

ROAD TRAFFIC LEGISLATION AMENDMENT (INFORMATION) BILL 2010

Second Reading

Resumed from an earlier stage of the sitting.

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [5.05 pm]: Just prior to question time I think I addressed the question asked by Hon Ken Travers about whether one of the intentions of the Road Traffic Legislation Amendment (Information) Bill and the amendments it contains is to make a driver's licence a general de facto compulsory identification card. That is most certainly not the case. If people want to use a driver's licence for identification purposes beyond simply proving their qualification to drive—for example, to prove their age to get into a nightclub, when undertaking a commercial transaction or for whatever other reason someone might need an identity document—they can and will do so. However, what is not contained in this bill is a requirement for people to use their driving licence to prove both their identity and their qualification to drive in circumstances other than those normally associated with a driver's licence—that is, in connection with matters to do with the Road Traffic Act. I offer that reassurance.

I note that the police handle a lot of sensitive information all the time and that photos, in the context of this debate, are a form of information. Police can access information only in connection with performing a function. Access is monitored and audited, and photos will be treated in the same way if the Parliament sees fit to pass this bill. Those are the protections that are in place. Indeed, we learn from time to time of police officers who have been subject to disciplinary action, including charges, as a result of having mishandled information. It is not contested that, from time to time, some of the vast amounts of information contained in this world will be mishandled; that happens. But we can minimise that, and there has already been a demonstration in our police service that any incident of misuse of information is viewed very seriously and that sanctions are taken against offenders. These are the safeguards that reasonably need to apply.

Hon Ken Travers offered his support to the proposal that learners' permits should contain the bearer's photograph in the same way that drivers' licences do, so I thank him for that. He also touched on the question of providing a photo to a family member in a situation in which the subject of the photo is deceased. The house became aware of a situation some little while ago in which someone had died, and the person's mother did not have a recent photograph of the deceased. It was just one of those things; it appears that the only recent photograph available of the deceased was the one on the driving licence database. She could not access that photograph because the law prohibits the giving out of that information except in the way prescribed. It had never been contemplated that such a requirement would come to notice. In that situation, I do not think anyone would have the view that a mother should not be allowed to have a copy of that photo or that the government should withhold it. But the law said what the law said and the law is very strict. I mention this to reinforce for those members concerned about the checks and balances we place on information disclosure legislation the need to understand that this act has shown that information can be controlled, although in this case the government seeks to amend the act in a very particular way to make sure there are no undesirable unintended consequences; hence the relevant amendment in this bill. There has been further discussion about this and it has since been pointed out that there may be occasions when the reason a family member may not have a recent picture of a family member is that they are estranged and the person who is the subject of the photograph may not have wanted the family member to have a copy of that photo—whether they were dead or alive. As members will see, there is a contemplation on the supplementary notice paper to entertain an amendment that will provide for the executor or other representative of a deceased person to receive such a photo if it is requested. Some people might think that is overkill, and it perhaps might be, but it recognises the extraordinary circumstances that we are trying to correct. I guess these things can happen and at least this way we will not unknowingly create some other problem. We are all in furious agreement on that and would like to see it done.

Hon Ken Travers: I think the circumstances of the mother that have been outlined are probably more extraordinary than the circumstances of someone not having a photo because they are estranged from the person. So we should help the mother but not the estranged person.

Hon SIMON O'BRIEN: Indeed. Frankly, it would seem to me that if someone who wanted a photo of a loved one did not have any photos, that might indicate the likelihood of an estrangement. Or it might be the photo of a teenager and everyone knows that teenagers quite often do not like to be photographed. Whatever the circumstances, we have sought to address that. It is interesting to note that we have had to seek to amend the act in order to do it. Anyone, be it myself as the minister or an opposition spokesperson, a director general, a head of a department or section holding this photo or information, or the bloke at the bus stop outside Hoyts Cinemas, could recognise that it is a reasonable prospect for a bereaved mother to be given access to the photo, but the fact is, the law said that we could not give her access and that is why we have to change the law. I mention that in light of Hon Ken Travers' earlier remarks about clause 12 and the capacity for governments in future to prescribe certain matters for disclosure. Here is an example of how we have to weigh things in the balance. It

would have been desirable to have a mechanism at our disposal to enable the provision of this photo much earlier than it will, ultimately, be provided. We still have a way to go before this legislation is passed. We need to balance that against the question Hon Ken Travers quite rightly raised about how much licence we give to a future government to set those parameters. Hon Ken Travers noted the confidentiality of information clause and I do not think that he has any objection to it per se, but his purpose in raising it was his concern that the government may be setting up an agenda, a secret agenda, for the privatisation of certain licensing functions. I can assure the member and the house that if this government wants to go down that path, it will not be coy, twee, hidden or secret about it. If this government decides that that is something that it wants to do, it will announce the fact and all commentators and stakeholders will have the chance to debate the issue and to be consulted about it.

Hon Ken Travers: Before you make a decision or once you have made the decision?

Hon SIMON O'BRIEN: It depends on the nature of the decision. I am not going to contemplate, in another portfolio, decisions or directions that have not yet been selected.

Hon Ken Travers: But when you were a minister, you were actively considering the option. You know that. And you didn't talk to the public about it then.

Hon SIMON O'BRIEN: No. The member is seeking to read into this something that is not there.

Hon Ken Travers: Are you saying that you never considered privatisation?

Hon SIMON O'BRIEN: Hang on a minute. I am dealing with this bill now in a representative capacity; therefore, there is a limit to how much ability I have to digress and to canvass other matters.

Hon Ken Travers: You can canvass any matter if you have knowledge of it. And you have knowledge of the drafting of this bill. When this bill was drafted, what was in the then minister's mind?

Hon SIMON O'BRIEN: I will tell the member exactly what was in the then minister's mind when this particular clause was contemplated and created. As I indicated earlier, this bill deals with matters concerning information disclosure. In a broad sense, it intends to cover the field. We need a confidentiality of information clause to contemplate not only some possible future involvement by those who are not already bound by the disclosure obligations that confront every public servant, but also by those who are already in the system but are not public servants and who may become aware of driver's licence information in the course of doing what they do. Those people already exist. The honourable member is well aware that vehicle examinations occur that are not conducted by public servants. That has happened for a long time and that will keep happening. That is the beginning and the end of the requirement for this clause. I may have had a view, and I have not discarded it, that it would be worth considering whether certain other licensing functions and services could not be done better by the private sector. I look at the queues of people that have, from time to time, accrued at government examination centres, and wonder why on earth this can be done privately in a country town, but not in the city. Why do people not have a choice whether they go to a government-operated examination centre or some other qualified and licensed person to have their vehicle certified? It happens in other places around the world. There are more than enough safeguards. I could very cheerfully talk about this sometime. I am sure that Hon Ken Travers will want to take part in that discussion with equal gusto. That is fine. But that is getting off the point of what this bill is about. Without any sense of hiding any agendas or anything like that or discounting things that might or might not happen in the future—I do not want to speculate on whether things might or might not happen—I can say that that is not the reason that this clause is in the bill. This clause is in the bill for the very good reason that people may legitimately come into the possession of driver's licence information in the course of their work on behalf of government and they also need to be bound by confidentiality clauses. There is also a belt and braces aspect to this clause to remind people, post the Wilson Security affair and other incidents that have occurred, of their obligations to keep private information confidential. I hope that has reassured people. I thank Hon Ken Travers for his thoughtful contribution to the debate.

Hon Alison Xamon raised a couple of matters that I have already addressed in part, but there is more. She indicated that she had more questions for the committee stage, which is interesting and prompts me to ask, if I may —

Hon Alison Xamon: It is just to clarify some of the specific provisions, not the policy of the bill.

Hon SIMON O'BRIEN: Okay; we will deal with the second reading and then we will get down to some detail. My concern is to make sure that the member is provided with sufficient opportunity —

Hon Alison Xamon: I got an excellent briefing; thanks.

Hon SIMON O'BRIEN: I am just surprised that she has further questions.

Hon Alison Xamon: I think it is good to have some of the answers recorded in *Hansard*. I was satisfied with some of the responses I received in the briefing, but I thought it would be useful to have them placed on the record in *Hansard*, because the further clarification would be good.

Hon SIMON O'BRIEN: Has the member given notice of any of those questions?

Hon Alison Xamon: Yes.

Hon SIMON O'BRIEN: Good. We will seek to deal with those during the committee stage, but I just wanted to make sure, as ever, that when I deal with a bill, members know that they have only to ask if they require any more attention than they are getting and I will make sure that they get it.

Hon Alison Xamon: I have no complaints in that regard.

Hon SIMON O'BRIEN: No, and I would be surprised if the member did, because I know that everyone involved with this bill has been very helpful in offering their services.

Hon Ken Travers: Can I put on the record that I also think you have very good officers in this area, minister.

Hon SIMON O'BRIEN: Thank you. I am glad the member put that on the record.

Hon Ken Travers: I often question the cabinet, but I am always very happy with the way the officers present it to us.

Hon SIMON O'BRIEN: I am glad that members will have confidence in the advice and information that is made available to me as we head into the next stage of debate.

As Hon Alison Xamon observed, this bill is about the disclosure of information generally. These are broader issues that have been raised. She discussed them in her contribution to the second reading debate, and I thank her for sharing those thoughts and that insight. She asked about the rationale for disclosing information to government officers in other states. The bill proposes that certain information will be made available to Australian Security Intelligence Organisation officers, and they can be all over the place—that is, in different locations—and also to police officials, but there is limited ability at this stage to provide information to other government officers generally. If there are some other questions about that, we can deal with that when we get to that clause. The member also mentioned that it seemed a little unfair that learner drivers require a compulsory photo whereas other drivers do not. It may have been a while since she was a learner driver —

Hon Alison Xamon: It is many, many years!

Hon SIMON O'BRIEN: I am sure it is not that long. The member needs to have another look at her driver's licence. If she has not renewed it lately—I often try to get a five-year licence as my preferred option —

Hon Ken Travers: The current minister hopes to keep his for five years!

Hon SIMON O'BRIEN: I am sure that five years would be a very good achievement for any of us. I am advised that photos are now not discretionary on drivers' licences and have not been for some little while.

Hon Alison Xamon: I have always had a photo. I needed it for ID.

Hon SIMON O'BRIEN: That is right. It changed some time ago. I do not know exactly when.

Hon Alison Xamon: I kept getting asked.

Hon SIMON O'BRIEN: That is so the member can get into nightclubs and so on, is it not?

Hon Alison Xamon: It is, yes!

Hon Ken Travers: I think it might have even been in the late 1990s that compulsory photos were introduced.

Hon SIMON O'BRIEN: Hon Alison Xamon acknowledged, and I have already discussed, the high incidence of driver's licence fraud and the high incidence of identity theft. These are problems that need to be addressed. Yes, when addressing them, we need to consider the other wider issues relating to the security and privacy of information that governments extract and are required to hold and, in some cases, deal with. That is what this bill is all about.

I thank members for their support for the second reading of the bill. I acknowledge that there are some concerns, but I am confident that we will be able to work those through. I commend the bill to the house.

Question put and passed.

Bill read a second time.

The Deputy Chairman of Committees (Hon Brian Ellis) in the chair; Hon Simon O'Brien (Minister for Finance) in charge of the bill.

Clause 1: Short title —

Hon KEN TRAVERS: I have a very quick question. I appreciate the minister's response to the second reading debate. He referred to the suite of bills that will effectively form the second part of these bills. He mentioned that he hopes that the other bills dealing with compliance, enforcement and the chain of responsibility will be introduced some time this year. Those bills go together with the two bills that we will deal with tonight. Until then, the rest of that suite of bills will not come into realistic existence, for want of a better term. I appreciate that Hon Simon O'Brien is no longer the Minister for Transport, but can the member briefly outline what other processes are required to occur before that legislation can come back in? The member said that there was further consultation; has that been completed? Is it simply a matter of drafting that legislation and getting it in or is there still some other process that is required before we can get that legislation?

Hon SIMON O'BRIEN: It is stretching clause 1 a little to canvass this.

Hon Ken Travers: I could do it under the long title, which mentions the two bills!

Hon SIMON O'BRIEN: It is with that sense of flexibility that I am more than happy to briefly canvass this issue. I conducted some consultation quite some time ago. I thought it was important after a period of time and in view of prior circumstances.

Hon Ken Travers: If I remember correctly, the member released the consultation details on Christmas Eve with a response required by mid to late January.

Hon SIMON O'BRIEN: I am not sure of the dates. It was a genuine consultation with some people who claimed that they had not been consulted properly by the previous government in the development of the suite of bills. I thought that if we were to have a general acceptance of what was being proposed, it was important that those people felt that they had had their say. Indeed, it is likely that there will be modifications to some parts of the bill. The modifications will be substantially those that we have already dealt with. It is surprising how long it takes to get things amended. Nothing is as simple as we hope. In broad terms, as far as I am aware—I do not know how far it has been advanced now—the relevant department would be required to produce the drafting instructions, which may then have to go to cabinet for approval, depending on how substantial they are. There are the normal cabinet processes. Once approval is given to draft and print, the bills would be introduced. Because the bills disappeared with the dissolution of the last Parliament, they do not exist at all. Therefore, someone would have to go to cabinet with a submission to seek approval for the bills to be drafted even though they already exist. That is the process that would have to occur. Then, with the incorporation of some of the amendments that I have alluded to, there would be a fresh submission to cabinet to seek approval to print and introduce. That is the normal process, which I am sure the member is familiar with. That all takes a bit of time.

Hon Ken Travers: It has been two and a half years.

Hon SIMON O'BRIEN: That is right. But a lot of other legislation has had to find precedence.

Hon Ken Travers: Road safety is pretty important. That legislation is all about improving safety in the transport industry, which is, I would have thought, a pretty high priority.

Hon SIMON O'BRIEN: Sure. We do not want to get bogged down on this, of course. The package of legislation we are talking about replaces large parts of the Road Traffic Act 1974, but it does not introduce new material apart from the chain-of-responsibility matters, which are the subject of harmonised agreement between jurisdictions. I make that point because we already have licensing laws; it is not as though there is a vacuum that needs to be addressed. If we did not have the Road Traffic Act 1974 as amended, if that somehow expired, we would be in trouble.

Hon Ken Travers: The chain of responsibility is a vacuum at the moment; we do not have a chain of responsibility.

Hon SIMON O'BRIEN: Yes. This jurisdiction has got by without it since 1832 when this here Legislative Council was first created. I share Hon Ken Travers' view; I would also like to see us get on with it and finalise it. Thank you for your indulgence, Mr Chairman. I will now conclude on that point.

Clause put and passed.

Clauses 2 to 5 put and passed.

Clause 6: Section 8 replaced —

Hon ALISON XAMON: I have a few questions on clause 6. Would the government please explain why the definition of “authorised purposes” in proposed section 12(1) is not limited to disclosure for non-commercial purposes? Specifically, why is there no restriction on proposed section 12(1)(c) to that effect?

Hon SIMON O'BRIEN: I thank the member for her interest, which she foreshadowed. Hon Ken Travers also touched upon the matter in the second reading debate. In my response I acknowledged the questions that the members asked and I indicated that, on balance, in producing this bill the government felt that there needed to be not only some specifics, which are contained in proposed section 12(1), but also some flexibility, which is the issue we are now considering in the terms of proposed section 12(1)(c). These matters are ultimately matters of judgement. I am advancing the interests of flexibility and I think the member is challenging me to justify that on the basis of reasonable, real-world realities that we might encounter; I think I can do that. It is not the case that this government proposes to embark on some new channels of government activity or to privatise functions and use this provision to do so. If such a thing were to happen with some government in the future, the effect of this provision would be to control the disclosure of information. This is not what is on the table at the moment; a policy decision to privatise issuing of drivers' licences—or however members want to characterise it—will be a decision that is made quite separately from these current proceedings.

There is no contemplation of that now. Whether such a decision or one like it or several like it might be made in five, 10 or 20 years' time, what I hope to be section 12(1)(c) will come into play and will prescribe the authorised purposes, which in turn will be subject to our information disclosure laws and be captured by them. I agree, though, with the honourable member who has noted that, yes, this is a general power and, yes, it is a matter of whether the chamber wishes to grant government this degree of flexibility. She is quite correct; that is the view I am advancing and the view the government puts forward.

In conclusion, the question has been asked: “Hang on, is this going to be for government use in future or some commercial purpose?” I think that was how it was phrased. It is fully possible to have some commercial purpose without it representing a privatisation push. As Hon Ken Travers indicated, without any identifying information being provided—for example, Alison Xamon owns this car and she lives at this address—it might be the case that some information to identify the vehicle, such as an engine serial number, is provided to a consultant or an insurance interest that is involved in doing an audit process to try to prevent re-badging or re-birthing of stolen vehicles. That might be a path we might want to go down. That would be characterised as a commercial undertaking and could be highly desirable, I am sure members would agree. That may be the sort of thing that we may need to prescribe.

There are a couple of examples. I have taken a little while to address this question, but I have tried to pick up on each of the threads in the member's question and also the other threads that were raised or foreshadowed during the second reading debate. I hope members are reassured and are now in a position to conclude their consideration of this legislation.

Hon ALISON XAMON: Similarly, minister—I suspect the answer will be in a similar vein—will the government explain why the definition of “prescribed person” in proposed section 12(1) is not limited to federal or state government agencies or local government? I note that the minister has already outlined some of those instances. Would this allow the information to be given to people working outside the public service; for example, if some functions of WA Police or the Department of Transport were to be privatised or even outsourced? I understand from the briefing that I received that that is already occurring in some instances, particularly in regional areas, but it would be useful to have that elaborated.

Hon SIMON O'BRIEN: The member is absolutely right; my answer is very similar to what I have just described in the last question. Without being flippant about it, in many cases the prescribed person facility is very much intended to describe the things that people will undertake as authorised purposes. The member is quite correct in contemplating it, but there is a little more to it as well. There are already numerous categories in which people required to access and use the sort of information we are talking about are not public servants, even though people might think of them as such. I am advised that there is a group called Austroads, for example. It sounds very much like some federal government instrumentality. I understand it is a non-government corporation formed as an alliance between the states and territories to do certain things, but it is not a government body. There is another repository of information called NEVDIS, which is also, if my memory serves me correctly, an alliance operation between the police forces of several jurisdictions. It is a computer facility to enable all those jurisdictions which are signatories—all our Australian jurisdictions are—to share licence information. That stemmed from cooperation between all the police forces back in the day when this licensing information was held by police forces.

It is funny how this evolution occurs, as I alluded to earlier, when it all worked fine as an arrangement between police forces, but now that separate licensing authorities have inherited that arrangement there are all sorts of implications when police need to access that information. The sorts of variations that can occur—for example,

when the police force in Victoria needs to access some information about a South Australian vehicle on one of its roads—raise questions that involve the custody of information by South Australian licensing authorities and how they interact through NEVDIS.

Suffice to say that there are examples of when that can happen. I mentioned earlier the example of some commercial entity or commercial alliance wanting to look at a re-badging prevention program. That is an example of a prescribed person perhaps being identified to undertake that sort of work, but generally a prescribed person enjoys the government support that we are giving them with the same purposes and rationale as we support the “authorised purpose” definition that we have just discussed. To give members an idea of other sorts of organisations that might be accessing this information, they include Centrelink, local governments and universities. Universities are generally set up by a state government charter. However, are those who work within them exercising compliance functions in respect of their parking bylaws? Are they government officers? You are getting into a quasi-government stage. Port authorities are another example, and there are a whole range of others.

In conclusion, when it comes to commercial entities, this government made it clear—for example, when there was a recent application by Wilson Parking, which we opposed—that we were not prepared to give this sort of information to private entities. Having said that, the matter is not as simple as that. It is not enough to just assert that, as there are other ways that the sort of information that is held on our database can be accessed through the courts. In the future governments may well decide that this is a matter that needs to be managed in some way other than simply resisting and then having to respond to court-produced outcomes. I do not know. That is not something that is actively under consideration at the moment. If that were the case, there would need to be some device that not only permitted some exchange of information but also put a fence around how that information can be used. For now, that is not a measure that is contemplated, but there are a lot of other applications in which it is necessary to have such a power to prescribe persons.

Hon KEN TRAVERS: This is the key clause about the disclosure of information. I find it interesting that we are very prescriptive about to whom and when information can be transferred internally between government agencies. Clause 6 relates to the exchange of information between the director general and the Commissioner of Police and between the director general and other authorities, while information can be disclosed to the Commissioner of Main Roads and the registrar of the Fines Enforcement Registry. We have a very extensive framework. Proposed new section 12 under clause 6 states that information can be disclosed to a person prescribed “by the regulations for the purposes of this definition”. Later in the bill, it is proposed to replace section 15 of the Road Traffic (Administration) Act 2008. The legislation has not yet been proclaimed but it has been passed by this Parliament. As the minister noted in either his second reading speech or in answer to a previous question, this legislation supersedes that act so we can get on and deal with the issues around information whilst we are waiting for the Road Traffic (Administration) Act to be proclaimed. When we get to the relevant clause, we will abolish current section 15. The way in which the minister is proposing to handle this matter is different from the way it is currently handled under section 15. I am happy to be corrected if I am wrong, but the issues that I would say are different in section 15 are that there is provision in section 15 for information to be provided to all those bodies that are currently listed and there is provision for it to be provided to other state and government instrumentalities, which would include local government. The key issue in the existing legislation, which is not yet proclaimed but which has been passed by Parliament, provides for those records to be provided to people for the purposes of the performance of the person’s function under a written law, or for a function relating to the enforcement or administration of a written law. My reading of the legislation is that we could still do it by prescription, but only if it fitted in with another purpose under another written law or the administration of a written law, whereas this afternoon we are going an awful lot further and saying that we can pass this information on to whomever we like, so long as the minister prescribes it. Is that a fair description of what we are looking at here compared to what is proposed under section 15 of the existing act and what will happen as a result of the passage of this bill?

Hon SIMON O'BRIEN: I thank the honourable member for coming to the point of this question because I think it is quite pertinent. The good news is that I think I can satisfy his query. It is true that the relevant section in the Road Traffic (Administration) Act 2008 will be amended by way of a later clause in this bill. What we are creating now will be replicated precisely in the future when the administration act is proclaimed. That is desirable. We are considering clause 6 of the bill, which deletes section 8 and proposes to insert new sections 8, 9, 10, 11, 12 and 13 into the act. As members will notice, proposed new section 8 relates to the exchange of information between the director general and the Commissioner of Police. Proposed new section 9 relates to the exchange of information between the director general and other authorities. Proposed new section 10 relates to the disclosure of information to the Commissioner of Main Roads and proposed new section 11 relates to the disclosure of information to the registrar of the Fines Enforcement Register. These are known quantities. These

are major areas of information exchange activity, as I am sure the member would acknowledge. We have been pretty prescriptive in these four clauses.

Hon Ken Travers: It is between government agencies.

Hon SIMON O'BRIEN: They are specific government agencies. The member should notice that they are different; it is not just Main Roads being taken out of one and the police being put in. Different information is being provided. By the time we get to proposed section 12, which is what the member is looking at, we still see that a good level of prescription is required here. This is the theme that we have been talking about; that is, how much prescription do we have in here and how much do we allow to be prescribed somewhere remote from here? In the current version of the law—the bill that is before us now—we are evolving the way in which we prescribe what can be done, what information can be shared and between whom. This is more specific than what it proposes to replace. I do not believe that there is any failure on our part in these aspects of the bill.

Hon Ken Travers: But there was a restriction. Under the Road Traffic (Administration) Act there were restrictions on who could get the information. This is now saying that the only restriction is that you have to have it gazetted. A future minister could provide this information to whomever, so long as they prescribe that as being okay, which is not what you could do under the existing legislation.

Hon SIMON O'BRIEN: That is where we had a problem with the existing legislation, including with the Commissioner of Main Roads. A range of other functions are yet to be prescribed.

Sitting suspended from 6.00 to 7.30 pm

Hon SIMON O'BRIEN: Before the dinner break we were having an extensive and necessary discussion on clause 6, in particular that portion which introduces proposed new section 12 to the Road Traffic Act. Having reflected on this over the dinner break, it might be useful if I were to summarise where we are at and to make a short statement to the chamber about this. I hope members find that this addresses their questions.

Broadly, proposed section 12 provides that the director general may disclose to a prescribed person information for an authorised purpose. What information may be disclosed? The director general will only disclose information the prescribed person requires for an authorised purpose. This may be vehicle licence information, for example, in the case of a local government authority that needs the information in order to enforce local government parking bylaws. In the case of a person who operates a mobile speed camera device for police, the person will not require access to any information to perform that function. Generally, under proposed section 12(1)(a) and (b) the authorised purpose will be to administer or enforce a written law.

Hon Ken Travers: The minister said “generally”.

Hon SIMON O'BRIEN: Yes, “generally”, but now I will come to paragraph (c). Paragraph (c) will enable another purpose to be prescribed in regulation. I indicated before the dinner break that these circumstances may be many and varied and it would probably be impossible for us to contemplate an exhaustive list right now because circumstances change. An example of a circumstance that may need to be prescribed relates to the director general’s need to engage expertise for the maintenance and repair of software and hardware used by the director general for storing the information that he or she is required by law to keep, such as a demerit points register, a driver’s licence register and a vehicle licence register. In order to be eligible to undertake a maintenance or repair job, a potential tenderer would likely need access to the relevant software and hardware in order to scope the task. The director general cannot presently give such access.

Now we turn to the question of who might be a prescribed person for the purposes of proposed section 12(1)(c). Presently we know that various entities such as Centrelink, the Botanic Gardens and Parks Authority, port authorities, local governments, the Keep Australia Beautiful Council and so on require information in order to administer or enforce written laws. The list is extensive, and I guess that it is going to change and evolve over time, and as I pointed out in response to a question from Hon Alison Xamon earlier today, some of the entities are not government instrumentalities. It is intended to prescribe these entities in a schedule, which obviously will evolve and change as all schedules of things that are more convenient to prescribe by regulation evolve and change over the years. Providing for prescription in regulation is considered necessary to future-proof the framework for disclosure information needed for law enforcement, law administration or other authorised purposes that may be prescribed in regulation.

I was asked whether the regulations will prescribe non-government entities as persons to whom information may be disclosed for an authorised purpose. The answer is yes—possibly. Potential tenderers for software and hardware maintenance and repairs will likely be commercial entities outside of government. I think we can contemplate today persons who may need to be prescribed for an authorised purpose in due course. Hon Ken Travers mentioned earlier an initiative of a non-government entity that has approached government to float an idea. The idea relates to the proposal to establish a register that the public could consult to check whether a

vehicle that a person wishes to purchase has previously been written off and has been placed on the written-off vehicle register maintained by the director general. Such vehicles are sometimes rebirthed by unsavoury parties who endeavour to sell them to unsuspecting members of the community; however, these vehicles have been written off because they have been so badly damaged in an accident that the structural integrity of the vehicle has been compromised to the extent the vehicle is unrepairable and unsafe. If the government determined to support this idea, the proposal could not constitute an authorised purpose under paragraphs (a) or (b); however, they could be prescribed under paragraph (c) as an authorised purpose. Even though there would be non-government elements and non-government personnel and would not be law enforcement-related—not directly anyway—and would involve a commercial entity that is undertaking what is ultimately a commercial operation, it would still be desirable that such a thing could be facilitated.

In the example I have given the chamber, the information sought by the proponent would be the vehicle licence information only, and specifically information relating to previously licensed vehicles that had been written off under the Road Traffic (Written-Off Vehicle Register) Regulations 2003. I hope these examples reassure members that proposed new section 12(1)(c) has been demonstrated to be necessary. It is true that it is not a provision that currently exists. It is something we need to introduce as our legislation evolves to meet the needs of the day. I hope I have demonstrated, by way of the examples I have given now and before the dinner break, not only the necessity to have this device and this flexibility, but also that the intent of the government is to use it for necessary, benign and, ultimately, non-controversial and bipartisan purposes. They are my comments on reflection over the dinner break, and I hope they have been useful to members.

Hon KEN TRAVERS: I do not disagree that the government's intent is to do all those things, but with this legislation as drafted, the Parliament will lose control; it will be a matter of the executive making the decision. I am of the view, to borrow some words from the former Prime Minister, that a Parliament should decide who gets the information and the circumstances in which they get that information.

Hon Simon O'Brien: I did not know you were a disciple of that particular great man, but go on.

Hon KEN TRAVERS: I am not a disciple but one can put those words on the record. The minister, tonight, is saying, "Trust us." I may trust the minister, but I have a bit of difficulty with the new minister at times!

Hon Simon O'Brien: I do protest!

Hon KEN TRAVERS: Not that strongly, I note.

The Police Act has been in place since 1890. That shows how long a bill can last once it has been passed. Once we set up a framework like this and give away that power, in my experience, we never get it back; it will be gone from the Parliament never to return. We are setting up a situation in which the minister is asking us to trust the government. That might be fine for the current government, but who knows what a future government will do? I argue that that is a responsibility of Parliament. I do not think it is that difficult to draft a format to determine who should get this information and the circumstances in which they get it. As I understand it, the minister and I have both met with Wilson Parking—the example the minister gave tonight. I do not have the advantage of the expertise the minister had in the department to analyse all the implications, but on the face of it, what that company put to me sounded like a good idea. It did not want personal information; it wanted only the vehicle information to allow the company to match it with a range of other information it would collect in WA and around Australia and then provide a database that would be useful for consumers. As the minister pointed out, it would prevent rebirthing of stolen or written-off vehicles, fraud and a range of other things. That would be a great outcome. It is not that hard for us to write in the circumstances. At the same time, what the minister is proposing here today—correct me if I am wrong—will allow a future government to say, "We will provide the details of the people's addresses and motor vehicle registrations to Wilson Parking." There is nothing in this legislation that will prevent a future government doing that. I will finish with the question: under this legislation, if the government put in the *Government Gazette* that the purpose is to chase up unpaid fines and that the class of companies is anyone who owns a car park, could a future government provide the information previously provided to Wilson Parking to a future Wilson Parking?

Hon SIMON O'BRIEN: The member asks an intelligent series of questions. I will treat them with respect and respond to them now, as I hope we are getting to the end of the debate on this particular clause. Again, I think I can offer some comfort. There is no edge in my voice as I say this: I do not believe that I said, "Look, just trust this government; we are going to do the right thing." I do not think I have said anything like that, even though Hon Ken Travers used the words, "Just trust us, we'll be fine; we're the government." With respect, I have not said anything as glib as that. I am pointing to the letter of the bill before us and saying that, to meet the challenges of the day and the future, within reasonable parameters, this is the instrument that we require and this is how it has been designed with all in mind that we have discussed. Now I am going to get a bit glib for a

moment. The honourable member pointed out that even if we accept that this government is as pure as the driven snow, governments come and go.

Hon Ken Travers: I think I said that on this occasion, I do not think your intention was to do that.

Hon SIMON O'BRIEN: Okay; I think the word “licence” has come up from time to time, but in a different sense! Hon Ken Travers’ concern was about a future government. Hopefully, not a different government in the immediate future because that would reflect adversely on Hon Ken Travers’ motives! But I am being flippant when I say that.

Hon Ken Travers: The rumour that Eric and Brendon are having a glass of red wine is a complete myth!

Hon SIMON O'BRIEN: Hon Ken Travers needs accountability, this Committee of the Whole needs accountability and this chamber is looking for accountability, and I think he has got it. Let us take poor old Wilson Parking, which is always mentioned in relation to this. In opposition I have crossed swords with that company and more recently in government publicly, even though there is no personal antipathy.

Hon Ken Travers: It’s about policy. I don’t have a grudge against Wilson Parking.

Hon SIMON O'BRIEN: That is right. We keep using Wilson Parking as the example. I think that a government that gazetted a regulation that enabled certain personal information—name, address and so on—to be provided to a private entity would have some real explaining to do in this place and elsewhere in the community. The government would have to justify it. That is another way we have a safeguard because that is the very nature of prescribing by regulation. Who knows what might be prescribed in future? A private entity such as a parking company might enter into an arrangement in which government maintains the integrity of its information by setting up a process to act as an intermediary for that company, and the government entity communicates with the alleged parking miscreant based on the registration number given by the company. Who knows what might happen?

Hon Ken Travers: But the government will not have provided the information then, so it will not be a problem.

Hon SIMON O'BRIEN: Indeed. Who knows; that might happen. Let us not speculate too much on that, but let us take the example Hon Ken Travers gave. If a policy decision were made to do that, it would be a matter for the government of the day. It would be a public decision and the government would have to make sure that it did that in a way that is acceptable to community standards. Obviously, Parliament would retain its role to scrutinise subordinate legislation under section 42 of the Interpretation Act. Again, that is not the full process of a bill going through Parliament. I recognise that. I am saying that we believe that the instrument before us now meets the tests of balance between all the competing demands. In closing on that point, I remind Hon Ken Travers of one further thing: in considering proposed section 12, as we hope it will be, we have been looking at what “authorised purposes” might be. We have had a good discussion about that. We have seen that there is a need, I think, for authorised purposes to be prescribed in future. We have looked at the term “prescribed person”. I think we have also demonstrated that there will be a need for such a device to be at our disposal in the future.

The other matter I draw attention to is proposed section 8, which refers to not only who may get information or for what purpose they may receive information but also what information may be provided by the director general. That narrows the scope. It also requires that the information provided is actually required by the person for the authorised purpose. It breaks it up into several categories. The additional test that has to be met is that in each of the five categories of information—it is a pretty limited range—the director general has to be satisfied that there is a real requirement for whichever parts, any or all, of those types of information are to be provided; again, a further safeguard. All in all, I think we have the balance right. Is anything ever going to be perfect? Heck, we are amending an act that prevents us from giving a grieving mother the only known photo of her deceased child. That is the sort of thing that comes under this act, and it was never contemplated that the restrictions of this act would manifest themselves in such a way, but that shows members how, yes, there are times when we need to come to the house to adjust the act.

Hon Ken Travers: As the minister recalls, the house was ready to cooperate with the government to facilitate the passage of legislation to deal with that issue and fix that problem.

Hon SIMON O'BRIEN: Indeed; the only trouble is, there are two houses of Parliament, and it is not clear whether the other one would have been available to do it.

Hon Ken Travers: I am sure it would have gone to the other place as well, but the government certainly would have gotten the same cooperation from the opposition. We were prepared to facilitate the passage of the legislation to fix a problem like that.

Hon SIMON O'BRIEN: I am sure we would have, and there is no argument about that; it is just that the other matters did not come together to enable us to do that. That is not a point in dispute. What, also, should not be a point in dispute is that from time to time we make laws in this place, based on all of the advice and balancing all

of the competing demands, that may need to be changed in due course, but I believe that the Road Traffic Legislation Amendment (Information) Bill 2010 fits the bill, and so I commend clause 6 to the house.

Hon KEN TRAVERS: I asked a very specific question, and I will ask it again in the hope that I can get a simple, clear answer. Under this clause, would this or a future government be able to provide information of the type that was provided to Wilson Parking to a parking company?

Hon SIMON O'BRIEN: I do beg the member's pardon, he did ask that specific question; I was not seeking to avoid it. I believe that yes is the clear and simple answer to that. I also point out that this information was provided in tens of thousands of examples for a fee paid by Wilson Parking under the previous legislation. So, again, there are no absolute guarantees of everything.

Hon Ken Travers: That's why we are here to fix it.

Hon SIMON O'BRIEN: I am not so sure that we can fix that particular thing, and I alluded to that in my second reading speech, but it is not the intention of this government to go out of this place, armed with this new provision, and start regulating for private entities to buy or otherwise obtain this information. But, yes, it could be used for that, and that would be subject to the normal review of the regulations.

Hon KEN TRAVERS: The minister referred earlier to the Interpretation Act. Correct me if I am wrong, but my understanding is that this would allow a future government to sell this information to the private sector. It may not even be the minister; it could be an instruction from Treasury because it has had an economic audit and has decided it needs to raise some money quickly and it sees the opportunity to sell this information to the private sector, because, as the minister rightly pointed out, this type of information is a valuable commodity in the private sector. So if the government gazetted the necessary legislation, it would then be able to provide that information to the private sector. Parliament may, at some point in the future, disallow that regulation, but the information has already been sold and provided, and there is no way the Parliament could require that information to be returned by that company. Am I correct in that assessment?

Hon SIMON O'BRIEN: I will raise a couple of concerns in response. For example, if a government of the day was to decide to start flogging information for the sake of raising some money—let us say it as blatantly as that because that is basically how the question was put—I think that might run foul of the state trading act. Although the giving of information to Wilson a number of years ago in exchange for a fee was characterised in the public domain as selling information, a fee for service was actually charged; it was not actively selling for reward. If we were to embark on selling for reward, I think that would offend the state trading act, but, in any case, that is not what we are debating now. I am sure the honourable member is not motivated purely by trying to get me to give some quote that can be held up as saying that we have some secret agenda for doing this.

Hon Ken Travers: I'm happy to say that I do not think the current government has a secret agenda to do this. I am saying that the government is asking us to pass legislation that will last beyond the current government, and that a future government may see that as an opportunity and that the Parliament will have lost the control to prevent it.

Hon SIMON O'BRIEN: Okay. To address that point directly: there are many, many occasions—indeed in almost every bill that sets up any form of administrative machinery—on which provision is made for regulations to prescribe those matters that are most conveniently prescribed in that way. That gives discretion to governments as to who, what or how much is included in the schedules produced under regulation—I understand that. Governments can do things that we disapprove of in a number of ways, even using the existing letter of the law. That is not the intention, and I do not think we should say that that will be the intention of a future government, but if it is, it will be up to the other checks and balances available in the system to hold such a government to account for its actions. I think that addresses the respective merits of what is being argued. I think it is a good exploration of the issues, but ultimately, having explored that, we need to move ahead with this legislation, and I hope we will be able to do it.

Hon KEN TRAVERS: Minister, one way of resolving this that would certainly give some greater security, I think, to me and to future Parliaments would be if the government was prepared to consider the method used for other legislation, whereby the government cannot provide the information until the regulations have passed the disallowance stage in Parliament. I would imagine that is something that could be drafted; I have seen it before in other legislation. I am trying to remember which bill it was, but I know of a bill that did not immediately allow the release of information after it had been gazetted.

Hon Simon O'Brien: I understand what you are saying, yes.

Hon KEN TRAVERS: I do not know whether the government would consider that as an amendment, but I think that would provide some protection at least, because the house would have the opportunity to stop the information being provided by a future government, rather than setting up a framework whereby the information can be provided, and even if the house was to disallow it, it would be too late.

Hon SIMON O'BRIEN: I appreciate that the suggestion was constructively offered, but the government is not able to entertain it. I acknowledge that there could be some situations in which what the member has outlined works—I am sure I have seen it, too, in legislation, but none comes to mind. We are trying to achieve the flexibility, within certain parameters, to have certain elements of information provided, being the right information for the right purpose to the right people, as prescribed by legislation, to meet the needs of the day. I think that is a flexibility that we need from the time that regulations are gazetted, bearing in mind that the existing provision, say for disallowance, may cover many months, particularly if it is over the summer recess of Parliament, for example. Therefore, again, we will defeat ourselves if we build in mechanisms that could ultimately delay any decisions that need to be made. The sorts of things that the member is worried about are extraordinary decisions. We are talking about making significant improvements to our vehicle and driver's licensing databases, to ensure that they work better, and that the correct safeguards for the rightful transfer of that information are in place. This is a significantly improved evolution on the current situation. Maybe we have not yet reached the ultimate, but I think that is all we can achieve now. The change that the member is suggesting is sufficiently radical that I would not be prepared to entertain it on behalf of the government at this time.

Hon KEN TRAVERS: Perhaps the minister will undertake to talk to the minister in the other place, and he can move this as an amendment in the other place; and, if the bill did come back to this place with that amendment, we could flick it through as quick as a flash.

Hon Simon O'Brien: If that will help us make progress, I will undertake to report that.

Hon KEN TRAVERS: In that case, I am happy to move on.

The minister said that what we are trying to do here is make the system work better. What we are also doing is setting up a mechanism whereby information that has been provided to the government—namely, the personal private details of individuals, which is pretty important and pretty valuable information—may be released to the public. I realise that a process will need to be gone through. However, when we are dealing with information that has been provided to the government, we need to take it very seriously.

Hon Simon O'Brien: I fully agree.

Hon KEN TRAVERS: There is one final area that I would like to get some clarification about. I understand the tests that must be met in order for this information to be released; that is, it must be for a prescribed authorised purpose, and it must be to a prescribed person. However, once that information has been provided to that person, what controls will be put in place over what that person may do with that information? Can the minister explain to us how that will work?

Hon SIMON O'BRIEN: I have just been taking some advice, Mr Chairman. I think it would generally be understood by Hon Ken Travers, and by me and other members, that there is a range of provisions and sanctions in this bill for persons who obtain information, quite lawfully, in the course of their duties, and misapply it. Members would also be aware of clause 12 of the bill, which proposes to introduce a new section 103 into the Road Traffic Act. That proposed new section also creates penalties for people who use information obtained through the act in a way that is not authorised. I think that would generally be understood. However, I believe that Hon Ken Travers, in the question that he asked, is going beyond that—he can correct me if I am wrong, or he can confirm if I am right. Hon Ken Travers asked about the security of information that is passed from the authorised person to some other public third party who does not have the same obligations through his employment, or through separate obligations currently or in the future to be cast under the act. I would say this in response. There comes a point at which the chain of responsibility and sanction finishes in relation to information that is obtained in the course of official duties and is then communicated outside. Once information has been communicated outside, it is in the public domain. If another person then obtains that information, that person is not the one who has unlawfully used that information. Hon Ken Travers also asked whether there is some sort of sanction for those who receive information unlawfully. That is the nub of the question that Hon Ken Travers asked, I think.

Hon Ken Travers: It is a range of areas. Obviously within the government there will be a range of protections around that information. The police computers show who has logged on and who has accessed what information and when they have accessed it. However, once information is given to the private sector, what controls will there be at that level? Part of the answer is that we will need to be very careful in how we prescribe the purposes, because if the description is too wide, we will not be able to stop people from using this information willy-nilly, because they will be able to say that it was within the purpose for which they got it.

Hon SIMON O'BRIEN: If public servant A or police officer B were to obtain information in the course of their duties, whether they were entitled to extract it from the systems that are available to them, or not—whether they came by it lawfully, or not—they would be committing certain disciplinary, and possibly also criminal, offences

if they then conveyed that information to people not authorised to receive it, if they conveyed it in certain circumstances. We know that; that is agreed.

Hon Ken Travers: They may be captured by proposed new section 103 under clause 12. Equally, they would be captured by the Public Sector Management Act and a range of police —

Hon SIMON O'BRIEN: We are all agreed on that. The member's question is: in all of the authorised purposes and what have you that we have spoken about, and then they in turn —

Hon Ken Travers: And it has gone out to a private organisation.

Hon SIMON O'BRIEN: The member wants to know what sort of sanction there is, if any, against that behaviour. I will take some advice.

Hon Ken Travers: And what protections are there around that information as well.

Hon SIMON O'BRIEN: Sure.

The bill before us deals with what it deals with. The question raised in my mind by the honourable member's question is whether we have existing provisions that will provide the safeguards that he seeks. I am not in a position to answer that now. What I propose as a way forward is this: this matter can be further researched overnight before the house meets again tomorrow. I would hope that one of the orders of the day for tomorrow might be the adoption of this committee's report, but if we can make progress in the balance of this bill, which I think most members recognise has merit, I will undertake to do that homework and deal with the honourable member behind the chair. I will give him an undertaking that if we can identify a gap that he is suggesting might exist, we will talk to him with a view to closing that gap.

Hon KEN TRAVERS: I appreciate that, and I am happy to proceed on that basis. I add that it is also about the control mechanisms in the place where it goes. As the minister pointed out, there is a range of potential additional controls when that information is in the hands of public servants over and above what is in this legislation. Once that information is passed to private organisations, we lose those controls. I am happy to proceed as the minister outlined. I will ask one final question, which I want to get on the record to be clear. We talked earlier about a company that was trying to put together a vehicle database. Is the government confident that under this legislation it will be able to provide the information that the company is looking for should the government decide it wants to provide that information?

Hon SIMON O'BRIEN: Yes, Mr Chairman.

Clause put and passed.

Clauses 7 to 9 put and passed.

Clause 10: Part IVA Division 4A inserted —

Hon KEN TRAVERS: Before I formally move the amendment standing in my name, I wonder if the minister could explain to the house exactly how he sees this provision operating. As I said earlier, if the Australian Security Intelligence Organisation wanted the information and it was for its legitimate purposes, it would be able to get it. I will focus on the provision of the photographs to the police. Can the minister outline to the house how he envisages this section operating in terms of the photo? Will they all be provided to the police service? Will the police maintain them on their own database? Will they be available to every police officer in their cars at all times? Can the minister give us a general outline of how he envisages it operating?

Hon SIMON O'BRIEN: Following our earlier extensive consideration of clause 6, which introduced a range of provisions relating to all kinds of information by the director general, we now turn, under clause 10, to providing a new division 4A into the act, which is about the disclosure of photographs. Typically, in this day and age photographs are digitally available and transferable by the mechanisms that currently exist with computers, and which are being developed all the time. I am going to be brief on this. If the member wants more, I am sure he will ask for it. In general, the vast majority of traffic contemplated here is not for other purposes such as national security under ASIO or disclosure to any relatives—we will come to that subject in a moment as well, separately—it is about police getting access to these photos. I pointed out in my closing remarks to the second reading debate that of course the police used to have access to all of this information because historically they did all the drivers' and vehicle licensing. That was at a time, I suppose, when photos were by and large not part of that database.

Hon Ken Travers: I suspect there would have been a wall in terms of that information. It may have been in a database but was not available to operational police. It was within the database, but anyway.

Hon SIMON O'BRIEN: I suspect there were provisions in place for it to be fairly freely available to operational police. Indeed, I think members will find that the legislation of the day was set up that way. Be that

as it may, that is another matter that has long since passed. The member wants to know how police might access this. This is an important point. I think we all agree there would be plenty of circumstances in which it is desirable for operational police officers who are actively pursuing their duties to have access to the information contained in their databases, particularly photographs that nowadays go with drivers' licences. We alluded to some of those things earlier in the debate. I do not think we need to go through them again. There is a range of reasons, whether it be protecting against identity fraud or identity theft, finding a way to identify someone who might be lost and suffering from dementia, or a suspect who has fled a crime scene and needs to be urgently identified and apprehended. There are a range of good reasons. Similarly, it has also been recognised in the debate that this is sensitive information that could be misused. It is proposed that the director general of the Department of Transport, in pursuance of division 4A, will provide information—the disclosure of photographs—to the Commissioner of Police and his delegated officers in accordance with the protocols that will be developed by those two chief executive officers. There will be a heavy reliance on the existing police requirements for the security of information, the accessing of information and what is done with it and so on. I have a lot of information about what provisions exist, but I think members are generally aware of the circumstances in which the police can access that information.

Hon Ken Travers: Are we talking about handing over individual photos on a case-by-case basis, or are we talking about handing over the database of photographs that will then be merged into the police database and be accessible to police officers at any time?

Hon SIMON O'BRIEN: The idea is not for police to apply piecemeal for individual photos through some process, whether that involves filling out forms or whatever; the police will have direct access to the Department of Transport's licensing database. The constraints on the access to that will be as I have already described; that is, in accordance with the protocols that are to be decided by the Commissioner of Police in consultation with the director general of the Department of Transport. The accessing of the information will be recorded and will reflect heavily all the protocols that the police currently have for accessing databases for personal information of whatever type. The bill sets out some other parameters. Proposed section 44AB(1) states —

The Director General must disclose photographs to a police official for the purposes of the performance of the police official's functions under this Act or another written law.

That is just one example. That sets a clear obligation on not only the director general, but also the police official. As I have already indicated, the police need real-time access to this type of information. It is not intended that an officer will fill in a form that will take three days to process before getting a photo. There will be none of that. The police will have direct access, via a computer terminal or terminals, to the Department of Transport's database. Access to those terminals obviously will be restricted to police personnel who are authorised by the commissioner under the terms of the protocols.

Hon Ken Travers: Will that include the in-car terminals that police officers now have in all vehicles?

Hon SIMON O'BRIEN: Not in the first instance, but it is clearly envisaged that it would be desirable to do that once the tasking and data information system is capable of such an interface. Again, protocols will need to be put in place in the same way that protocols are required to provide other information over TADIS or via a computer terminal of some other variety. There may, for example, be a further restriction such as "view only" so that an officer can examine a photograph to verify an identity as presented, and off it goes. Conversely, in other situations, not out on the street at 2 o'clock in the morning, but perhaps during the search for a missing person, hard copies of photos may be needed for distribution among personnel or for some other purpose. The short answer is that it is proposed that this will be within the constraints that normally apply to police officers accessing personal information within those same disciplines with which we are familiar. We have seen police officers prosecuted for the misuse of the system. The same disciplines that I and this Parliament would require, if we pass this legislation, will apply. However, it is intended that the police will have direct access to the database, as required, even though the requirement is circumscribed by the provisions of the act.

Hon ALISON XAMON: Can the minister confirm that the criteria that will be developed in order to prescribe the way that police officers in particular can access certain information and the form in which they can access it will be done internally by policy rather than by regulations? Is it not prescribed beyond that?

Hon SIMON O'BRIEN: Substantial statutory requirements are already in place about accessing this sort of information, and we will not impose any more. Similarly, I do not believe there is any scope for further prescription by regulation. It will be what can be seen here in the proposed provisions of the bill.

Hon Ken Travers: It will come down to the internal police management controls about how the police can access these photos once we pass this bill.

Hon SIMON O'BRIEN: Absolutely, but acting in communication and cooperation with the director general of the Department of Transport, because only he can provide it once he knows what he is providing it for.

Hon Ken Travers: You said that he can provide access to the whole database, so then it is up to the police to manage it.

Hon SIMON O'BRIEN: No. There is a process for auditing and monitoring police access to computers, and that will continue to be done by the police.

Hon ALISON XAMON: I was responding to the comment the minister made about some data not being able to be printed out, for example. How will that be—I was going to say “policed”, but I should not—managed and monitored? I would like the minister to confirm whether those limitations will be determined by internal policy.

Hon SIMON O'BRIEN: Again, I reiterate that any access to these photos will be governed by the same strong regimes that apply to police access to other sensitive information and systems. A lot of that information is a heck of a lot more sensitive than what we are talking about here, let us face it. In relation to hard copy, or view only, it is envisaged that when this is fully accessible by the police—it will be sometime before the technology is available—about 80 per cent of the everyday applications for and verification of identities, for example, would be done through TADIS and TADIS-like systems, which are “view only” anyway. The whole point is to become electronic and paperless.

Hon KEN TRAVERS: Basically, if we pass the bill as it currently stands, all the photographs will become available to the police and at some point in the future they will be available to police officers in every police vehicle and on every handheld TADIS. That is the simple fact of the matter.

Hon SIMON O'BRIEN: Access to each and every photo will be available to the police in the circumstances that are set out in the bill and within the guidelines that will surround that. It is a subtle distinction. It is not the case that on day one the contents of the databases get copied over to some police computer. That will not happen. The police will have to access individual photos as they require to access them, which obviously will not be all of them in one go, and it will not be all of them over a period of time.

Hon KEN TRAVERS: Earlier I noted the comments of the minister in his response to the second reading debate when he said that the situations in which there would be real-time photos in a security situation would be limited. In fact, we are now seeing that the reality of this bill is that if a police officer pulls someone over or stops them in the street, at some point in the future—I accept not immediately—a police officer will be able to type the person’s name into the system. The person may say that his name is Hon Simon O’Brien. The police can type that into the system, and a photograph of the person will come up immediately. If we incorporate all that with the ability to share that information with others, that says to me that our drivers’ licences are becoming identity cards. That is the bottom line. In fact, it is probably worse than an identity card, because it will no longer be a case of the police officer saying, “Present your papers to me”; it will be a case of the police officer saying, “Tell me your name”, which the person must tell the police officer, and then the police will have the papers there in front of them; they have the person’s photo and their details. That, to me, on any description, says that we are creating an electronic identity card. That is the point I made in the second reading debate. On that basis, I move —

Page 15, line 12 — To delete “must” and insert —

may

As members will see, there is a subsequent amendment. This will remove the word “must” and set up a framework under which photographs can be provided to the police, but there has to be a compelling reason in the public interest for the disclosure of those photographs.

The example that was given as the justification for bringing in this legislation is one that I am happy to support. If someone is running around the town and there is a risk to public safety, and if that photo is the only one that can be accessed, I have no dramas about having quick and easy access to that photograph. My amendment would allow that to occur. However, I do not think we should allow a massive handing over of all those photos for the database. It is interesting to go back and look at the debate. When we put forward the issue of the photographs, there was a huge argument about civil liberties. If members recall what happened, they will know that we have seen a creep. Initially, there was concern about even having photos on drivers’ licences, and it was going to be optional whether a person had their photo or did not have their photo on their driver’s licence. Many people chose to not have their photo on their licence. Then it became compulsory for a person to have their photo on their driver’s licence. Now we are going to move to the next stage whereby that photo will be available to every police officer across the state. People cannot see what is happening with the creep. Then we combine that with all the other legislation that has been proposed in recent times. It may not be the intention of members of the government—I am genuine when I make this comment—but when a party uses the word “Liberal” to describe itself, bearing in mind what that means in its strictest political sense, I find it extraordinary that that party is progressing down the path of setting up all the mechanisms for a police state.

The problem with a police state is that it does not have to be today. When I use the term “police state”, I do not mean any disrespect to any serving police officers; I am using it in the sense that it is used around the world to describe those areas where powers are abused and used to suppress the public and the democratic freedoms and the social contract—however one wants to describe it—that we as a community have, if we are law-abiding citizens, to go about without being subjected to the rule of an overbearing government. When we put it all together, the police will be able to stop and search people. An identity card will be sitting there on the tasking and data information system so that the police can look at the person. How long will it be before everyone who does not have a driver’s licence will have to provide their photograph so that it can be recorded in the database? That will be the next progression at some point in the future. It is just a continual time line, and we can see where it is going. It is voluntary, then it will be compulsory, and then a photograph will have to be handed over.

Some would argue that my amendment is probably not enough, but it is at least an attempt to say that we have to try to place some restrictions in this legislation. It must be the case that if a photograph is handed over, it has to be in the public interest. It should not be handed over for the sake of making the job of the police easier, because that is about removing and damaging the social contract that we have.

Hon SIMON O’BRIEN: If members want to do a little more homework, they might want to examine what happens in other states in which photos and other information are disclosed by licensing authorities to police or police officials. Police states have not manifested themselves, but there have been significant benefits as contemplated in advancing the capacity for this sort of information to be exchanged.

I have the greatest respect for those like Hon Ken Travers who offer wise counsel against the dangers of the erosion of civil liberties and advancement towards what we might call a police state. I do not think any of us want that, and we do not want to be a party to it. So we are in furious agreement on that point. Let me just remind members, though, that what we are talking about are amendments to the Road Traffic Act; we are not talking about licences to live or compulsory identity cards or “show us your papers” type situations arising in our streets.

Hon Ken Travers: It’s getting very close.

Hon SIMON O’BRIEN: That is a different matter, and who knows? Perhaps as a society we may want to go down that path one day. I certainly hope not, because that is not the sort of Western Australia that I would recognise or want to be a part of.

Hon Ken Travers: It’s just another step in that direction.

Hon SIMON O’BRIEN: The member has made that point and made it very well indeed.

I would like to offer a different perspective about what this legislation is about. This is about amendments to the Road Traffic Act as to what may be done by the custodian of information gathered under that act, the Director General of the Department of Transport, relating to how that information may be deployed, conveyed, utilised or passed to other parties. That is what it is all about—no more, no less. And that information can be used only for purposes that are related to the Road Traffic Act and the licensing regimes.

When a driver’s licence may need to be produced to a police officer, it is in connection with the Road Traffic Act. It is not the case that a police officer may demand someone’s driver’s licence and that they be required to show it. It may happen from time to time that people produce their driver’s licence as a way of confirming their identity, because that is a convenient thing for them to do —

Hon Ken Travers: Minister, can I just interject —

Hon SIMON O’BRIEN: — but it is making too much of a leap to say that a requirement for someone involved in driving a car to be called on to display their driver’s licence or present it to a police officer translates directly into some police state in which anyone can be required to produce some licence to live. Did the member want to interject?

Hon Ken Travers: The minister is right in terms of the Road Traffic Act and a police officer can require someone to give their name, but what he has missed is that once this bill is passed, they will also be able to access all the details on a driver’s licence, including the photograph and address. The point I am making is that the minister is moving beyond the realms of the Road Traffic Act because this information can be used in circumstances well beyond the Road Traffic Act.

Hon SIMON O’BRIEN: It is currently the case that in the pursuit of duties in relation to the Road Traffic Act, a police officer may require a person to present their driver’s licence. What is on a driver’s licence? It is a person’s full name and address, which a police officer can require of people anyway—their date of birth, the class of vehicle that a person can drive and their photograph. If the member or I were pulled up for a roadside check, we would present our driver’s licence with our photograph, which would protect our identity on our licence. This provision says that the officer can access the photograph of the person before them or the photograph of the

person they claim to be. I have already referred to the advantages of that, which most obviously are a reduction of people falsely representing themselves as someone they are not. That happens a lot and people's civil liberties are transgressed by people assuming their identity by the simple device of giving a false name when they are picked up for an offence, whereas, if police were able to check the identity of a name that is given by reference to a photo, they could make sure that the real owner of the name presented is not receiving demerit points they are not entitled to and the culprit is exposed as a fraud. It enables police officers to check the bona fides of someone who is driving a car and may have committed some offence but who does not have a licence to display at that time. An interrogation of the system will tell the officer whether that person actually has a licence, and access to a photo will enable the officer to confirm whether they are the licence holder. It can then get very interesting if that person, for example, has warrants outstanding and might otherwise give a false name and get away with it. There are many, many benefits to this clause. I do not see it is a move towards a police state; it is a realistic use of available information for legitimate purposes, but only in relation to the Road Traffic Act. The amendment that has been moved by Hon Ken Travers defeats the intent of the clause, and I advise the Committee of the Whole House that the government will not be supporting it.

Hon Ken Travers: I thought I had just about convinced the minister.

Hon SIMON O'BRIEN: The member's argument did not quite drag me over the line. I am aware of, and freely acknowledge, the member's intentions, but I do not think it is practicable to insert a requirement that the director general must be satisfied there is a compelling reason in the public interest for disclosure of the photograph. All of a sudden, that defeats the aim of direct real-time access, which is what this is all about. How is the Director General of Transport meant to confirm the view in his own mind about what a police official's performance of his official functions under this act or another written law are? That is the sort of thing that the Commissioner of Police has to be able to satisfy himself of, and we think that is the appropriate area for that to exist. Otherwise, we are going to go back to some situation in which the director general, through his delegate, has to individually go through applications and we will end up with a bureaucratic quagmire rather than a real-time response. Respectfully, we will not be supporting the member's amendment.

Hon KEN TRAVERS: Until the very end of the minister's response, I was going to let this go to the vote. The minister said that the police commissioner will be responsible for ensuring that the photos are used only in the performance of a police officer's function under this act or another written law. How will the police commissioner do that?

Hon SIMON O'BRIEN: It will be by exercising the same regime that applies to all information that comes under an officer's control or disposal, whether it is by computer access or however so obtained. Significant legislation, regulation and policy requirements are attached to police officers accessing information, and these will be extended to these photographs. In oversight and governance, there are professional standards, the Corruption and Crime Commission, personal vetting plus higher level security vetting, integrity testing, early intervention and profiling managed by the risk assessment unit, a declarable associations register and the BlueLine for anonymous and confidential reporting. Furthermore, in regard to the actual physical systems security, there is a password for standard operating environment access, a password for database access, partitioning to ensure that there is a job-related need for access, a system audit functionality and an audit and flagging system employed by professional standards in the police called AudiTrack. Those are the mechanisms to ensure that the police commissioner is satisfied with the appropriate dealing with the information obtained.

Amendment put and negatived.

Hon KEN TRAVERS: I move —

Page 15, line 15 — To insert after “written law” —

, if the Director General is satisfied that there is compelling reason in the public interest for disclosure of the photographs

Amendment put and negatived.

Hon SIMON O'BRIEN: I move —

Page 15, line 20 — To delete “may” and insert —

may, with the prior approval of the Commissioner of Police,

Clause 10 will insert a new division 4A into part IVA of the Road Traffic Act 1974. Division 4A will set out the circumstances in which the director general must or may disclose a photograph that has been provided to the director general for use in the production of a learner's permit document or a driver's licence document. This amendment will affect proposed section 44AB(3), which will empower the director general to disclose such a photograph to a prescribed law enforcement official where the director general considers that its disclosure is required for the performance of functions under a written law. The amendment will require the director general

to seek the approval of the Commissioner of Police before disclosing a photograph to a prescribed law enforcement official under proposed section 44AB(3). This is necessary to ensure the continued safety of a person who is a protected witness for the purposes of the Witness Protection (Western Australia) Act 1996. Under the witness protection act, the Commissioner of Police is required to establish a state witness protection program under which protection and other assistance may be arranged or provided for witnesses whose safety is or may be put at risk due to the nature of their evidence. Amongst other matters, the witness protection act provides for the commissioner to apply to the Supreme Court for a new identity order to be made in respect of a witness. The Commissioner of Police, as the official with the responsibility for the state witness protection program, has knowledge of the identity of protected witnesses. The requirement for the director general to seek the commissioner's approval will require that a photograph not be disclosed if its disclosure would compromise the safety of a protected witness. This is a necessary safeguard that we will introduce.

Hon KEN TRAVERS: The opposition became aware of this amendment, I think, late yesterday. I have not had a great deal of time to consider it but I am happy to agree to its passing through this place. If on further consideration we have any concerns, we can raise them in the other place and, if we can convince the government, the bill can be returned to this place. It causes me some concern because if, despite the information being provided, a photograph is not provided, it will be a red light to anyone on the east coast that the person might be a protected witness. I do not know how we get around that. I kind of understand what the government is trying to do, but I ask that we think about the fact that if we show there is an exception in relation to someone, we will be flagging that person as being different in some way.

Hon Simon O'Brien: I am sure the commissioner and his senior officers will be aware of that.

Hon KEN TRAVERS: If in Western Australia a person is pulled over to the side of the road and their name is keyed in for a licence check and the details come up without a photograph, that will also be a flag. I raise those issues and let better minds than my mind consider it within the government. We will not oppose this amendment at this stage.

Amendment put and passed.

Hon SIMON O'BRIEN: I move —

Page 15, line 26 to page 16, line 7 — To delete the lines and insert —

44AC. Disclosure to executor or administrator

If the person shown in a photograph has died, the Director General may disclose the photograph to an executor or administrator of the person's estate.

This amendment has been drafted in response to concerns raised by the opposition. The matter was canvassed by members during the second reading debate. I think we all understand the provision. Clause 10 inserts a new division 4A in part IVA of the Road Traffic Act 1974. Division 4A will set out circumstances in which the director general must or may disclose a photograph that has been provided to the director general for use in the production of a learner's permit document or a driver's licence document.

This amendment will affect proposed section 44AC, which, in its present form, will empower the director general to disclose such a photograph, when the subject of the photograph is deceased, to a near relative of the deceased person. The amendment will provide for proposed section 44AC to be deleted and replaced with a provision that, instead, will empower the director general to disclose a photograph of a person who is deceased to the administrator or executor of the deceased person's estate. Pursuant to the amendment, the photograph will be treated as a part of the deceased's estate to be dealt with appropriately in accordance with the deceased's wishes. I would like to thank members of the opposition for their constructive suggestion. The government commends this amendment to the Committee of the Whole.

Hon KEN TRAVERS: I have covered this in my contribution to the second reading debate. I thank the government. I think this is a better way of proceeding with the bill. The amendment will achieve its aims and will actually provide some protection. It even means that, if the only surviving relative is an uncle, he will be able to get it if he is the executor. It broadens the provision and, hopefully, an executor or administrator will have a better understanding of the wishes of the deceased person. I thank the government for accepting the opposition's amendment. I note that we managed to shorten the bill by somewhere in the order of 10 lines. That is always a good thing!

Hon Simon O'Brien: Brevity is always my strong suit; you know that!

Amendment put and passed.

Clause, as amended, put and passed.

Clause 11 put and passed.

Clause 12: Section 103 inserted —

Hon KEN TRAVERS: I think this is certainly one of the provisions in this bill that will work to facilitate privatisation. I also realise that it has some other roles to play in the legislation that has now been presented. I think that could have been handled differently, but in light of the wording of the legislation, I will not move any amendments because it is important as it stands in relation to earlier legislation. I hope the government does not go down the path of privatisation. If it does, we will oppose that strongly at that stage.

Hon SIMON O'BRIEN: I thank the honourable member for contributing to debate on this clause. We believe the clause is required regardless of what a future government might do about privatisation or contracting out of functions. It is not, with respect, to be taken as evidence of something that this government may or may not do in the future. We believe that these provisions are required regardless. I ask the chamber to support this provision.

Clause put and passed.

Clauses 13 to 25 put and passed.

Clause 26: Part 2 Division 3A inserted —

Hon KEN TRAVERS: I indicate that I will not proceed with the amendments standing in my name on the supplementary notice paper. This is one of those proposed sections in which we are duplicating what is in the Road Traffic (Administration) Act. Even if I were lucky enough to somehow gain the support of the chamber on this one, I suspect that we would end up having to recommit the whole bill to make the two pieces of legislation consistent. Therefore, I will not proceed with the amendments standing in my name.

Hon SIMON O'BRIEN: Mr Chairman, of course if we fail to make this consequential amendment to the 2008 act, that would only give argument to not bring in the bill because that would be inconsistent with what we are trying to do and with what the committee has already decided. With that in mind, I had best move the two amendments standing in my name on the notice paper. They are consistent with the last amendments that I moved. For the same reasons as previously expressed, I move —

Page 32, line 1 — To delete “may” and insert —

may, with the prior approval of the Commissioner of Police,

Page 32, lines 7 to 19 — To delete the lines and insert —

11D. Disclosure to executor or administrator

If the person shown in a photograph has died, the CEO may disclose the photograph to an executor or administrator of the person’s estate.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 27 put and passed.

Title put and passed.

Bill reported, with amendments.