Act 2012 amended**

#### **78. Act amended**

This clause confirms that the provisions of Part 10 Division 2 of this Bill will amend the *Road Traffic Legislation Amendment Act 2012* (WA).

The *Road Traffic Legislation Amendment Act 2012* has yet to commence operation. It forms part of a suite of legislation for the reform of the *Road Traffic Act 1974* (WA) (RTA) comprising the:

- *Road Traffic (Administration) Act 2008* (WA);
- *Road Traffic (Authorisation to Drive) Act 2008* (WA);
- *Road Traffic (Vehicles) Act 2012* (WA); and
- *Road Traffic Legislation Amendment Act 2012* (WA) (RTLAA).

All four pieces of legislation are drafted so as to commence operation simultaneously. Work is currently underway to draft the extensive supporting regulations required and to make the necessary administrative preparations for their commencement.

Under the reforms, the *Road Traffic Act 1974* (WA) will continue in force but will be amended by the RTLAA, in part to remove provisions it contains relating to driver licensing, vehicle licensing and administrative and enforcement matters, as the substance of these matters will transferred to other Acts in the suite.

The RTLAA will also make consequential amendments to other Western Australian laws affected as a consequence of the commencement of operation of the reforms.

#### **79. Section 191 deleted**

The *Road Traffic Legislation Amendment Act 2012* (WA) (RTLAA) will make consequential amendments to Western Australian laws affected as a consequence of the commencement of operation of an extensive suite of road traffic reform laws which is expected shortly to commence operation.

One of the amendments contained in the RTLAA is intended to amend consequentially the *Transport Co-ordination Act 1966* (WA) (TCA).

Amongst other matters, the TCA authorises persons to operate vehicles as taxi-cars. The TCA section 47ZE requires persons who drive taxi-cars to be authorised to do so under the *Road Traffic Act 1974* (WA).

When the road traffic reform laws commence operation, authorisation to drive a taxi-car will cease to be conferred under the *Road Traffic Act 1974* and will instead be conferred under the *Road Traffic (Authorisation to Drive) Act 2008* (WA).

For this reason, the RTLAA section 191 would provide for reference in the TCA section 47ZE to the *Road Traffic Act 1974* to be amended to reference instead to the *Road Traffic (Authorisation to Drive) Act 2008*.

When the provisions of this Bill commence operation, however, authorisation to drive a vehicle as a taxi will be conferred under this Bill.

For this reason, this clause will delete the RTLAA section 191, because the amendment it contains will become obsolete when the provisions of this Bill come into force.

Clause 87 will provide for the deletion altogether of the TCA section 47ZE.

#### **Division 4 – *State Administrative Tribunal Act 2004* amended**

#### **80. Act amended**

This clause confirms that the provisions of Part 10 Division 4 of this Bill will amend the *State Administrative Tribunal Act 2004* (WA) (Act). Amongst other matters, the Act establishes a State Administrative Tribunal that is empowered to review certain administrative decisions and to make binding rulings.

The amendments are necessary as a consequence of the introduction of the taxi driver licensing regime the subject of the Bill.

## **81. Schedule 1 amended**

This Bill will be known as the *Taxi Driver Licensing Act 2013* when it is passed by the Parliament and receives Royal Assent.

This clause will provide for reference to the *Taxi Driver Licensing Act 2013* to be included in the *State Administrative Tribunal Act 2004* Schedule 1, making it a relevant Act for the purposes of the *State Administrative Act 2004* section 105.

Under section 105, if the State Administrative Tribunal has reviewed and made a ruling regarding an administrative decision made under a relevant Act, the applicant for the review may appeal the Tribunal's ruling, if dissatisfied with the ruling, either in the Court of Appeal or the Supreme Court.

## **Division 5 – *Taxi Act 1994* amended**

### **82. Act amended**

This clause confirms that the provisions of Part 10 Division 5 of this Bill will amend the *Taxi Act 1994* (WA) (Act). Amongst other matters, the Act regulates the operation of vehicles as taxis within the control area to which the Act applies.

The amendments are necessary as a consequence of the introduction of the taxi driver licensing regime the subject of the Bill.

### **83. Section 16 amended**

The *Taxi Act 1994* (WA) section 16 provides for the sale or lease of taxi plates that may be affixed to a vehicle that is to be operated as a taxi.

Section 16 sets out the process by which such sale or lease is to occur.

With regard to the lease of taxi plates, where there are more applicants for the lease of a taxi plate than there are available taxi plates, section 16(8) sets out merit selection criteria that the Director General is to use to rank applicants so as to determine to whom taxi plate leases ought to be awarded.

Section 16(8) permits applicants to submit information that may lend weight to an applicant's suitability. It also contemplates the consideration of offence information that may detract from an applicant's suitability.

This clause will add a new paragraph (da) to section 16(8) that will provide that consideration may be given, in relation to an applicant for a taxi plate lease, to:

- any convictions recorded against the applicant for an offence against the provisions of this Bill, or an equivalent taxi driver licensing law of another jurisdiction; and
- any infringement notices given to an applicant (and not later withdrawn) in relation to an alleged offence against the provisions of this Bill, or an equivalent taxi driver licensing law of another jurisdiction.

#### **84. Section 29 amended**

The *Taxi Act 1994* (WA) Part 3 Division 2 requires a person wishing to provide a taxi dispatch service to be registered.

Section 29 empowers the Director General to impose conditions on the registration of a taxi dispatch service provider. It prescribes the kinds of conditions that may be imposed.

This clause will provide for the insertion of a new paragraph (f) in section 29 that will enable conditions to be imposed on such registrations requiring a taxi dispatch service provider to take particular steps to ensure that its services are not provided to taxi drivers who are not authorised as required under the provisions of this Bill.

#### **85. Section 40 amended**

The *Taxi Act 1994* (WA) section 40 empowers the making of regulations necessary to support the operation of the *Taxi Act 1994*.

This clause will delete regulation-making powers relating to:

- the regulation of the conduct and behaviour of taxi drivers; and
- the circumstances under which a driver may refuse to accept a hiring or may terminate a hiring.

Neither of these regulation-making powers will be necessary when the provisions of this Bill commence operation, as taxi driver conduct and behaviour, including the circumstances in which a taxi driver may refuse to accept a passenger or may terminate a hiring, will be regulated under provisions of this Bill.

### **Division 6 – *Transport Co-ordination Act 1966* amended**

#### **86. Act amended**

This clause confirms that the provisions of Part 10 Division 6 of this Bill will amend the *Transport Co-ordination Act 1966* (WA) (Act). Amongst other matters, the Act requires vehicles that are to be used to carry goods or passengers for reward to be licensed and to comply with appropriate standards. In particular, the Act regulates the operation of vehicles as taxis in Western Australia, except in the area in respect of which the *Taxi Act 1994* (WA) applies instead.

The *Taxi Act 1994* applies to the “control area” as defined in the *Taxi Act 1994* section 3 (and in particular in the *Taxi Regulations 1995* regulation 4), which comprises the metropolitan area, bounded by the Shires of Wanneroo, Swan, Kalamunda, Armadale, Kwinana and Rockingham, and parts of the Shires of Mundaring and Serpentine-Jarrahdale.

The amendments are necessary as a consequence of the introduction of the taxi driver licensing regime the subject of the Bill.

**87. Section 47ZE deleted**

A vehicle must be licensed under the *Transport Co-ordination Act 1966* in order to be operated as a taxi-car. Section 47ZE prohibits a person from driving a taxi-car unless the person is licensed under the *Road Traffic Act 1974 (WA)* to do so.

This clause will delete section 47ZE, as the authority to drive a vehicle as a taxi-car will no longer be conferred under the *Road Traffic Act 1974* and will instead be conferred under the provisions of this Bill.

**88. Section 47ZF amended**

The *Transport Co-ordination Act 1966* section 47ZF provides extensive regulation-making powers for the prescription of a taxi-car licensing regime.

Section 47ZF(1)(q) empowers the making of regulations regulating the conduct, behaviour and dress of drivers of taxi-cars.

Clause 88(a) will repeal section 47ZF(1)(q) as these matters will instead be regulated under the provisions of this Bill.

Section 47ZF(1)(u) empowers the making of regulations prescribing the means by which taxi-cars, and drivers of taxi-cars, will be able to be identified.

Clause 88(b) will delete reference to drivers of taxi-cars, as the provisions of this Bill will regulate drivers of taxi-cars, and the means by which they will be identified.

In particular, clause 20 of this Bill will require the CEO to give every licensee a taxi driver licence document, and clause 24 will require it to be displayed in any vehicle being driven as a taxi by the licensee.

**Part 11 – Repeals**

**89. Part 10 Division 1 repealed if not commenced**

Part 10 Division 1 of this Bill will amend provisions contained in the *Road Traffic Act 1974 (WA)* (RTA) Part IVA. These amendments are necessary as a consequence of some provisions of this Bill.

Under a suite of laws that will reform Western Australian road traffic laws, the provisions of the RTA Part IVA will be deleted by the *Road Traffic Legislation Act 2012 (WA)* (RTLAA) section 8, because their subject matter will instead form part of the new *Road Traffic (Authorisation to Drive) Act 2008 (WA)*.

The RTLAA and the *Road Traffic (Authorisation to Drive) Act 2008* have yet to commence operation.

The provisions of this Bill will commence operation in two parts.

If, on the day on which the first part commences operation, the RTLAA has not yet commenced operation, the amendments contained in Part 10 Division 1 will be required.

This is because the provisions of the RTA Part IVA will still be in force, and Part 10 Division 1 will be required to amend them as a consequence of the commencement of operation of the first part of the Bill.

In this case, clause 2(c)(i) will provide for Part 10 Division 1 to commence operation on the same day as the first part commences operation.

If, however, the RTLAA commences operation before the first part commences operation, the amendments contained in Part 10 Division 1 will become obsolete because the RTA Part IVA will have been repealed.

In this case, clause 2(c)(ii) will provide that Part 10 Division 1 will not come into operation.

If this is the case, this clause will repeal Part 10 Division 1.

#### **90. Part 10 Division 3 repealed if not commenced**

Part 10 Division 3 will amend the *Road Traffic Legislation Amendment Act 2012* (WA) (RTLAA) by deleting the RTLAA section 191 if, when the provisions of this Bill commence operation, the RTLAA has not yet commenced operation.

The RTLAA is one component Act of a suite of laws that will reform Western Australian road traffic laws. The reforms are expected to come into force in 2014.

The RTLAA contains only consequential amendments to other Acts affected by the reforms.

The RTLAA section 191 will provide for an amendment to be made to the *Transport Co-ordination Act 1966* (WA) (TCA), changing reference in the TCA section 47ZE to the *Road Traffic Act 1974* (WA) to reference instead to the *Road Traffic (Authorisation to Drive) Act 2008* (WA).

The TCA section 47ZE will be repealed by clause 87 of this Bill, however, as it will become obsolete when all of the provisions of the Bill commence operation. The RTLAA amendment to section 47ZE is therefore redundant.

If the RTLAA commences operation before the provisions of this Bill, section 191 will come into effect, will act to amend the TCA section 47ZE and will be unable to be repealed

If this is the case, clause 2(e)(ii) will provide that Part 10 Division 3 does not come into operation at all and this clause will provide for it to be repealed.

(If the RTLAA has not yet commenced operation, clause 2(e)(i) will provide for Part 10 Division 3 to commence operation so that the obsolete amendment that is the subject of the RTLAA section 191 will be repealed.)

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