

PARLIAMENT OF WESTERN AUSTRALIA

**JOINT STANDING COMMITTEE
ON
DELEGATED LEGISLATION**

THIRTY-NINTH REPORT:

Taxi Amendment Regulations 1998

Presented by the Hon R L Wiese MLA (Chairman)
and
the Hon N D Griffiths MLC (Deputy Chairman)

May 1999

Joint Standing Committee on Delegated Legislation

Members

Hon Bob Wiese MLA (Chairman)
Hon Nick Griffiths MLC (Deputy Chairman)
Hon Simon O'Brien MLC
Hon Ray Halligan MLC
Hon Jim Scott MLC
Mr Bill Thomas MLA
Mr Iain MacLean MLA
Mr Norm Marlborough MLA

Advisory/Research Officer

Frank van der Kooy

Committee Clerk

Jan Paniperis

Terms of Reference

It is the function of the Committee to consider and report on any regulation that:

- (a) appears not to be within power or not to be in accord with the objects of the Act pursuant to which it purports to be made;*
- (b) unduly trespasses on established rights, freedoms or liberties;*
- (c) contains matter which ought properly to be dealt with by an Act of Parliament; or*
- (d) unduly makes rights dependent upon administrative, and not judicial, decisions.*

If the Committee is of the opinion that any other matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House.

ISBN No: 0 7309 8927 5

Report of the Joint Standing Committee on Delegated Legislation

in relation to

Taxi Amendment Regulations 1998

1 Executive Summary

- 1.1 The Committee notes that certain drivers in the taxi industry have raised a number of concerns regarding the *Taxi Amendment Regulations 1998* as well as other broader issues.
- 1.2 The Committee has resolved not to recommend disallowance of the Amendment Regulations after:
- hearing evidence from three taxi drivers and officers of the Department of Transport who appeared before it; and
 - reviewing the written submissions made by one of the taxi drivers who appeared before it and by an officer of the Department.
- 1.3 However, a number of issues were brought to the attention of the Committee during its consideration of the Amendment Regulations and the Committee is of the opinion that these matters should be reported to the House. In particular, they are:
- (a) the use of infringement notices to penalise fare evaders;
 - (b) the suppression of destinations when advising drivers of the availability of fares in their area;
 - (c) the fact that a prearranged booking does not guarantee that a taxi will arrive on time; and
 - (d) the apparent breakdown in communication between the Department, industry groups and drivers in the taxi industry.

- 1.4 For the reasons outlined below, the Committee believes that these are pertinent issues that have serious implications for the industry. The Committee believes that the taxi industry should be encouraged to take responsibility for resolving these issues and recommends that the Minister for Transport continue to monitor the progress of the taxi industry and the provision of services to the public.

2 Introduction

- 2.1 In the exercise of its scrutiny function the Committee reviewed the *Taxi Amendment Regulations 1998* ('Amendment Regulations') created pursuant to the *Taxi Act 1995* ('Act'). A copy of the Amendment Regulations are attached and marked 'Annexure A'. Under the Committee's Joint Rules, if the Committee is of the opinion that a matter relating to any regulation should be brought to the notice of the House, it may report that opinion and matter to the House. It is also the function of the Committee to consider and report on any regulation that appears not to be within power.

- 2.2 These amendments to the *Taxi Regulations 1995* ('Principal Regulations') are part of an ongoing program of taxi industry reform. The reforms are expected to result in significant improvements to the performance of the taxi industry with a decrease in waiting periods and an increase in the services provided. In brief, the amendments:

- provide penalties for a driver who knowingly enters incorrect information on a Taxi Users Subsidy Scheme voucher;
- make it an offence for a passenger to fail to pay a taxi fare at the end of hiring, or fail to fulfil a prior agreement made with the driver in relation to payment of a fare;
- provide 'valid' reasons - ie a driver's safety or payment of the fare - for a driver to refuse a taxi hiring;
- impose requirements on a driver to advise the Taxi Dispatch Service of location details to facilitate the efficient allocation of requests for taxis;
- prohibit drivers from interfering with the surveillance cameras fitted to the taxi;
- make it an offence for a driver to leave their taxi unattended at a taxi rank; and
- allow infringements to be issued for breach of the newly created regulations.

- 2.3 The Committee first considered the Amendment Regulations at its meeting on 24 February 1999 and resolved at its meeting on 11 March 1999 to invite members of the

taxi industry to appear before it and, if necessary, officers of the Department of Transport.

- 2.4 On 17 March 1999, the Committee heard evidence from Mr Michael Cahill, Mr Eagul Faigen and Mr Alan Luxton. Mr Cahill and Mr Luxton are both full time taxi drivers. Mr Faigen worked as a taxi driver during his university studies and now practices as a lawyer, although he still drives a cab on a part time basis on weekends. After hearing evidence from these witnesses, the Committee requested Mr Faigen to make a written submission to the Committee setting out the drivers' concerns regarding the Amendment Regulations. A copy of Mr Faigen's submission dated 19 March 1999 has been attached to this report and marked 'Annexure B'.
- 2.5 The Committee also resolved to invite officers from the Department of Transport to appear before the Committee to respond to some of the issues raised by the taxi drivers on 17 March 1999. On 24 March 1999, Mr Rob Leicester, Manager, Metropolitan Taxi Unit, and Mr Trevor Maughan, Manager, Legislation and Legal Services, from the Department of Transport appeared before the Committee. During the course of the hearing, the officers responded to the issues raised by the taxi drivers regarding the Amendment Regulations. An unsigned written submission by Mr Maughan in response to the issues raised by Mr Faigen was also provided to the Committee during the hearing. A copy of this submission has been attached to this report and marked 'Annexure C'.
- 2.6 The Amendment Regulations were published in the *Government Gazette* on 8 December 1998 and tabled in the Parliament on 15 December 1998.

3 Concerns regarding the Amendment Regulations

- 3.1 Mr Faigen's written submission, reproduced as Annexure B to the report, sets out in detail a number of particular concerns in regard to the Amendment Regulations. Mr Maughan's written response to this submission, at Annexure C, deals with each of the issues raised by Mr Faigen in turn. These written submissions provide a good summary of the evidence provided to the Committee regarding the Amendment Regulations on 17 and 24 March 1999. A brief summary of Mr Faigen's concerns and then Mr Maughan's responses are set below:

- **Regulation 8(2)** - it is not clear whether this regulation covers other voucher type payments such as Cabcharge, AMEX, Diners Club, Motorpass or Japanese Credit Bureau forms.

Response - the definition of 'voucher' in regulation 8(4) encompasses only vouchers 'issued under an approved State or Commonwealth Government Scheme which is intended to make taxi travel available to persons who have

a disability or who are financially disadvantaged’.

- **Regulation 9A** - queries the interpretation of ‘termination of hiring’ and ‘agreement... at the commencement of hiring’.

Response - ‘termination of hiring’ is defined in regulation 9 of the Principal Regulations and an agreement at the commencement of hiring is only a surety against their obligation to pay the metered fare. If the driver enters into a set fare agreement for a hiring that is all they are entitled to receive. These agreements must be in writing and signed by both parties 24 hours before the hiring is undertaken.

- **Regulation 9B** - queries the use of the word ‘may’ instead of ‘shall’ in reference to adding the amount of the fare that would have been paid by the defaulting hirer to the modified penalty specified in the infringement notice. Raises possibility of including other costs associated with evasion.

Response - ‘may’ is used to cover instances where an offence has been committed and the offender pays the fare prior to the issue of the infringement notice. The inclusion of compensation for downtime would be *ultra vires*.

- **Regulation 9B(2)** - seeks clarification of the phrase ‘so much of the amount added as is recovered through payment of the modified penalty’. It is suggested that the Department should have powers similar to bailiffs to seize and sell non-essential items from people failing to pay an infringement notice.

Response - the amount will be the modified penalty of \$100 and the amount of the fare outstanding. As the infringement is only an allegation of an offence it would be inappropriate for officers of the Department to be vested with the power of seizure and sale of goods before the recipient has exercised their rights.

- **Regulation 13** - suggestion of an amendment to this provision to enable a driver to refuse to take a hiring where the driver believes the hirer may evade the payment of the fare.

Response - this regulation empowers the driver to refuse a hiring where the driver believes that the hirer has previously evaded or attempted to evade a taxi fare.

- **Regulation 13A** - Mr Faigen asserts that the requirement that the driver shall inform the provider of the taxi service of the driver’s location is not necessary, particularly in the event that a global positioning system is introduced as is the case in the eastern States.

Response - this regulation is necessary to enable the Taxi Dispatch Service to be able to effectively manage its fleet. Global positioning technology will probably not be introduced into Perth taxis for another two years and in the meantime this regulation provides the mechanism for public access to the taxi fleet.

- **Regulation 17** - this regulation prohibiting drivers from leaving their taxis unattended on taxi ranks is very strict in its application.

Response - taxi ranks are established for vacant taxis available for immediate hire. They should not be used for any other purposes.

- **Schedule 1** - questions the reason why the modified penalty for a fare evader is \$100 but a driver entering false or misleading information on a fare voucher is fined \$200. Contends fare evasion is no less serious than fraud.

Response - modified penalty of \$100 for fare evasion reflects statements made by the Minister to the Parliament during the passage of the enabling legislation. The misuse of the Taxi Users Subsidy Scheme involves an element of premeditation, a betrayal of trust and an attack on the viability of a government scheme put in place to assist disadvantaged members of the community. For these reasons the higher penalty for misuse of the scheme was considered appropriate.

- **Miscellaneous** - a suggestion that the fines levied and collected by the Department of Transport should be applied by the Department in a manner that benefits the taxi industry. For example, promotion of the industry through advertising or establishing a trust for drivers who suffer trauma through being attacked at work.

Response - Section 6(2) of the *Financial Administration and Audit Act 1985* requires that, with the exception of penalties the subject of express statutory provisions (eg the Road Trauma Trust Fund), monies collected by way of infringement penalties must be paid into the consolidated fund. Without amending the Act, any changes along these lines to the Principal Regulations would be *ultra vires*.

- 3.2 After hearing evidence from the Department's officers and reviewing Mr Maughan's written response to the issues raised by Mr Faigen's written submission, the Committee resolved not to recommend disallowance of the Amendment Regulations. However, a number of other issues were brought to the attention of the Committee during its

consideration of the Amendment Regulations. The Committee is of the opinion that these matters should be brought to the attention of the House.

4

The Committee's Concerns

4.1 The issues that the Committee wishes to draw to the attention of the House are as follows:

- (a) the use of infringement notices to penalise fare evaders;
- (b) the suppression of destinations when advising drivers of the availability of fares in their area;
- (c) the fact that a prearranged booking does not guarantee that a taxi will arrive on time; and
- (d) the apparent breakdown in communication between the Department, industry groups and drivers in the taxi industry.

4.2 The Committee was initially concerned about regulations 9A and 9B of the Amendment Regulations. Regulation 9A makes it an offence for a hirer to fail to pay a fare at the termination of the hiring. Regulation 9B(1) provides that where an infringement notice is issued under section 39 of the Act for an offence against regulation 9A the amount of the fare should be added to the amount otherwise payable. Regulation 9A does not appear to make any allowance for circumstances where it may not be appropriate for the hirer to pay the fare, or at least part of the fare (eg if the driver failed to take the shortest route to the required destination). The following exchange between members of the Committee and officers from the Department is indicative of the members' concerns:

‘Mr MAUGHAN: It becomes a strict obligation to pay the fare at the hiring. What was the evader's intent simply becomes a mitigating fact which he can raise in court if he is charged. At the time of the termination of the fare, he has an obligation to pay the fare.

Mr MARLBOROUGH: Under this legislation that does not have to be proved. Basically, if a person has not paid the fare, he can be fined \$1 000 by the department.

Mr MAUGHAN: The only elements we must prove are: He hired the taxi, the hiring was terminated, and he failed to pay the fare that was on the meter. They are the three elements the prosecution must prove.

Hon RAY HALLIGAN: I hope there will not be any misuse. I am thinking of

a situation which could possibly occur, not that often, in which a hirer has been out drinking, has decided he is having a problem, and jumps out of the cab even after asking the driver to stop. In fact, he makes a mess of himself and the driver says, "This is the third one I have had tonight; I am not taking you home", and he drives off. It has been terminated and there has been no payment.

Mr LEICESTER: Do you see that as a case in which the driver would claim a fare evader?

Hon RAY HALLIGAN: That is a possibility.

Mr LEICESTER: The driver would probably be happy for the passenger to leave.

Hon RAY HALLIGAN: He might still want his fare.

Mr LEICESTER: From a practical perspective, the driver would probably make every endeavour to receive some sort of payment for that.¹

4.3 Section 40(d) of the Act provides:

'The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act and in particular -

...

(d) prescribing offences and modified penalties for the purposes of section 39².'

Further, recent amendments to the Act specifically provide for regulations such as 9A and 9B. Sections 40 (ka) and (kb) of the *Taxi Amendment Act 1998* ('Amendment Act'), assented to on 19 November 1998, permit regulations to be made for:

'(ka) providing that the hirer of a taxi who is obliged to pay for carriage in the taxi any fare that is in accordance with this Act commits an offence if, in prescribed circumstances, the hirer fails to pay the fare, and prescribing a fine of not more than \$1000 that may be imposed for the commission of the offence;

(kb) providing for -

¹ Transcript of Evidence, 24 March 1999, page 7.

² Section 39 of the Act regulates infringement notices and modified penalties.

(i)there to be added to the amount that would otherwise be payable as the modified penalty under an infringement notice given under section 39 for an offence referred to in paragraph (ka), the amount of the fare that the hirer failed to pay;

(ii)the payment to the person entitled to the fare that the hirer failed to pay, towards the discharge of that entitlement, of so much of the amount added as is recovered through payment of the modified penalty’.

On the basis of these recent amendments to the Act, the Committee was satisfied that, despite its reservations, regulations 9A and 9B are within power.

4.4 The second issue relates to the way in which jobs are currently issued. Since October 1998, the destination of a fare is not displayed on the Taxi Dispatch Service (‘TDS’) computer fitted to taxis. This change has been brought about as a condition imposed by the Director General of Transport on the providers of the taxi dispatch service³. Although this is not an issue directly related to the Amendment Regulations, it was a major source of concern for each of the three drivers that appeared before the Committee on 17 March 1999. The Committee resolved at its meeting on 24 March 1999 that the issue should be brought to the attention of the House in the context of this report. The following are excerpts from the transcript of evidence given by the drivers in regard to the difficulties caused by not displaying destinations:

‘Mr CAHILL: The new regulations have removed the consumer's right to freedom of choice. If a person books me for a specific time, I need to be able to do the small local work around the area to maintain the cash flow until that prearranged booking time. The radio dispatch company has the right to send

³ See section 29 of the Act which provides:

‘29. Conditions

(1) The Director General may impose conditions on the provider of a taxi dispatch service in relation to-

- (a) fare schedules;
 - (b) customer service standards;
 - (c) administration and infrastructure standards;
 - (d) record keeping;
 - (e) complaint resolution,
- and such other matters as may be prescribed by regulation.

(2) The provider of a taxi dispatch service shall comply with the conditions imposed under subsection (1).

Penalty: \$5 000.’

me anywhere, and if I tell them that I cannot do a particular job because I have a previous booking - my clients are mainly aged and frail people - at the moment under the regulations it will penalise me \$100.

The ACTING CHAIRMAN: Basically you could be in one of the suburbs and end up at the airport even though you have a long term booking to do a local job.

Mr CAHILL: I take one lady to a dialysis unit three times a week. The dialysis unit tries to keep people on time because it wants to put through as many people as possible each day. If I am late picking up that lady, it affects not only her, who cannot be out of the house for a long period, but also the system at the hospital. The taxi dispatch service say the first taxi available near the pre-booked time. There is no guarantee a taxi will come. In order for me to be on time and pick up that lady, I would probably have to stop working one hour before the prearranged time in case I am given a job that would take me too far away to get back by the prearranged time. I do not know that until I get to the person's front door and ask him where he is going because no destination is given. If I leave a client to take other passengers, that causes conflict between the customer and the driver. If I decline the job, I am fined \$100. It prevents that person's ability to choose the best service suited to his or her needs.⁴

‘Mr FAIGEN: I would like to make two comments: Firstly, when jobs are dispatched and destinations are not given, there is an impact on customer relations between the driver and the passenger. I often find myself in embarrassing positions when people get into the car and I ask them, "Where can I take you to today?" when they have already provided the dispatch service with their destination that the driver has not been provided with. Secondly, my interpretation of not providing destinations is for the purpose of preventing what is called the recall of work by drivers. What occurred frequently was if a driver was dispatched a job through the dispatch service and that job was an M8 - a local job which was not a large fare - the driver was sending back that work and waiting for larger work that was leaving the area. To prevent this, the dispatch services stopped showing the destination; the effect being that drivers are now no longer aware whether the job is large or small. If drivers are not aware of the destination of the job prior to picking up the passenger, they are not aware of the commercial viability of that job. I do not know whether the lack of destination meets that end. Other mechanisms could be employed to prevent drivers recalling local work.

I have written to the member for Southern River, Mrs Monica Holmes, about

⁴ Transcript of Evidence, 17 March 1999, page 2.

this matter. In that letter, I advised Mrs Holmes that one way this might be done, and also to reduce the level of what we call outstanding work, is to provide drivers with the destination. In the event that the driver then recalls work, he/she must provide a valid reason for not doing that work. If a driver cannot provide a reason for that, and is subsequently penalised, the driver cannot afford an excuse for failing to do the local work if he/she is provided with full details of the job as in the example raised before. If a driver is covering regular work in an area and then leaves that area, it causes great difficulties. That may be a legitimate reason for refusing or failing to do local work; however if a driver is at least given full details of the job, even if it is small, he/she can then make an assessment of whether they can do the job. As such, that will not afford them an excuse for failing to do it simply because the job was not commercially viable. That would meet the end of customer service and protecting driver income.’⁵

‘Mr LUXTON: I agree with that. I work at nights, I have a silver service car and I receive many bookings. I have repeatedly had to drive empty to the airport when work is outstanding. I do not know where those jobs are going and I cannot take them without letting down my customer at the airport. The original reason for introducing this regulation was drivers were knocking back short jobs. We used to have a system whereby drivers received what was called "six hours off the air" if they did not perform the work they were given. That was discontinued when the computers were introduced. The issue was raised with the general manager but apparently it was too difficult to reintroduce the system. The object of not having destinations is to make people do the job to which they are sent. That can be done by ensuring there is no refusal of work - once a driver is given a job, he must do it. We should have destinations. They are in the interests of customer service. So many times we have to run empty to pick someone up when we could pick another fare on the way and drop that fare off instead of leaving it waiting. I agree with my colleagues that the destinations should be shown on the computer.’⁶

4.5 Mr Leicester explained the rationale behind withholding the destination of fares to the Committee as follows:

‘At this stage, it is about getting the best use out of the fleet. In the past, drivers have been picking and choosing their jobs, for their own reasons, some of which are justified, but most are because they prejudge that the fare might be a short fare or otherwise. In an industry which restricts the number of licences, it is about getting the most efficient use out of those licences and not

⁵ Transcript of Evidence, 17 March 1999, pages 2-3.

⁶ Transcript of Evidence, 17 March 1999, page 3.

inconveniencing people who have been inconvenienced in the past, particularly for short hirings.’⁷

‘[T]he more common example that has occurred recently is the driver who sees that the job on the screen is for the senior citizen who is going a kilometre down the road to visit the doctor. Drivers reject that type of job because they just do not want to do it. It is not profitable for them and they do not want to go to the effort of helping senior citizens.’⁸

‘Mr LEICESTER: Nationally the best practice is that destinations are not displayed. We are looking at the problem and we will continue to do so to ensure it is not working in a negative way. We are fairly confident that there is capacity within the available technology to accommodate the scenario of a driver who does not want to go too far out of his way. We provided a concession for the dispatchers to display destinations for a given period around the standard changeover times so drivers are able to move back to their changeover points. There is some concern about whether that concession was the right thing to do, but we have done it.

Hon J.A. SCOTT: Is that working?

Mr LEICESTER: My understanding is that it is.’⁹

4.6 Mr Leicester later advised the Committee that this change was introduced after the industry approached the Department:

‘The industry initially approached us to introduce that change. Most of these changes arose after a great deal of consultation with the industry. Some groups in the industry want the destination provided. The introduction of this change resulted from consultation with the industry and many requests for us to provide the taxi dispatch service with control over the drivers because, in many cases, the drivers were not doing the right thing. We want to see the long-term effect of it and how it works in practice before we change it back again, if that is necessary, because we could be throwing out the baby with the bath water; it is a catch-22 situation. If destinations are provided, there will be many good reasons why taxis could not pick up a person. Drivers are requested to go to a local job - a small job - and because they are not allowed to give back that job because they have been directed by the base, the car will break down or

⁷ Transcript of Evidence, 24 March 1999, page 15.

⁸ Ibid.

⁹ Ibid, page 16.

they will need a comfort stop and many of these situations will occur. That has been expressed to me by senior people in the industry. By not providing the destination, the driver does not need to make excuses. In most cases, operationally it still works effectively. The issues you raised before about a driver being sent out of an area which he preferred because he had private customers, can probably be dealt with within the technology that exists. I understand a great deal of discussion is taking place within the industry about not being provided with the destination. It is an issue that remains current and must be considered ongoing.’¹⁰

- 4.7 The Committee is of the view that this is a difficult issue which involves balancing the needs of the taxi drivers with the obligation to provide a good service to the general public, including those who only require a taxi for a short journey. This new system is being tried in an effort to get the optimum use out of the existing taxi fleet. Nevertheless, the Committee believes there should be sufficient flexibility in the system to take account of fixed appointments and drivers’ preferred suburbs. Although this new practice was not brought about by the Amendment Regulations, the Committee agrees that it is pertinent that the matter be brought to the attention of the House.
- 4.8 The third issue to emerge from the hearings held by the Committee was the fact that a prearranged booking is no guarantee that a taxi will arrive at the requested time. Mr Cahill informed the Committee:

‘Another problem with part of that procedure is that if there is a prearranged booking in outer areas such as Armadale and Wanneroo, it is called 15 minutes before it is due.’¹¹

In effect, **a prearranged booking is not treated any differently to a booking requesting a taxi immediately.** The Committee is perturbed that in an industry with a restricted number of licences, a prearranged booking, even if it is made more than 24 hours earlier, cannot be guaranteed and is not treated any differently to an immediate booking. The Committee noted that most courier companies, a number of which also have independent contractors as drivers, are able to guarantee pick up and delivery times for packages and queried why it is that the taxi dispatch companies cannot do the same.

- 4.9 The fourth issue that was brought to the attention of the Committee by the taxi drivers during the course of its inquiries, was the apparent lack of communication between the Department, industry groups and cab drivers working in the industry. Page one of the Department’s explanatory memorandum states that:

¹⁰ Transcript of Evidence, 24 March 1999, pages 19-20.

¹¹ Transcript of Evidence, 17 March 1999, page 5.

‘In the course of developing the reforms, all recognised industry representative groups were consulted and provided feedback to influence the changes made.

There was broad agreement to the changes, with a general view that they are critical to improve customer service within the taxi industry.’

- 4.10 One of the members of the Committee pursued this issue with the taxi drivers during the hearing on 17 March 1999:

‘Hon SIMON O'BRIEN: We were advised that in the course of developing these reforms, all recognised industry representatives group were consulted and provided feedback to influence the changes made. Is that the case?

Mr FAIGEN: I could not comment on that.

Hon SIMON O'BRIEN: What is your industry group?

Mr CAHILL: The groups are not very representative of the taxi industry in general. Unfortunately, over the years there has been a lot of talk and not much done. This is a small group of people.

Hon SIMON O'BRIEN: What is that group called?

Mr LUXTON: The Taxi Council is the biggest group; it has over 900 members. However, it consists only of owners.

Mr CAHILL: Drivers like us do not have any input. There is the Western Australian Taxi Operators Association, I was involved some years ago but nothing was ever done.

Hon SIMON O'BRIEN: Your suggestions are for things which should have been fleshed out before these regulations were promulgated.

Mr CAHILL: A lot of that stuff is done and we are just told about it. That happens even with the changes the minister has introduced.’¹²

- 4.11 After hearing evidence from the taxi drivers, the Hon Simon O'Brien stated, ‘Clearly there has been some communication deficiency and in the course of doing our business we may be able to bring that to attention and meet some of the needs you have outlined which fall outside our remit.’¹³

¹² Transcript of Evidence, pages 7 - 8.

¹³ Transcript of Evidence, 17 March 1999, page 9.

4.12 Mr Faigen addressed the issue at page 6 of his written submission as follows:

‘I would also be grateful if the Committee would take into its advisory [sic] the fact that there appears to be a lack of communication between government departments, industry groups and drivers, and I believe this issue should be addressed in the interests of the industry and the general public.’¹⁴

4.13 In response, the Department in its submission to the Committee stated:

‘These regulations resulted from extensive consultation with taxi industry representative groups, including the Taxi Industry Board and a wide cross section of industry interests and Government authorities.’¹⁵

The Committee heard evidence from Mr Luxton that the Taxi Industry Board is not representative of the taxi industry:

‘We used to have the Taxi Control Board which consisted of people, the majority of whom were in the industry. The police and the Department of Transport had one and so did Transperth. When the Taxi Control Board was working, because of the experience, many matters were worked out. We did not have a regulation for this and a regulation for that because it was all done at the TCB. Since the Taxi Industry Board has been established, it consists of people who do not drive taxis. Trying to make these people understand is hard because they are not out there and they just do not understand what goes on. I would like to see the Taxi Control Board reinstated. The general manager of Swan Taxis Co-op Ltd has 40-odd years' experience. There is no substitute for experience.’¹⁶

4.14 When Mr Leicester appeared before the Committee, he was also asked to comment on the communication difficulties with the industry:

‘Hon J.A. SCOTT: Something which has been very evident to me in the hearings we have held so far is that the lines of communication through the various associations to the drivers are not very good. It is clear that the overriding problem the department faces is communicating with all the drivers and educating them on what this is all about. I wonder whether the department is looking at picking up on that problem. It seemed to be the crux of the issue.

¹⁴ See page 6 of Annexure B.

¹⁵ See page 4 of Annexure C.

¹⁶ Transcript of Evidence, 17 March 1999, page 5.

Mr LEICESTER: I wholeheartedly agree with that. It is a very difficult industry to communicate with. Comments were made earlier about the various different positions and attitudes in the industry. We have approached the problem by going through the recognised industry representative groups. Essentially there are five with which we regularly communicate.

Hon J.A. SCOTT: Some of those are not very good at communicating with their members.

Mr LEICESTER: Yes, but it is very difficult when there are 3 500 drivers. They all have strong views about issues and many of the drivers are very different from each other. I often say there can be 100 taxi drivers in a room and 200 opinions and they will all change their minds on the way out the door. That is the nature of the industry. Drivers are very individual in the way they think and operate. Perhaps that is what attracts them to the taxi industry. The Department of Transport goes through the industry's peak body, the Taxi Industry Board, the Taxi Council of WA which represents predominantly the drivers, the Taxi Association which predominantly represents drivers and it talks to the two major taxi dispatchers, Swan Taxis and Black and White Taxis. We have agonised for a long time over how we can better consult and communicate with the industry. The department uses a number of publications. Three of those representative groups have magazines or newsletters. I have been working with the taxi industry for a long time. There is no easy way to deal with this problem. No matter what outcome we arrive at, whatever consultative mechanism we choose, it will not satisfy them all. That is impossible. One will never totally satisfy any group. However, it is even harder with the taxi industry, it is so fragmented. It is unfortunate because the industry could achieve a lot more if it were more united. However, it is the nature of the people in the industry. I take the committee's point -it would be great if we could find the magic solution.¹⁷

- 4.15 After hearing evidence from the taxi drivers and officers of the Department, the Committee formed the view that communication between the Department, industry groups and taxi drivers may be deficient. When a piece of subsidiary legislation is being developed, it is essential that all relevant groups that may be impacted by any changes are adequately consulted. The Committee is not satisfied that this is occurring in the taxi industry. Responsibility for this breakdown in communication cannot be borne solely by the Department, but must be shared by the industry representative groups and the drivers themselves. It is in the interests of the Department, the taxi industry and more importantly, the general public, that the lines of communication are improved.

¹⁷ Transcript of Evidence, 24 March 1999, pages 21-22.

5 **Recommendation of the Committee**

- 5.1 The Committee has resolved not to recommend disallowance of the Amendment Regulations after hearing evidence from the three taxi drivers and officers of the Department who appeared before it and reviewing the written submissions made by Mr Faigen and Mr Maughan.
- 5.2 A number of issues were brought to the attention of the Committee during its consideration of the Amendment Regulations and the Committee is of the opinion that these matters should be reported to the House. In particular, they are:
 - (a) the use of infringement notices to penalise fare evaders;
 - (b) the suppression of destinations when advising drivers of the availability of fares in their area;
 - (c) the fact that a prearranged booking does not guarantee that a taxi will arrive on time; and
 - (d) the apparent breakdown in communication between the Department, industry groups and drivers in the taxi industry.
- 5.3 For the reasons outlined above, the Committee believes that these are pertinent issues that have serious implications for the industry. The Committee believes that the taxi industry should be encouraged to take responsibility for resolving these issues and recommends that the Minister for Transport continue to monitor the progress of the taxi industry and the provision of services to the public.

.....
Hon R L Wiese MLA
Chairman
April 22, 1999

ANNEXURE A

8 December 1998]

GOVERNMENT GAZETTE, WA

6585

TRANSPORT

TR301*

Taxi Act 1994

Taxi Amendment Regulations 1998

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Taxi Amendment Regulations 1998*.

2. Commencement

These regulations come into operation on the day on which section 4 of the *Taxi Amendment Act 1998* comes into operation.

3. The regulations amended

The amendments in these regulations are to the *Taxi Regulations 1995**.

[* *Published in Gazette 10 January 1995, pp. 75-90.*

For amendments to 24 November 1998 see 1997 Index to Legislation of Western Australia, Table 4, p. 264.]

4. Regulation 8 amended

After regulation 8(2) the following subregulation is inserted —

“

- (2a) A driver who accepts a voucher as payment or part-payment of a fare shall not enter on the voucher any information that the driver knows to be false or misleading.

”

5. Regulations 9A and 9B inserted

After regulation 9 the following regulation is inserted —

9A. Hirer shall pay fare at termination of hiring or as otherwise agreed

The hirer of a taxi who is obliged to pay for carriage in the taxi any fare that is in accordance with the Act commits an offence if —

- (a) at the termination of the hiring; or
(b) contrary to an agreement made with the driver at the commencement of the hiring,

the hirer fails to pay the fare.

Penalty: \$1 000.

9B. Unpaid fare may be added to modified penalty and paid to driver

- (1) If an infringement notice is given under section 39 for an offence under regulation 9A, the amount of the fare that the hirer failed to pay may be added to the amount that would otherwise be payable as the modified penalty.
- (2) If subregulation (1) has effect, the person entitled to the fare that the hirer failed to pay shall be paid, towards the discharge of that entitlement, so much of the amount added as is recovered through payment of the modified penalty.

6. Regulation 13 amended

Regulation 13(1) is amended as follows:

- (a) by inserting before paragraph (a) the following paragraph —

“

- (aa) the driver has reasonable grounds to believe that —
 - (i) the hirer or a person accompanying the hirer; or
 - (ii) the place at which the hiring is to commence or terminate, poses a threat to the driver's safety;

”;

- (b) after paragraph (b) by deleting “or”;
- (c) by deleting the full stop at the end of paragraph (c) and inserting the following instead —
“ ; or ”;
- (d) after paragraph (c) by inserting the following paragraph —

“

- (d) the driver has reasonable grounds to believe that the hirer, or a person accompanying the hirer, has evaded or attempted to evade the payment of a fare for hiring a taxi.

”.

7. Regulations 13A and 13B inserted

After regulation 13 the following regulations are inserted —

“

13A. Driver shall inform provider of taxi dispatch service of certain matters

- (1) The driver of a taxi that is operated using a taxi dispatch service shall not fail to inform the provider of the taxi dispatch service on each occasion that —
 - (a) the driver commences or completes a period of duty driving the taxi;

8 December 1998]

GOVERNMENT GAZETTE, WA

6587

- (b) a hiring commences or terminates and where it commences or terminates; or
- (c) while the driver is plying for hire, the taxi enters or leaves an area designated by the provider of the taxi dispatch service (a “designated area”).

- (2) It is a defence to a charge of an offence under subregulation (1)(c) for the person charged to prove that the person had not been given sufficient information by the provider of the taxi dispatch service to enable the person to identify the relevant designated area.
- (3) When contacting the provider of a taxi dispatch service for the purpose of complying with subregulation (1), a driver shall correctly identify himself or herself to the provider.

13B. Driver shall not interfere with operation of camera surveillance unit

- (1) If a taxi is fitted with a camera surveillance unit in compliance with a condition imposed by the Director General under section 20, the driver of the taxi shall not obstruct, interfere with, damage, destroy or remove the unit.
- (2) In subregulation (1) —
 “camera surveillance unit” means an approved device that is fitted to a taxi for the purpose of enabling photographs to be taken of persons who enter or leave the taxi.

”.

8. Regulation 17 amended

Regulation 17 is amended as follows:

- (a) by inserting before the first word the subregulation designation “(1)”; and
- (b) by inserting at the end of the regulation the following subregulation —

“

- (2) A driver shall not leave the taxi unattended while it is at a taxi rank.

”.

9. Schedule 1 amended

- (1) Schedule 1 is amended by inserting after the item that refers to regulation 8(2) the following item —

“

Regulation 8(2a)	Driver entering false or misleading information on fare voucher	200
------------------	---	-----

”.

6588

GOVERNMENT GAZETTE, WA

[8 December 1998

- (2) Schedule 1 is amended by inserting after the item that refers to regulation 9(2) and (3) the following item —

“

Regulation 9A	Hirer failing to pay fare at termination of hiring or as agreed	100
---------------	---	-----

”

- (3) Schedule 1 is amended by inserting after the item that refers to regulation 13(1) the following items —

“

Regulation 13A(1)	Driver failing to inform provider of taxi dispatch service as required	100
Regulation 13B(1)	Driver obstructing, interfering with, damaging, etc., camera surveillance unit	100

”

By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.

ANNEXURE B

22/03/99 07:16 LEGISLATIVE COUNCIL → COMMITTEE OFFICE
 19-MAR-1999 16:03 FROM 61 8 93210266 TO

NO.597 P001/006

92227809 P.01



Our Ref: EAF:sl: 990012

19 March 1999

By Facsimile: 9222 7809

Western Australia Joint Standing Committee On Delegated Legislation

Attention: Advisory/Research Officer
 Frank van der Kooy

Dear Sir

TAXI AMENDMENT REGULATIONS 1998

I refer to my attendance before the Committee on 17 March 1999, and the submissions made regarding proposed amendments to the draft regulations.

I addressed a number of issues relating to the proposed regulations and other matters not necessarily covered by the proposed regulations.

Following on from those oral submissions, I make the following comments:

1. **Amendment of Regulation No.8(2)**

- The intent of this regulation is to:
 - prevent fraud by drivers;
 - to ensure accuracy of both taxi despatch service ("TDS") records;
 - ensure accuracy of the records of companies or agencies providing vouchers for payment of taxi fares.

Clearly, this regulation, as it stands, will encompass use of the Taxi User Subsidy Scheme and Department of Veteran Affairs vouchers. It is unclear, however, whether the regulation will include other voucher type payments, such as Cabcharge, AMEX, Diners Club, Motorpass or Japanese Credit Bureau forms.

It is almost certain that any definition of "voucher" will not cover other forms of payments, such as EFTPOS and Visa (which are wholly electronic).

80091701

19 Ord Street, West Perth
 Western Australia 6005
 Telephone: (08) 9321 0411
 Facsimile: (08) 9321 0266
 Mobile: 0418 940 237

22/03/99 07:16 LEGISLATIVE COUNCIL → COMMITTEE OFFICE

NO.597 P002/006

19-MAR-1999 16:04 FROM 61 8 93210266 TO

92227889 P.02

**M o n t g o m e r y
A s s o c i a t e s**

2

Barrett Street, Perth

In regards to the electronic forms of payment, drivers are required currently to enter codes into the EFTPOS machine prior to it being able to process payment of the fare. These codes identify where the Hirer was picked up from and their destination. This ensures accuracy of the credit provider records who ultimately pays for the fare. Essentially, drivers are required to identify where the Hirer was picked up from and their destination to ensure accuracy of records.

If the intent of the regulations is to ensure accuracy of all non-cash records of payment then it is arguable that the definition of "voucher" needs to be expanded to cover all these forms of payment. Alternatively, the existing drafting should be amended to include "voucher, docket or other forms of electronic payment" which would then encompass all forms of non-cash payments.

2. Amendment of Regulation 9A

- The intent of this regulation is to provide a penalty for fare evasion.

The drafting of Regulation 9A only makes fare evasion an offence when the fare (or journey) is completed (i.e. in accordance with sub-paragraphs (a) and (b) of 9A). It is therefore arguable that it is not an offence unless the factors behind the evasion fall within these two sub-sections.

A problem arises in how "termination of hiring" and "agreement ... at the commencement of hiring" are to be interpreted.

Can the current drafting of Regulation 9A be said to cover instances where a fare evader exits the taxi prior to reaching their final destination? By way of example, if an evader enters the taxi in Perth and says to the driver that they wish to go to Midland, does 9A apply if the evader flights from the taxi in Rivervale?

It is also arguable whether it is an offence if a fare evader pays for some of the fare (i.e. deposit) but not all of the fare because the driver's estimate is may be lower than the metered fare. As such does fare evasion take place if an agreement for payment of a set fare is less than the metered fare at the destination. Accordingly, could Regulation 9A be enforced against the hirer for non-payment of the fare?

3. Amendment of Regulation 9B

- The intent of this regulation is to:
 - protect drivers
 - provide restitution for drivers' loss of income
 - act as deterrent against fare evasion

99031701

19 Ord Street, West Perth
Western Australia 6005
Telephone: (08) 9321 0411
Facsimile: (08) 9321 0266
Mobile: 0418 940 237

22/03/99 07:16 LEGISLATIVE COUNCIL → COMMITTEE OFFICE
 19-MAR-1999 16:04 FROM 61 B 93210266

NO.597 P003/006

TO

92227809 P.03

Monaghan
Associates
 Barristers & Solicitors

3

The spirit of 9B meets these aims and intents, however, proposed additions to meeting these ends may include:

- (a) when a Section 39 infringement is issued, restitution for the fare should be made as a matter of course, and not as a discretionary power given to the Department. According, the word "may" should be changed to "will" or "shall";
- (b) to ensure restitution for lost income, there should be an additional levy to cover the lost time and aggravation associated immediately after evasion of the fare. To meet this end, a flat levy may be introduced to cover the cost of this loss or, alternatively, a time charge calculated with reference to the lost time associated with the drivers "down time" should be compensable under the regulations. These amounts should be sought from the fare evader in addition to the fare.
- (c) Drivers should be entitled to have other miscellaneous costs associated with the invasion sought from the evader. This would include any cost to download pictures from the camera unit, and the cost to reset the camera.

4. **Amendment of Regulation 9B(2)**

It is unclear whether the drafting of this regulation will cover the costs referred to above. It is also unclear "so how much of the amount added as is recovered through payment of the modified penalty" is to be interpreted. I would suggest that this regulation should be clarified.

To meet the end of deterrence and to give effect to the serious manner in which fare evasion is to be enforced, the Department of Transport should have powers similar to bailiffs to seize and sell non-essential items from people failing to pay an infringement notice validly issued to them pursuant to section 39.

Another sanction to enforce a s39 infringement may include amendment to the fines enforcement legislation to suspend a "convicted" fare evaders drivers licence in the event that they fail to pay an infringement or fully retribute the driver for their losses.

5. **Amendment of Regulation 13**

- The intent of this regulation is to protect the welfare of drivers on the road.

I would draw your attention to the grammar in sub-paragraph (d) and would suggest that the provision be amended to:

mc031701

19 Ord Street, West Perth
 Western Australia 6005
 Telephone: (08) 9321 0411
 Facsimile: (08) 9321 0266
 Mobile: 0418 940 237

22/03/99 07:17 LEGISLATIVE COUNCIL → COMMITTEE OFFICE

NO.597 P004/006

19-MAR-1999 16:05 FROM

61 8 93210266

TO

92227809 P.04

**Monaghan
Associates**

Barristers & Solicitors

4

"the driver has reasonable grounds to believe that the hirer, or the person accompanying the hirer, may evade or may attempt to evade the payment of the fare for hiring a taxi"

6. Amendment of Regulation 13A

- The intent of this regulation is to enable a taxi despatch service to be aware of the location of a driver/taxi.

A suggested amendment to the grammar in sub-paragraph 13A(1) may be to change the double negative of "shall not fail" to simply "shall" or "will" which still enables the regulation to achieve the same purpose.

To the extent that the committee is not already aware, the TDS already provides for a series of driver rebate and driver PIN numbers to be entered into the TDS database prior to the driver commencing their shift.

Accordingly, it is already possible for a TDS to ascertain what drivers are working at any given point in time from their database.

In relation to sub-paragraph 13A(1)(b), if a driver is plying for hire (vacant), and is plotted to an area, the moment that the driver engages their meter the TDS can already ascertain the area that the driver was last located in.

A TDS is also aware of where the hiring commences and terminate from the details provided to it from the customer calling for a taxi.

Similarly, when a drivers meter goes off a driver will typically plot to an area their fare terminates in and accordingly the TDS will then aware of where the driver is presently located.

Logistically, if drivers were to notify the TDS by their 2-way radio of their location the efficient operation of the TDS's query channel operation will be affected. I would point out that the current "query" channel used by Swan Taxis already provides a sizeable delay for drivers who are making legitimate enquiries about job details. If all drivers are now required to give location details through the query channel, it will not be possible for the current system to cope, and as such will directly impact on customer service.

Regarding driver location, Regulation 13A will also become redundant in the event that a global positioning system is introduced to taxis in the same manner as the case in the eastern states. This system will automatically enable the TDS to locate a car and "track" a taxi at all times.

In summary, it appears that Regulation 13A is unworkable and/or unnecessary given it is already possible to ascertain driver location from the existing TDS computer systems, and by virtue of the fact that it is likely to become redundant given new development in the industry (GPS).

ec031701

19 Ord Street, West Perth
Western Australia 6005
Telephone: (08) 9321 0411
Facsimile: (08) 9321 0266
Mobile: 0418 940 237

22/03/99 07:17 LEGISLATIVE COUNCIL → COMMITTEE OFFICE
 19-MAR-1999 16:05 FROM 61 8 93210266

NO.597 P005/006

TO

92227809 P.05



7. Amendment of Regulation 17

- The intent of this regulation is to keep taxis on ranks operational and not to obstruct other drivers egress to the rank.

Regulation 17 is very strict in its application and does not account for instances where:

- (a) drivers park on a rank and leave their taxi to deliver a package;
- (b) drivers briefly leave their taxi to go to the bathroom;
- (c) a driver leaves their taxi to pray; and
- (d) where drivers exit their taxis and clean their windows;

accordingly, the definition of "unattended" should be more clearly defined.

Suggestions for the amendment of this regulation to include a time limit for drivers leaving their taxis parked on a rank (e.g. 5 minutes), or alternatively provide exceptions to the present regulations, such as when a driver delivers packages etc.

8. Amendments to Schedule 1

- The intent of these amendments are to provide penalties for infringements against the new regulations.

It appears that a fine of \$200 for a driver breaching regulation 8(2A) is double that of a hirer failing to pay a fare (\$100).

Fraud and theft are both serious offences, however, it is arguable whether a distinction in the amount of the penalty should be drawn between them.

Fare evasion is no less serious than fraud and, accordingly, the penalty should reflect this. In the least, the fine for breaching regulation 9A should be increased from \$100 to \$200.

9. Miscellaneous Matters

If not already included in the Regulations, fines levied by the Department of Transport should be collected and applied by the Department in a manner that benefits the taxi industry.

Two suggestions may be to apply those monies collected to the promotion of the taxi industry in general through advertising in the media. Alternatively, the funds collected could be placed in trust and applied in situations when drivers

ec031701

19 Ord Street, West Perth
 Western Australia 6005
 Telephone: (08) 9321 0411
 Facsimile: (08) 9321 0266
 Mobile: 0418 940 237

22/03/99 07:17 LEGISLATIVE COUNCIL -> COMMITTEE OFFICE
19-MAR-1999 16:06 FROM 61 8 93210266

NO.597 P006/006

TO

92227809 P.06

**Monaghan
Associates**

Barristers & Solicitors

6

suffer trauma through their job, e.g. if they are attacked and need counselling. In this instance, funds collected through fines could be used to pay for that counselling.

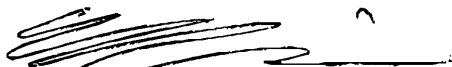
Conclusion

I provide this letter as comment on the proposed regulations and hope that it assists the Committee in making recommendations for the amendment or re-drafting of the proposed Regulations.

I would also be grateful if the Committee would take into its advisory the fact that there appears to be a lack of communication between government departments, industry groups and drivers, and I believe that this issue should be addressed in the interests of the industry and the general public.

If I can be of any further assistance in the future, or if you have any further queries, please do not hesitate to contact me.

Yours faithfully



Eagul Faigen

ec031701

19 Ord Street, West Perth
Western Australia 6005
Telephone: (08) 9321 0411
Facsimile: (08) 9321 0266
Mobile: 0418 940 237

TOTAL P.06

-

ANNEXURE C



My ref: DT/96/0208
Your ref:

Chairman
Joint Standing Committee on Delegated Legislation
Parliament House
Perth WA 6000

Dear Sir

Taxi Amendment Regulations 1998

Thank you for the letter signed by your Adviser, Mr van der Kooy dated March 22, 1999 and the opportunity to brief the Committee and provide a written response to the matters raised by Messrs Monaghan and Associates in their correspondence to the Committee dated March 19, 1999.

Regulation 8(2)

The intention of this new Regulation is simply to deal with any fraud of the Government's Taxi Users Subsidy Scheme (TUSS).

TUSS provides taxi travel at a reduced rate for people who have a severe disability that prevents them from using a conventional public transport bus service.

At present any misuse of the TUSS can only be dealt with under the criminal code. Minor offences are not given priority by the Police Service. This regulation will enable Transport to deal with any relatively minor abuse of the system, however significant misuse will continue to be forwarded to the Fraud Squad for action under the Criminal Code.

A voucher is defined in regulation 8(4) as a "voucher issued under an approved State or Commonwealth Government scheme which is intended to make taxi travel available to persons who have a disability or who are financially disadvantaged".

Regulation 9A

As drafted the regulation requires a passenger to pay a fare:

- on the termination of the hiring; or
- in accordance with any agreement made at the commencement of the hiring.

The termination of a hiring is defined at regulation 9 as being "when the taxi is free to resume plying for hire". Where a hirer decamps from a vehicle prior to the taxi reaching the

Working to achieve the best transport system for Western Australians

Legislative & Legal Services
441 Murray St
Perth
Western Australia 6001
Telephone (08) 9320 9611
Facsimile (08) 9320 9617

destination, the hiring is terminated as the taxi is then free to ply for hire. In decamping the vehicle, the hirer fails to meet their obligation to pay the fare at “the termination of the hiring” and commit an offence.

Where a hirer is required to pay the approximate fare or a deposit in advance, the payment is only a surety against their obligation to pay the metered fare, and any refusal to pay any shortfall between the deposit and the metered fare would be an offence.

However, where a person enters into an agreement with a taxi driver in relation to a set fare for a hiring, then the agreed payment is all that the driver is entitled to receive. Drivers clearly have the right to enter into contract fares with passengers, however it is a condition of the owners licence that the agreement must be in writing and signed by both parties at least 24 hours before the hiring is undertaken. This ensures that bartering does not occur at taxi ranks and casual taxi users can be assured of a consistent charging structure when using a taxi.

Regulation 9B

The use of the expression “may” rather than “shall” in respect to the inclusion of unpaid fares in an infringement notice is intended to cover those instances where, whilst an offence has been committed, the offender pays the fare to the driver prior to the issue of the infringement notice.

The issue of whether compensation for “down time” and incidental expenses should be included as part of the infringement penalty was debated in the Legislative Council, and an amendment to that effect was moved by the Hon Norm Kelly, however that amendment was defeated. As a consequence any amendment drafted in the terms suggested by Monaghan & Associates would be *ultra vires*.

Regulation 9B(2)

As identified above, the amount of the infringement will be the modified penalty of \$100 together with any amount of the fare outstanding at the time of the issue of the infringement notice.

The issue of an infringement notice is only an allegation of an offence. It is then open to the recipient of the notice to either pay the penalty or refuse. In the latter case the recipient may elect to go to court where the charge may be dismissed. As such it would be totally inappropriate for Transport Officers to be vested with powers of seizure and sale of goods before the recipient has exercised their rights.

The recovery of outstanding fines and penalties is regulated under the *Fines Penalties and Infringement Notices Enforcement Act* which gives the registrar a number of options to enforce payment including the seizure of goods and the suspension of an offenders drivers’ or vehicle licence.

-

Regulation 13

This regulation empowers a driver to refuse a hiring where the taxi driver believes that the hirer has **previously** evaded or attempted to evade a taxi fare.

In relation to a hirer who the driver believes may evade or attempt to evade the payment of the fare for the hiring to be undertake, the driver already has the right, under regulation 12, “to ask the hirer to pay a deposit equal to the anticipated fare as estimated by the driver”. Where the passenger refuses a request by a driver to pay a deposit, the driver is under no obligation to under take the hiring.

Regulation 13A

This regulation requires drivers to “log on” to the Taxi Dispatch Service (TDS) computer dispatching system and to indicate their specific location so that the TDS is aware of the availability and location of taxis. Without this the TDS cannot efficiently manage its fleet and this significantly impacts on customer service.

In relation to the specific comments raised by Monaghan & Associates, the current provisions of the regulations:

- Do not require drivers to “log on” to the TDS computer dispatch system. Therefore the TDS is not able to determine how many taxis are on the road and the best use of the taxis cannot be achieved.
- Do not require, drivers to indicate their location. It is also not uncommon for drivers to indicate an incorrect location to the TDS. This regulation enables the TDS to know, with a greater degree of accuracy, where the available taxis are located. The comment in relation to the taxi meter is irrelevant, as it is not the meter that determines where a taxi is located. The driver must manually “plot” their location into the computer.
- Only approximately 70% of taxi hiring’s are dispatched by TDSs. The remainder are as a result of hails, taxi ranks or mobile phone calls. This regulation, by requiring drivers to indicate their correct location, when vacant, enables the TDS to be more efficient in dispatching requests for a taxi.
- Drivers have not always indicated their location correctly. This regulation requires drivers to indicate where they are actually located.
- If drivers were required to identify their location to the TDS via a two way radio, then this would certainly create a logistical problem for the industry. However, current taxi industry computer dispatching technology provides for easy location “plotting” and subsequent identification by the TDS.
- It is not known when global positioning technology will be introduced into Perth’s taxis and in what form it will be introduced. Estimates put it time frame as about 2 years and in

the meantime regulation 13A provides the mechanism for the public access to the taxi fleet.

Regulation 17

Taxi ranks are established for vacant taxis available for immediate hire. The situations described by Monaghan & Associates are not intended to be accommodated by taxi ranks and drivers need to find other alternatives to accommodate these circumstances.

Schedule 1

The setting of the modified penalty at \$100 for fare evasion reflects statements made to the Parliament by the Minister during the passage of the enabling legislation.

In setting the modified penalty regard was had to both the deterral value of the penalty and financial capacity of potential offenders to pay the fine.

Whilst it is appreciated that the modified penalty is less than that which applies to drivers who misuse TUSS, it should be remembered that misuse of TUSS involves an element of premeditation, a betrayal of trust and an attack on the viability of a government scheme which was put in place to assist disadvantaged members of the community. For these reasons it is considered that the penalty of for misuse of the scheme should be set at the higher end of the scale.

Miscellaneous

Section 6(2) of the *Financial Administration and Audit Act* requires that, with the exception of penalties the subject of express statutory provisions eg Road Trauma Trust Fund, monies collected by way of infringement penalties must be paid to the Consolidated Fund.

Any amendment to this practice would require an amendment to the *Taxi Act 1994* and As a consequence any amendment drafted in the terms suggested by Monaghan & Associates would be *ultra vires*.

Conclusion

These regulations resulted from extensive consultation with taxi industry representative groups, including the Taxi Industry Board and a wide cross section of industry interests and Government authorities.

Yours sincerely

Trevor Maughan
Manager, Legislative and Legal Services

ANNEXURE D



My ref: DT/96/0208

Your ref:

Ms Jan Paniperis
Clerk to the Committee
Joint Standing Committee on Delegated Legislation
Parliament House
Perth WA 6000

Dear Ms Paniperis

Taxi Amendment Regulations 1998

As requested, please find attached an amended copy of the transcript of evidence given to the Committee on the 24 March 1999, signed by Mr Leicester and myself.

During the course of the hearing I gave the Committee undertakings to provide further information in respect to the following issues:

- The right of a passenger to refuse to pay a fare in circumstances where he is ordered by the driver to vacate the vehicle;
- Whether payment of the fare included on an infringement notice is to be made to the driver or the Taxi Dispatch Service; and
- The position of the Department of Transport as to whether or not a meter is required to be operating during the carriage of a contract fare.

The Committee's attention is respectfully drawn to regulation 13(2) of the *Taxi Regulations* which does not allow a driver to terminate a hiring unless a person begins to soil the taxi or become abusive, and in those the driver may require the hirer to pay:-

- (a) the fare that would have been due if the hiring had terminated at that point in the normal course of events; and
- (b) a charge to cover the cost of cleaning the taxi, as set out in the fare schedule.

Regulation 9B provides that where a fare is recovered as part of an infringement penalty, it is to be paid "to the person entitled to the fare that the hirer failed to pay". Administrative arrangements will ensure that fares will be paid to the driver who will be the complainant in any proceedings.

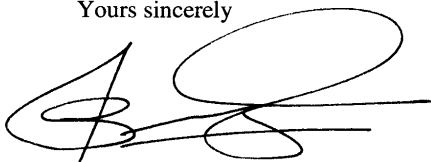
Working to achieve the best transport system for Western Australians

Legislative & Legal Services
441 Murray St Perth
Western Australia 6001
Telephone (08) 9320 9611
Facsimile (08) 9320 9618

I can find no regulatory requirement for a driver to operate a meter for a "contract" fare that has been negotiated in accordance with conditions attached to the Owners Licence ie that the agreement be in writing and made at least 24 hours prior to the journey.

I trust that the above information will be of assistance to the Committee and please do not hesitate to contact either Mr Leicester or myself if we can be of any further assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Trevor Maughan', with a large, stylized flourish at the end.

Trevor Maughan
Manager, Legislative and Legal Services
7 April 1999

