

Ms Libby Mettam; Mr Vincent Catania; Mrs Lisa O'Malley; Mr Bill Johnston; Ms Janine Freeman; Mr David Michael; Mr Bill Marmion; Mr Zak Kirkup; Ms Rita Saffioti

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**ROAD TRAFFIC AMENDMENT (IMMOBILISATION, TOWING  
AND DETENTION OF VEHICLES) BILL 2020**

*Second Reading*

Resumed from 17 June.

**MS L. METTAM (Vasse)** [4.19 pm]: I rise to speak on behalf of the Liberal opposition as the lead speaker on the Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020. From the outset, the Liberal opposition supports the proposed legislation. We support the wider community that is calling for the predatory and draconian practice of wheel clamping to be outlawed. We have seen questionable, predatory practices, particularly in Scarborough and around the City of Stirling, that has resulted in the driving away of customers. We have seen wheel clamping small businesses sitting, waiting and illustrating this predatory behaviour; and local shoppers being penalised for minor infractions—for example, parking in front of one shop and visiting another in the same complex. On this note, we, on this side of the house, believe and support the comments made by the Premier that this practice is simply unacceptable. I quote WAtoday on 5 December 2019, which states —

Premier Mark McGowan has labelled wheel-clamping contractors as “thugs and bullies”, declaring the state government would develop legislation to outlaw the controversial practice across WA.

Mr McGowan said wheel clamping and the way that contractors targeted people was “unacceptable” and un-Australian.

The Liberal opposition has indicated early support for such a measure. Our shadow Minister for Police, the member for Hillarys, stated that it was about time the government recognised the public anger over the practice and put a stop to it. Another news article states —

“Nobody wants to come out of a store, find their car clamped, unable to pick up their children from school, unable to get to their job, unable to get to medical appointments,” he said.

That was in response to a growing level of anger in the community regarding these sorts of behaviours. The Cities of Stirling and Melville, and other local governments, have strongly advocated for wheel clamping to be banned in light of the practices I have touched on. The City of Stirling first raised this in the media in August 2019, and it has been investigating changes to local government laws to ban wheel clamping itself. It should be acknowledged for bringing this issue to the fore and for being very proactive on this issue. The Liberal opposition, as I stated, supports this proposed legislation.

There needs to be a balance for local businesses and drivers to be treated fairly while at the same time protecting the rights of small businesses and landowners to maintain access to their properties. I am pointing to some consideration of issues surrounding the tow truck industry. This bill will bring WA in line with other states regarding vehicle immobilisation, which is prohibited in New South Wales, Victoria and Queensland. Queensland has quite a heavy-handed approach with this practice that is largely condemned by our community, and this bill draws from its existing legislation. Queensland has banned vehicle immobilisation since 1997, and has a thoroughly regulated towing industry as well. This bill proposes changes to two aspects of private parking enforcement, with the prohibition of wheel clamping and other means of immobilisation. This bill will ban vehicle immobilisation in WA or wheel clamps, but will also see the banning of other technology such as barnacles on windscreens. Some vehicle immobilisation will still be permitted, as the bill suggests. People will be able to use wheel clamps on their own vehicles, such as caravans or trailers, to keep that part of the vehicle secure. This legislation applies to private parking enforcement, and some vehicle removal will still be necessary and legal when they are obstructing or causing a hazard on public roads, or are an abandoned vehicle. There is quite obviously a necessary need, in extraordinary circumstances, when a vehicle simply has to be removed. We understand and acknowledge that that is sometimes a measure of last resort. State appointed enforcement officers will still be able to immobilise vehicles in the course of duty, as will sheriffs, police and agents of the court under written authorisation.

This bill also regulates the removal and detention of towing of parked vehicles. As I understand it, there is currently no regulation of private parking towing. These new laws will have no impact on the cost or any of the issues around breakdown towing, which have been raised quite separately in the public sphere as well. To that end, the Liberal opposition has some questions on this section of the bill, which will be raised during the consideration in detail stage. Experiences in other states suggest that when vehicle immobilisation is banned, some car park owners turn to having vehicles removed from their land as a means of controlling parking. That makes a lot of sense. For this reason, the government intends to regulate vehicle removal and put a greater level of onus on local government. Some of those measures have been outlined in this bill. We will ask some questions during consideration in detail about the resourcing that will go into that effort.

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The bill outlines that a number of steps must be taken before a vehicle parked on private property may be towed. Prominent signage will be required and the tow truck driver must try to locate the vehicle owner or the driver. If they return before the vehicle is fully loaded and agree to move their vehicle, they can have their vehicle returned without charge. How will that cost will be borne? Will it be by the car park owner or by the tow truck industry? If the driver or owner does not return until after the vehicle is loaded or they refuse to move the vehicle, the vehicle will be taken to a storage yard. The regulations will provide a fixed fee for return of the vehicle. I understand the fixed fee we are looking at is around \$200, and will be indexed, which is in line with Queensland and other states as well. The Department of Transport will provide wardens to support this level of enforcement, which will be an expansion of its powers. The government's position is that the best enforcement option is for parking operators to enter into local parking arrangements with the relevant local government. I will seek clarity around the preparation for local governments to support the measures that will be put in place. From the briefing, I understand that 39 of the 40 local governments in the metropolitan area are already in a position to support this approach, but we will seek clarification of how that will work and also how it will work in the regions.

Although this bill deals specifically with towing from private parking areas, it has been pointed out that there is an opportunity to revisit outstanding reform of the tow truck industry more broadly. Some concerns are yet to be addressed by the Labor government, particularly around consumer protection. There are around 750 registered tow trucks in WA. We have heard many stories of unfair and intimidating behaviour by tow truck drivers and corrupt practices, such as accepting tip-offs and the like. A RiskCover agency bulletin from February 2017 highlighted instances of receiving accounts for metropolitan towing from the same crash, with a 500 per cent cost difference between towing operators. I know the minister is aware of the issues with the unregulated tow truck industry, with meetings requested with the industry from July 2017. We are all familiar with the inquiry undertaken by the Economics and Industry Standing Committee in 2018 into Western Australia's automotive smash repair industry, which handed down a raft of recommendations. That inquiry also gained significant media attention, similar to the wheel-clamping issue. Towing rates for journeys of less than 10 kilometres in distance range in cost from \$300 to \$1 500 in central Perth, with dodgy companies taking advantage of vulnerable drivers. Since May 2019, Consumer Protection has received 135 inquiries and 37 complaints about tow trucks. It found that high towing fees were mainly a problem in accident towing situations. There are a number of issues.

I note that the minister stated in December 2019 that it was a deeply concerning issue and that some new regulations would be introduced to provide maximum towing and storage fees, and that trucks would be subject to annual inspection and compliance with relevant standards. However, to date there is no function for the vetting of operators. There is an outstanding issue with the accreditation process that could be put in place. There are public safety issues as there is no compulsory criminal history screening of people who drive tow trucks. I note that the minister previously pointed to the Consumer Protection options paper. There was a bit of media on that last week, with a representative from Consumer Protection pointing to some of the work that has been undertaken in this area. However, it should be pointed out that there seems to have been very little progress in this space. A Consumer Protection representative said on radio just last week, on 11 August, that the department is asking people to submit any experiences or concerns and it will provide a report to the government. This is of significant frustration to the industry.

I take the opportunity to raise these issues at this time because some regulation of the tow truck industry is included in this bill. The Liberal Party is supportive of the body of what is proposed in the bill. We certainly support the prohibition on wheel clamping in this state. We also support the regulation of the removal, detention or towing of parked vehicles. However, there are a number of questions we would like to ask about the bill. We will also take the opportunity to urge the government to address some of the broader outstanding concerns with the tow truck industry and some of the questionable practices that remain. I will leave my comments there.

**MR V.A. CATANIA (North West Central) [4.35 pm]:** I speak on behalf of the Nationals WA as the transport spokesperson handling this bill, and put on the record that the National Party supports the Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020. I also put on the record my thanks to the minister's office for providing the National Party with a briefing on what is well recognised to be an unsafe practice in a lot of ways—that is, wheel clamping. For example, someone could be walking by themselves to a car park at night after being at a nightclub or pub. They then find that their wheels have been clamped and need to try to find out how to get them unclamped so that they can get home. That puts that person in an unsafe and precarious position. It is timely that wheel clamping is thrown out the door in Western Australia, in line with what has happened in Queensland, New South Wales and Victoria.

The purpose of the bill is to prevent wheel clamping as a form of vehicle immobilisation by private landholders, including shopping centres and strata schemes. The bill also seeks to prevent wheel clamping from being replaced by the towing and detention of vehicles by seeking to introduce greater regulation of the towing industry, including maximum fees. As has already been mentioned, Queensland has similar legislation in place. That legislation includes maximum towing fees, with a maximum fee of \$260.25 for release from a towing yard, \$156.16 for onsite

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release if a vehicle has been loaded but not towed, and \$26 per day for storage in a holding yard. I am pleased that the government has indicated that similar fees will be set out in Western Australia. The maximum fee will hopefully be around the \$200 mark to disincentivise tow truck operators. I think that is what it will come down to.

I hope that the changes in this bill to stop wheel clamping do not lead to an increase in the number of vehicles being towed away. I note that when the Queensland legislation to ban wheel clamping came in, the number of cars being towed increased. The regulation of the towing industry under this bill will hopefully prevent tow truck drivers from simply towing away vehicles and creating another unsafe environment for people. I gave the example of a person walking to a car park late at night. When they parked their car, there might have been a heap of cars there, but suddenly there are no cars. The tow truck driver says that they can release their car, but that it will cost \$200 or whatever it is. The person does not have that money on them, so they go to get some cash out. They therefore have to go through the streets at night to find a place to get out some cash. It creates all these issues. I hope that the towing away of vehicles does not create the same problem as wheel clamping.

This is probably a more city-based piece of legislation to protect people who park in the city. A lot of country members park in the city in some of the shopping centre car parks and may fall foul of the requirement to park in the right space or get a ticket. This is unlikely to have a big impact in regional areas, but bigger towns such as Bunbury and Busselton, and perhaps even Geraldton or Kalgoorlie, may have vehicles towed away. As the member for Vasse outlined, it is great to see that already a large number of local governments have moved away from wheel clamping, which I think has created a safer environment in their local areas and ensures that people are not caught out by wheel clamping.

We understand the bill is limited to private areas such as shopping complexes and private property. Regulation will call for towing to be a last resort, with signage needing to be displayed. Tow truck drivers would need to demonstrate that they had made every effort to locate the owner of the vehicle. It is important that signage is present so people can see it. There should also be a number to contact should people come back for their car and find it is not there. That would provide them with the ability to make a call. I hope when one rings that phone number, someone will be on the other end at all hours of the day so people can find out where their car is and access it. If it is 10 o'clock at night or one or two o'clock in the morning and a person's car has been impounded for the company by a tow truck driver, can that person get a taxi, an Uber, an Ola or whatever to get their impounded vehicle—obviously if they meet the requirements and pay the fee owing? That would be a good question for the minister to answer, because it is important to allow people to access their vehicles at any time once it has been impounded. If an impounded vehicle is left to the next day, it costs more money. As I said, that is a last resort. I hope the tow truck industry realises that it is a last resort, because at the end of the day it is there to make money. It is there to protect the business that employs them. Obviously, with clamping, the more clamps put on, the more money earned, so hopefully this provision to tow vehicles away does not suggest to tow truck drivers that they have another avenue of earning income. That is why it is important to have more regulation around the tow truck industry. As the member for Vasse said, this bill is a step in the right direction, but there needs to be greater regulation around tow truck drivers, because, let us face it, all of us in this place know that they generally do not have the best reputation. Anyone who has had an accident and had 10 tow trucks rock up has had to try to pick which one will get them the best deal, and a lot of them can be quite forceful. As I said, this bill goes some way, but there needs to be further regulation on tow truck drivers, or those companies, to ensure they employ the right people and have some standards so that public safety is first and foremost.

The regulations will also include the maximum distance a vehicle can be taken to, in order to avoid vehicles from Perth being impounded in places such as Mandurah. Although that seems pretty commonsense, one of the issues will be where companies can have a compound to house the cars. If it is in the CBD, land will obviously be more expensive. It is important that there is requirement for people to be able to access their vehicles in the general vicinity of the Perth CBD and there is a maximum distance. Perhaps the minister can explain what that maximum distance will be. Companies will find the cheapest dirt to house vehicles, which will assist in keeping costs down through them not owning or leasing a very expensive piece of dirt. As I said, will there be a government garage, if you like, for vehicles not collected or owned by people who cannot afford to pay the fine? What happens to those vehicles? Is there a maximum time they can be left in the yard? After a month or two, is the vehicle handed back to the state, which then disposes of it if a person cannot pay a fine? They are some important questions that the minister could answer. Some people will not have the ability to pay the fine, especially if it accumulates over time and goes from \$200 to \$1 000. What happens next? How does a person who relies on their vehicle to work access it in the future? Does it get sold if it is not able to be collected in the necessary time? What does the government have in mind? Are there time frames in which the vehicle could be kept? What is the maximum penalty? What happens if the vehicle cannot be paid for?

I think the intent of the bill is right. Public opinion says that wheel clamping is not on. As I said, I do not think it is safe, but I understand that small businesses need to be protected so they can earn money by having customers come and go and not having people park in front of them because there is free parking and them then walking into

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another shop down the road or catching a bus to work. I understand the complexities affecting small businesses, but my real concern is about someone going to a nightclub district late at night, say in Northbridge or Perth, where it can be unsafe to go to a car park to retrieve a vehicle and finding it has been clamped or towed away. There needs to be signage, a number to call and a requirement for tow truck drivers to make sure they have tried every way of finding the owner of the vehicle. We do not want a tow truck driver to be there for just 10 minutes and then load the vehicle up and off they go. Perhaps the minister can talk about whether there is a time frame. Is it one hour or is it two hours? That needs to be put out there to the tow truck industry. The fear is that we get rid of one problem of wheel clamping, but create another one of vehicles being towed away.

As I said, the Nationals WA support the bill. It would be crazy not to support it. Wheel clamping is not needed in this state. It follows other states that have done this. It is important that consideration is given to regulating the industry more into the future to make sure that we have people who are there not to bully and intimidate but to make sure that businesses can operate in a safe way. We will ask a few questions in the consideration in detail stage and I have raised a few questions that hopefully the minister can answer in her second reading reply speech, because it is important to know exactly what some of these regulations, which we in this house have no visibility over, will be. Perhaps the government can give us some idea about that because it would be nice to come back in to this chamber in due course with the future regulations and reflect on that to see how this legislation has impacted on the industry and whether it has worked and we have seen an increase in the number of vehicles towed away. Perhaps, in due course, after this legislation is enacted, the minister can report back to the house on that.

**MRS L.M. O'MALLEY (Bicton)** [4.50 pm]: I rise to speak in support of the Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020. "Shop local" has become an important mantra for the business owners of Bicton and beyond. Wheel clamping and other means of vehicle immobilisation are fundamentally anti-shop local and create a disincentive and in some circumstances a financial barrier to customers to visit their local shopping areas where the practice of wheel clamping exists.

I note that although the new legislation means that the use of all vehicle immobilisers will be banned, including new technology, I will mostly use the term "wheel clamping" during my contribution. I refer specifically to one shopping area in my electorate of Bicton, Hulme Court in Myaree. A constituent, who I will refer to as Colin, wrote to me to express his frustration and dismay following a recent wheel clamping experience in Hulme Court. He sent me a copy of the communication between himself and the wheel clamp company regarding the wheel clamping of his car outside a business that he visited following a visit to a different business. It is important that I read the exchange more or less in full to best illustrate the unfair and potentially discriminatory nature of this draconian practice. Colin wrote —

The Manager

...

This email is to complain / appeal against the wheel clamping of my vehicle ... in the afternoon of Friday 6 September 2019 ...

Firstly, we ARE going to GI Clinic (Unit 16) but chose to go to Spice Express for lunch first. It was almost 2pm and we were hungry.

Secondly, there is no prominently displayed signage anywhere in the vicinity of your "private lots" to inform the public that they are private lots reserved for "units 16 to 32". Most shops do not have their Unit Number prominently displayed in their shopfronts facing Hulme Court. This includes Hulme House. Are patrons of Hulme Court expected to get off their vehicles, unparked, walk around to look for your obscure signage, and then check out unit numbers of shops to determine which lots belong to which shop, before parking? Clearly, this is ridiculously impractical. Hulme Court is a busy area at lunch time, with cars passing every minute. All my wife and I wanted were to get a quick lunch and then go to GI Clinic to check on an outstanding bill. Would everyone need to go through this parking legitimizing process just to get a quick meal or visit the shops?

We revisited the area later in the afternoon, and found that there are merely two notices of perhaps A3 size ... stuck on the wall of Hulme House, the blue/gray building. Facing Hulme House, the notice on the left side of the building has an arrow pointing right while the notice on the right side of the building has an arrow pointing left. There were parking lots directly in front of Hulme House and they fall between these 2 arrows. All these lots are unmarked, giving the public the impression that they are not reserved lots. However, even if one is to stretch the point that they are reserved by virtue of the 2 notices on the wall, what one can infer from the arrows on the notices is that they refer to the lots directly in front of Hulme House, ie within the "range" of the arrows. Our car was not parked in these lots.

Where we parked was on the left, before Hulme House. There is no shop there at all. The lots where we parked are also unmarked. There is also no signage stating that these lots are reserved for patrons of units 16 to 32.

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To the left of the lot where we parked, there are a couple of notices hanging on the posts supporting an extension. These face a completely different direction, away from the lots I was parked. These notices are also different from those on Hulme House. They do not indicate that the lots are reserved for specific units. What they say is that the lots are for “Customers Parking” and are restricted to 2 hours.

Unlike those carpark lots in front of DV Computers where signage clearly state that lots are for its customers only, there are absolutely no markings on the ground of the lots on the Hulme House side. How would anyone even start to suspect they are private lots when there are no appropriate markings? DV Computers has brightly marked bollards in front of their lots, supplemented by equally bright notices on the wall. Any unsuspecting patron would, by comparison, know that those lots are reserved, and the rest on the opposite side are therefore not.

My wife and I have been in and out of Hulme Court for years, having part-owned a business there. We still frequent the area to eat and shop weekly. Never had we encountered this nasty shock before. We have decided never to go there anymore. What you are doing is killing the businesses there.

Thirdly, —

The wheel clamp attendant —

told us he watched my wife and I on CCTV closely, from the time we parked the car to our walking over to Spice Express. Basing on the CCTV, he concluded that we are not visiting the specific shops 16 to 32, so he decided to wheel clamp our vehicle. What gave him the idea that we will not visit the shops after our lunch? After all, it was almost 2 pm and we were hungry. As stated earlier, we are going to GI Clinic after lunch to settle a bill. We were so distressed by the whole affair we just drove off after being release. The point I am making is – do patrons have to go to the shops first to “legitimize” our parking before proceeding for lunch? Kindly point us to this notice, if indeed there is one.

...

Lastly, our car was the only one wheel clamped during the time we were there, although there were cars on either side of ours. None of these were clamped. As we were questioning ... about the wheel clamping, the owners of these vehicles returned. One was a young couple, our acquaintance, and they told us they too did exactly the same thing as we did, ie parked their cars, had lunch, and came back to collect their cars. The other car belonged to a young woman with a little girl, carrying a cup of bubble tea. Her car was also not clamped although it was clear she went to the Bubble Tea shop, not the shops from Unit 16 to 32.

On this basis, we want to know why was our car selected to be clamped. Was it perhaps because we are elderly and therefore soft targets? We asked —

The wheel clamp attendant —

why only ours was clamped and his answered was he did not see them parking their vehicles and didn't know where they walked to. He therefore did not wheel clamp their vehicles. It appears to us then, that it is a matter of selective wheel clamping, a cat and mouse game ...

Please be aware that the ... “release fee” is about a third of a pensioner's fortnightly income. It was a very painful expensive experience for us.

In conclusion, I therefore request for a refund ... on the basis that the wheel clamping is completely unjustified. Firstly, we ARE going to GI Clinic (Unit 16). Our “crime” was choosing to go to Spice Express for lunch first. Secondly, there is no proper and prominent signage, no markings and the inadequate number of notices displayed are unclear, misleading and contradictory.

The response from the wheel clamp company was —

Dear Colin,

I have reviewed the circumstances which lead to your vehicle being clamped.

The car park is signed at all entrances and within the parking area, all clearly display parking is for customers vehicles only and the consequences if failing to comply with the car park conditions.

Your vehicle was parked on private property which is for the exclusive use of the customers of Hulme House. It is your responsibility as the driver of the vehicle to ensure that you make yourself aware of the conditions of use of the car park when parking on private property. Please note that you need to remain on the premises to be considered a customer of the premises.

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Unfortunately you had no authority to park at this location as you were not a customer of Hulme House at the time of clamping, and therefore I wish to advise you that I decline in offering a refund based on the above.

Please note that this decision is final and no further correspondence will be entered into.

Deputy Speaker, this is but one example of a far too familiar situation that results in an entirely disproportionate penalty and punishment for the nature of the infringement. Although it could be argued that the practise could be beneficial in ensuring that car parks are kept available for customers of the businesses that have agreements with the wheel clamping company, in reality, the practice of wheel clamping overwhelmingly benefits only one business—that is, the wheel clamping company.

Bicton business owners have also told me that a lack of available parking has a detrimental effect on customers easily accessing their business, so it is important that this legislation reflects the need to support local businesses.

This bill is not about removing the rights of private property owners; it is about putting in place a just and proportionate framework for dealing with illegally parked vehicles. The new legislation will protect the rights of landowners and small businesses to allow for infringements as normal. As the minister reflected in her second reading speech —

At a time when we are actively trying to encourage people to shop at local businesses more than ever, it is vital that we remove practices that scare them away.

There is no doubt that during the COVID-19 pandemic, it has been a difficult time for Bicton business owners, especially those who operate small to medium-sized businesses in retail, hospitality and tourism or travel, which rely almost entirely on international movement, to remain viable. Bricks and mortar businesses, including those located along our “high streets” and shopping areas such as in Hulme Court, Myaree, have also been hit hard. I know of many who have had to close the doors of their business for a period, some of whom have still not reopened. All of them have had to adapt their business models rapidly and repeatedly over the past months while negotiating changes to their business property leases and mortgage or business loan repayment schedules.

I know firsthand how challenging and, quite frankly, strange this time has been for business owners and their families, because I live it every day with my husband as the owner of a work wear, personal protective equipment and uniform supply business. We have been in business for over 15 years now and know that the challenges can be great, as can be the rewards of small business ownership. I know personally that now more than ever, small business needs all our support as legislators and as customers. I believe that the changes proposed in the Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020 will play an important role in providing this support. I thank the minister on behalf of the business owners of Bicton. I commend this bill to the house.

**MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum)** [5.01 pm]: I am speaking today on the Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020 in my capacity as the member for Cannington. I wanted to give members some information on wheel clamping. An unusual situation occurred at my office in Cannington. During the redevelopment of the Westfield Carousel Shopping Centre, people were parking in the bays outside my electorate office and the offices of two other tenants—a medical imaging centre and MercyCare, the charity. It was driving us crazy. It was very difficult for us. We spoke to our landlord and asked for the capacity to ring somebody if we thought a person was not behaving properly. We did not want random wheel clamping. We agreed on a system that enabled my senior electorate officer, the manager of the medical imaging centre or the manager of MercyCare to dial a phone number and say that we wanted a specific vehicle clamped. It was agreed that we could dial a phone number and provide the registration, make, model and colour of the vehicle. Only then would the vehicle be clamped and only when we rang.

Auto Clamp, a business run by a woman named Sue Chapman, put the signs up and then clamped cars when our offices were not open. This was terrible. We were getting complaints from everybody whose car was clamped at our place. As a member of Parliament, it became very difficult because people were parking on the weekend when my office was not open, when the medical imaging centre was not open and when MercyCare was not open. People's cars were still being clamped.

**Mr W.R. Marmion:** You'd be losing votes.

**Mr W.J. JOHNSTON:** Absolutely. The car belonging to the daughter of a prominent businessman in Western Australia was clamped. He sought me out at a business function to tell me what had happened outside my own office on a weekend in July. We took action and asked our landlords to not allow this to continue to happen, but of course it did continue. I will not go through all the correspondence. We received all these emails backwards and forwards to our landlord asking that this practice cease.

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It all came to a head in the week of Christmas 2017. On 20 December 2017, the people from Auto Clamp started clamping cars at night while their owners were shopping across the road at Carousel. One of the people whose car was clamped was a relief electorate officer from my office. She had parked in one of the car bays in the car park that was clearly marked “Bill Johnston”. My casual relief electorate officer rang me and said, “How can this be?” I came out to see her.

I point out that the signs that Auto Clamp had put up did not comply with the code of practice for wheel clampers and they gave an incorrect address—4 Cecil Avenue instead of 6–10 Cecil Avenue. Auto Clamp then asserted that it had clamped the car because it was not authorised to be parked there. I said, “Look on the ground. It says ‘Bill Johnston’. I’m Bill Johnston. How can you say that the person is not authorised to park their car there?” Auto Clamp threatened to clamp my car parked in my bay outside my office. We called the police. The police said that they could not intervene; they believed it was a civil matter. I accepted the advice of the police. However, Sue Chapman threatened to have the car towed away. The police pointed out to her that that would be illegal because nothing on the sign said that a car would be towed. Although the sign said that if a car was not authorised to be parked there—this person was authorised to park their car there—it would be towed, there was no authority to tow the car.

We can see what Auto Clamp has been doing. It clamps cars and has a tow truck circling, and people believe that their car is about to be towed. Therefore, Auto Clamp gets the money, even though it has no lawful authority to do it. I make the point: how did Sue Chapman and Auto Clamp know which vehicles were authorised to be parked there and which vehicles were not authorised to be parked there? I gave the example that the person whose car was clamped was authorised to park her car in my bay. The fact that Sue Chapman threatened to have my car clamped when I parked my car in my car parking bay in front of my electorate office shows the extraordinary extent to which these people will go. Over the following couple of days, we sought the assistance of the Department of the Premier and Cabinet and the clamp was removed two days later. The car sat outside my office for two days before the clamp was removed. In the end, it was removed and we did not pay.

Then we come to 26 December, Boxing Day. As it happens, my wife and I were about to go on annual leave, travelling overseas. Like everybody, I had a few things to tidy up in my electorate office before I went on leave. On Boxing Day, I went to my electorate office. When I went into the car park, all the bays were full, so I parked behind the building. The bays at the back of the building are marked as being for people who work for the medical imaging centre. It was always agreed, specifically between myself and the manager of the medical imaging centre, that if my bays were occupied—sometimes they are occupied by his clients during the day, which is just the way it is—I was always permitted to park in the staff bays at the back. I spent three or four hours working away, clearing up correspondence—the usual stuff that we all do before we go on leave—and came out to find that my car had been clamped. Again, we went through the charade of having an argument with these people. I said, “How do you know that I am not authorised? Who told you that I am not authorised to park here?” They said, “We’ve clamped your car because you’re not authorised to park your car there.” I was authorised to park there. The question I had for them was, “Okay; if you’ve clamped my car on the basis that I’m not authorised to park there, prove that I am not authorised to park there.” They could not do it because there was no proof. In fact, there was no proof that any of the cars they had been clamping were not authorised to be parked there. I can go through it. I have lots of correspondence that shows that each of the tenants had told our landlord that we had no interest in public holidays and weekends; we were concerned only about Monday to Friday.

**Mr W.R. Marmion:** Did you have to pay the money?

**Mr W.J. JOHNSTON:** I paid the money, because what choice did I have? I was leaving the country in two days. My casual did not have to pay; the Department of the Premier and Cabinet negotiated something with the landlord. I had to pay \$170 via Visa to get the clamp removed. I videoed things and did all that. The point was that Auto Clamp had no authority to put on that clamp, because it did not know who was authorised to park in those parking bays. It was just a scam. I watched how much the company was taking. I reckon that on Boxing Day 2017, it took between \$10 000 and \$20 000 from the car park in front of my office and the other offices alongside. If that is not illegal, it should be illegal. I have seen in the media real estate agents and others say that businesses need to be able to manage their car parking. That is true. That is the problem that I was trying to confront. However, clamping vehicles when the businesses are not open is ridiculous. It is a scam. There is no other way of putting it.

Following on from that, we had some correspondence with our property managers, and, in the end, the property managers arranged to cancel the contract with Auto Clamp. We now manage the parking problem in a different way. Subsequent to that, the works at Carousel Shopping Centre have finished, and although the parking problem is continuing, it is not as bad as it was during that difficult period in 2017 when Carousel had significantly reduced parking capacity. I acknowledge that the real estate agent for my property refunded the \$170 that I had been scammed out of by Auto Clamp.

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I want to refer to another incident. My office is on Cecil Avenue. At the corner of Cecil Avenue and Lake Street is a block of multiple-use premises, with businesses on the ground floor and apartments above. My daughter was living there with her flatmate, a friend, who was a nurse. One Saturday evening, her friend came back from her night shift, and for some reason the electronic gate to get into the premises would not open, so she parked in front of the row of shops. The next morning, she went out and found that her vehicle had been clamped, again by Auto Clamp. My daughter's friend has a very clever stepfather. There is a method of removing the clamp. I do not know the details of how to do it, but I understand it is by letting the tyres down. Her stepfather removed the clamp and took it to Cannington Police Station, which is at the end of the street. Auto Clamp would not go and collect the wheel clamp from the police station. I ask why the director of that company would not attend the police station to recover their property. That is an interesting question.

What is more, in that block of units and businesses there was a Lebanese restaurant called Cedar Cafe. Auto Clamp was clamping the vehicles of all the customers of that cafe—hundreds of them—because they were parked in the bays at night when the other shops were closed and only Cedar Cafe was open. Vehicles were also being clamped when they were parked on the grassed area out the front, when there was no evidence that that grassed area was the property of the development, so how would Auto Clamp know who was authorised to park in those areas? Cedar Cafe had to move out of that premises and to another premises on Sevenoaks Street because of the problems caused by Auto Clamp. I have heard representatives of small businesses, and property managers, talk about the need to manage car parks. However, if they are using Auto Clamp, they are not doing that. They are not protecting the interests of their tenants. They are simply making money for a person who is clearly not interested in working hard and earning a living as the rest of us have to do.

I do not want to go through all the documentation, but let me make it clear: I do not believe Auto Clamp could prove that it had a right to clamp cars that were parked at our property in Cecil Avenue. Of course, the challenge is that it is a civil matter, not a criminal matter, and the cost of going to court would be high. I am very glad that in the end, in early January 2018, our landlords cancelled the arrangement with Auto Clamp. I am also very pleased that the Minister for Transport has brought this bill to the house. When this bill came to cabinet for approval to draft, I sent a text message to the minister saying, “You’re the best minister in the cabinet”, because she is finally dealing with the question of clamping. That is because I have been so personally affronted by Sue Chapman from Auto Clamp and the bullying and intimidation that went into this \$170 that they were intimidating hundreds of people into paying. I think the behaviour of that company is completely unlawful.

**MS J.M. FREEMAN (Mirrabooka)** [5.15 pm]: I thank members for the opportunity to speak on the Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020. I absolutely welcome this bill. I want to talk about the length of time I have been raising this issue in this Parliament. The amazing fact about emails is that I can go back and see that I was raising this issue right back in early 2009 and 2010, but more stringently in 2015. This bill will ban the use of certain vehicle immobilisers, such as wheel clamps, to enforce payment or the collection of parking charges on private property.

Although some people might argue that wheel clamping is a right of private property owners, I absolutely agree that it is predatory, intimidating and unfair. The reason I believe that it is unfair is that it provides no opportunity for the person whose vehicle has been clamped to do anything other than pay a penalty to get their vehicle released. The penalty is vastly greater than the commensurate damage to the private property owner. This is the sort of stuff that gets caught up in contract law. A person owns a piece of land. A person who owns a shop that is located on that piece of land enters into an agreement with the person who owns that private property about how they will use the parking area that has been allocated to them, and if people breach what the property owner says is the proper use of that parking area, the property owner has some sort of right to penalise that person for the damage or loss they have caused. However, the penalty of wheel clamping is in no way commensurate with the damage or loss that has been caused to that private property owner. It is absolutely unfair.

I have recounted this in Parliament before, but I will do it again. A year or two year ago, a very distressed woman with a number of children came into our office. English was not her first language, so her understanding of what had happened to her was limited. She was Muslim, and her capacity to interact with the overbearing wheel clamber was such that she found it very intimidating. She came into our office because her car's wheels had been clamped after she had parked in the Mirrabooka ice-skating rink car park. The rink is now closed but the wheel-clamping notice is still up. The business no longer operates, so it could no longer incur a loss from anyone parking in that area, but the wheel-clamping sign is still up. I was recently asked, “If I park in the vacant car park of the ice-skating rink, which is no longer in use because the equipment has been sold and the signs have been taken down, will my car still be wheel-clamped?” My answer could only be, “I think you still will be because the contract is still with the company if you park there.” The business was operating when this woman parked at the Mirrabooka ice-skating rink. She parked there to go to the Department of Housing, which is located at this new, great, you-beaut building on Milldale Way in Mirrabooka, but it has no parking. I have a gripe about this. The previous government promised



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a light rail to Mirrabooka—we were robbed—and because of that, when the building approvals were given, it was allocated less parking. We now have this you-beaut government building that houses the Department of Justice, the Department of Housing and a whole bunch of departments, but there is no parking for its customers, effectively, so there is a massive parking issue.

The staff park all over the place in every available position, so people who try to access the Department of Housing services have no capacity to park anywhere. This woman parked in the ice-skating rink car park, which is across the road. She went back to her car after trying to seek information—I am not even sure why she went to the Department of Housing—to find that her wheel had been clamped. Suddenly, an overbearing, really large man told her that she had to pay \$165 to have the clamp removed. She was fearful and upset. She had children with her. She came into our office and all we could tell her was, “Yes, you will have to pay this fine.” We rang the company. We tried to deal with it, but there was nothing we could do.

I see two circumstances. The first is what happened to that particular woman. There was a sign saying, “If you park here and you’re not using the business, you’ll get wheel-clamped.” I understand that that will be stopped entirely, but the second is an issue that I have talked about in this place before. Parking Enforcement Services, which is a division of Wilson Parking, has established parking zones in some areas in Mirrabooka. If a person drives past a sign that says, “You agree to the terms and conditions when you park in this area”, and then they park in front of a sign that states that they can park for only three hours, if a person breaches the rules of that parking area, a breach of contract notice is put on their car window. It looks exactly like a fine that a person would get from a local council and it basically says, “We are Parking Enforcement Services and you have to pay \$65 because you have overstayed and broken the three-hour parking rule.” People have to read the fine print to realise that they have breached a contract by staying in that area.

I argue that \$65 is not commensurate with the loss when shopping centres have massive car parks, such as at Mirrabooka. Frankly, we could do with other people being allowed to park in some of the car parks in Mirrabooka because people end up parking on verges, but that is another matter. People cannot park in the Mirrabooka shopping centre car park for any length of time greater than four hours without getting one of those breach notices and they cannot park in the car park out the front of my office for any greater period than three hours without getting a breach notice. If they catch a person breaching the terms and conditions, they say that they have to pay this amount within a period of time. The amount is \$65. It is really questionable whether that is a commensurate loss. It is a free car park. People do not go through and flick and pay for ticketing or anything like that. The term that is used for parking there too long is “liquidated damages”. What is worse is that the small print on the breach notice, which looks like a fine, says that they have a right to clamp a vehicle if someone does not pay for the breach. If people park at Mirrabooka shopping centre and stay for more than four hours, they get a breach notice for liquidated damages. If they then park in the parking area outside my office, Parking Enforcement Services will drive by and clamp their car even if they have not been there for any length of time, and they then have to pay \$165 to have it unclamped, plus the \$65 for liquidated damages.

It is really interesting to look at old emails. I have an email that I wrote to Rita Saffioti on 26 May 2015, which is headed “Parking issue — Mirrabooka Square”. This was a while ago, Rita, so I do not expect you to remember this! The email reads —

Hi Rita, as you have Ellenbrook in your area I wanted to raise with you the issue with parking at the Mirrabooka Square and a constituent in Ellenbrook.

I then provide the background of the story and include the email that was sent to me, which states —

Hello Janine,

I work for the Dept of Housing in Mirrabooka. 3 weeks ago I had finished my shift at work to find when I had returned to my vehicle that it had in fact been clamped. I was mortified. 17.15 at night and I am trying to get someone to come and unclamp it. I was spoken to rudely and hung up on multiple times. There was a woman from DCP who had also been clamped and the parking gentleman was with her. He was extremely rude and arrogant. I was advised I had to pay \$135.00 to have my vehicle unclamped (this was off pay week with 3 children and left very very short on funds for the week). I asked why my vehicle had been clamped and he advised me because I had a couple of outstanding fines from Mirrabooka Shopping centre for parking my car in their car park. I kindly advised this gentleman that I had never received a ticket on my windscreen and if I had I would have contested it or paid it. He just said, “we are targeting you government workers”.

...

I have disputed my clamping issue but heard nothing from them and I have also requested that they reimburse me the \$135.00 that I had to fork out.

I am hoping that you will be able to help me and the other lady’s that has the same issue.

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Frankly, we could not help because for all intents and purposes, having parked in that area, unless she could show that she never got those breach notices, she had to pay those liquidated damages. I understand that cars can still be wheel-clamped if there is explicit consent. My question for the minister is: does explicit consent happen when a person does not pay the first breach notice? They get a notice of breach because they parked in an area after driving past a sign and supposedly entering into a contract with Parking Enforcement Services, which is a division of Wilsons. They incur a breach. They do not pay it, and they never park in that parking area again because they think, "I'm not going to park there again", but they park somewhere else, somewhere completely different, and suddenly their car wheel is clamped. Is that a situation in which the company could argue that there was explicit consent because they did not choose to pay the first parking fine?

In wrapping up, I want to say that ever since I have come to this place I have argued against private car parking companies being able to issue fines when they do not issue parking tickets or require cars to pass through some sort of boom gate. I refer for example to Parking Enforcement Services, which is a division of Wilson Parking services, which simply drives past and take photos of car registrations because it has done a deal with the owner of a parking area and businesses located nearby. I do not believe that is an effective way of regulating parking in our community.

People know that businesses do not want people to park, say, in bays outside my electorate office for the whole day so they can catch a bus into the city. We get that. But the idea that just because someone drives past a sign, they implicitly, by driving past and parking, have entered into a contract, and that if they breach those conditions can be subject to liquidated damages, is simply unfair. I raised this issue when Minister Rob Johnson was Minister for Commerce; Police; when Minister Paul Miles was Minister for Commerce; and when Minister Johnston was Minister for Commerce; and I have also raised it with the current Minister for Commerce, John Quigley. This issue crosses into consumer protection. My understanding is that Consumer Protection investigated the issue of liquidated damages that happens with PES and Wilson Parking and whether that conduct amounts to false or misleading misrepresentation under the consumer law. Given that Wilson Parking does not hold statutory authority to issue penalties, because it issues only breaches, Consumer Protection has concluded that the application of liquidated damage does not constitute an offence contrary to the Australian Consumer Law. I disagree with that. Consumer Protection has never pursued that claim. It has never taken that matter before any court on behalf of anyone subject to those sorts of damages.

Also, I understand that in Victoria and other jurisdictions, liquidated damages must be commensurate with the loss. It cannot be for massive amounts. If a company tows a vehicle away, it could be able to say, "You have to pay us \$250 for towing," when the loss incurred from someone parking in an area for four hours versus three hours is only \$20 because that person has walked into a business to buy a lotto ticket or something like that. We really need to comprehensively look into this area to make sure that consumers are protected. Everyone accepts that businesses want their parking areas to be available for their customers. But the loss to that business when someone parks in that area for the day is very different from the loss incurred when someone overstays by a short time. At the moment those things are not taken into consideration; it is just a block breach.

I want to congratulate the City of Stirling because it considered changes to its local law to stop wheel clamping. That really was the impetus for this change. I was really pleased when the City of Stirling did that, because I always felt as though I was yelling into the wind every time I stood up to speak in Parliament or to ministers on this issue. Everyone I spoke to would just give me this look of, "It's too hard." The issue of wheel clamping is only part of the much broader issue around private property rights and parking, and the commensurate losses and proper damages that result from people who park in those areas. I thank the minister for bringing this bill before Parliament.

**MR D.R. MICHAEL (Balcatta)** [5.33 pm]: I will be reasonably quick given that the member for Nedlands looks as though he, too, wants to speak on the Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020, and that it will be good to go into consideration in detail on this bill before we deal with another bill tonight. It is great that everyone agrees that the practice of wheel clamping is terrible. There are massive safety problems involved. I often think that it presents difficulty for young people, especially those who have just got their licence and are the designated driver, when they have to park in the city when they go out. Sometimes they come back to their car alone and find that their car is gone, and it is not a good situation to be in. I first encountered this when I was young. My car was never wheel clamped, but there used to be quite a lot of empty lots in Northbridge and Perth and, like the member for Mirrabooka mentioned with the Mirrabooka ice rink, the businesses were not operating anymore, but the owners of that property were taking advantage of the situation and not putting a chain on the entrances to their vacant property or having any sort of bollards and letting people park there. They would have very small signs that no-one could read in the dark, and there would be wheel clamping. There were, as we have heard, exorbitant costs not proportionate to the offence, if you like. There was intimidation sometimes by the people who were involved in removing the wheel clamps. There was sometimes entrapment. We saw that happen in Scarborough in the lot where the great former member for Stirling Jann McFarlane used to have her electorate office. People would wait in the darkness for someone to park their car while they nicked into a shop to get something.

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They may not have thought they were parking on someone else's property because the signs were very small. It has been a terrible plague that we have had for some time now.

When I became a City of Stirling councillor in the mid-2000s, I remember a gentleman by the name of Taiura Nicholls, who worked for the RAC and with the party as well. He had done a heap of research into wheel clamping. I still have in my Google Drive scans of documents that he gave me when I became a councillor, because I thought that the City of Stirling should try to ban wheel clamping. Those documents are related to a Victorian parliamentary report done in the late 1990s and a heap of research done for the Queensland Parliament before it drafted its anti-wheel clamping laws. I was 25 or 26 years old when I became a councillor. Back then I did what I was told but if I had been told this at the end of my local government career I would not have done the same thing. I was told that in local government we could not do a local law. It would not fly. Do not do it. If I tried to do it at council, the mayor or someone else would rule it out. I left it there because I thought that was right.

At the 2019 City of Stirling elections, the then and current Mayor, Mark Irwin, the first directly elected mayor of the city, started a petition as part of his campaign to ban wheel clamping. Like the member for Mirrabooka, I congratulate him and the City of Stirling for passing a local law to ban wheel clamping. I do not think it got to the Joint Standing Committee on Delegated Legislation because the council has since decided not to continue after the state government announced that this legislation was coming. I think the push for anti-wheel clamping came very much from the City of Stirling and its council. I would also like to thank the mayor and those departmental officers and other people within government who pushed for this as well and who have probably been doing it for some time. I think it is really good.

I think it is great that the bill goes further. The last thing we want is for those in parts of the tow truck industry who are not as reputable as others to come in with similar practices and charge people a lot of money to get their cars back. It is great that there will be some regulations that promote prominent signage for penalties and consequences for breaching parking conditions, rather than those little things that no-one can read and the confusing signs that the member for Mirrabooka spoke about that no-one can understand. It is great that a tow truck driver will need to make an effort to find the owner of a parked vehicle, and that if the owner of the vehicle comes back and the car is still there, the person will get their car back without charge, which I think is important. However, it is also important that there will be a regulated fee, which is not exorbitant, if a car is towed away.

At the end of the day, as well as safety and all those other issues, wheel clamping is about anti-vibrancy. If a person wants to shop or eat some food or go somewhere or use a business at a shopping precinct, big or small, and they know that wheel clamping is going on, they will be less likely to go to that shopping precinct than another one. Not having wheel clamping will make it better for all businesses in an area. That is why I think it is so important that this bill passes.

Local government has a part to play. It is great we are promoting local parking arrangements or agreements. The City of Stirling has had these for many years. It means that a business can enter into a partnership with the City of Stirling to regulate its car parks. This will be for businesses that are located in areas in which car parks are used as park 'n' rides near a high frequency bus route to the city or at a train station. The City of Stirling or any local government can come along, chalk tyres and check to see whether someone is using that car park as a park 'n' ride. The owner will get a modified fine that will stop that behaviour pretty quickly once they know that that car park is for the business's use only, and it may be for only two or three hours' parking.

I congratulate the minister for bringing this bill forward. Although it is minor in many people's eyes, it is a very important thing to do and it will make our shopping precincts much better for not only consumers, but also businesses in that area. Hopefully, we will outlaw the predatory behaviour of wheel clampers and the companies that do that, and also make sure that we regulate tow trucks, as part of a further suite of reform to the tow truck industry, which is sorely needed.

**MR W.R. MARMION (Nedlands — Deputy Leader of the Opposition)** [5.40 pm]: I will make a brief contribution to the Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020. If I had known there were going to be so many speakers from the other side, I probably would not have! I have gone through this bill to try to find fault with it, and I have not been able to do so. It does two things. Firstly, it prohibits wheel clamping. What does wheel clamping achieve? If someone has a car parked in a bay, and it should not be there and its wheels are clamped, it is still there. The problem has not been solved. All the wheel clamping has done is create a burden, rightly or wrongly, for the person who owns the car. It has also created a bonanza for the person who has clamped the car and can recover some cash to unclamp it. Getting rid of wheel clamping is a good thing. Wheel clamping can also damage wheels and tyres, and a lot of other issues can happen with wheel clamping. When this topic comes up on talkback radio, the phones go wild. I have heard so many stories, and we have heard some stories this afternoon. It is very hard to beat the member for Cannington's stories. I have a couple of little stories, but it is amazing that the member had his car clamped. Some people on this side might

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say it is just deserts for the member, but it was hilarious to find that the member for Cannington has had his car clamped.

The other aspect of this bill that we support is the change to the towing away of cars from a private property. This bill is about private property. If someone has their car parked in a private car parking bay, there needs to be regulations around someone taking their car away. There also needs to be some protection, of course. An owner of a private property can earn some income from owning a car park. I will use the good example of an electorate office. I will use my office as an example, as the member for Cannington did. In my car park, I am authorised to park in a certain spot, but who knows which car I might park there? I might bring in my wife's car, or one of my electorate officers might park in my spot. I have got only one spot in this big car park, so the issue is: how does anyone know who is authorised? In most private car parks, the car registration is assigned to the bay, so someone could be penalised if their car is registered, but they use another car. There is a huge issue around that. Six months ago, in our particular car bay, signs suddenly appeared stating that if someone is unauthorised to park, their car would be wheel clamped. We were not advised of these signs going up; they just appeared. When we looked at them, we wondered whether someone had just put them up to scare people off from parking there. I think there was a phone number on the sign, but I am still not sure how formal it is. At our car park, if someone parks in my bay, I will end up parking in another bay. If I know whose bay it is, I will go to the particular shop and say, "Excuse me. I have parked in your bay. I am going to be two hours; is there a problem?" If there is a problem, I would park in another bay. Members can imagine that if wheel clamping was happening in our car park and one person parked in the wrong spot, there would be a flow-on effect. If somehow the wheel clamping organisation knew which car was supposed to be in each bay—I think the member for Cannington said they would not be able to, but let us assume they can—the flow-on effect of one car parking in the wrong spot would mean that 30 cars would have their wheels clamped for being in the wrong spot if they all cascaded from the wrong one. Therefore, I agree that wheel clamping should be prohibited. That is what this bill does.

The next part of the bill is all about towing vehicles away. This reminds me of an incident of an authorised towing of a clearway. A couple of years ago, I was going to a function on Beaufort Street. The left lane was a clearway until 5.15 pm, from memory. I got to where I was going at about 5.10 pm. I thought, "Should I risk it? No, I'll go around the block." I drove around the block and it still was not 5.15, so I went around the block again. When I came back it was right on time, but someone had already parked in that spot, so they got the best spot opposite this particular venue on Beaufort Street. I managed to drive a bit further up and I found a spot, but then I saw the tow truck that the car was being put on. I am sure this person got there at 5.14 pm, one minute before it was not a clearway. The tow truck driver must have been waiting until someone parked there, and this person thought they would risk the one minute. The person was at the function I went to—in fact, I think the member for Dawesville would know this person, but I will not mention them in Parliament. When I went into the function, I asked someone, "Who owns a Jaguar?", and they said that it was their car. I told them they will find it has been towed away. He raced out in the street and was too late. He could not negotiate with the tow truck driver to not tow his car away. That reflects on some of the experiences that people have had. That was legal, but we probably need to look at that. That particular car was not a serious threat to Beaufort Street at 14 minutes past five, but that is how officious the tow trucking industry obviously is, and there is a good return for it.

Back to the bill, which is about private land. I am pleased to see that the towing of vehicles will be a last resort. Regulations will be put in place to ensure the right processes are followed, including signage. Signage is a key issue. From my memory of contract law from about 30 years ago, car park owners are obliged to have signage that is readable so that when someone goes into a car park they can see the signage and its conditions are quite clear. I think the member for Mirrabooka mentioned whether there is a contract. My understanding is that if it is going to be an implied contract, it has to be quite clear to the person and they have read the sign that states the conditions of parking in that place. It has to be on every single entry to that car park. If someone comes in a different way and they have missed the sign, they could argue there is not an implied contract. I am sure all those things will be in the regulations, such as making sure the signage is fit for purpose. With those few comments, the Liberal Party supports this bill and I hope it comes into force soon.

**MR Z.R.F. KIRKUP (Dawesville)** [5.48 pm]: I, too, rise to talk to the Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020. I will be short, I imagine, at 11 minutes or less. I obviously stand with the Liberal Party in support of the legislation; I think it is an important bill. I would like to talk about two areas very briefly—firstly, the revenues that local governments continue to get from car parking, and, secondly, towing. It goes to the point the member for Nedlands and others have already raised in this debate.

I find it interesting to consider what the future will look like. We can assume that in perhaps a decade or so there will be an increased number of autonomous vehicles and a massive decrease in the number of cars that will pay for parking. I envisage that we will no longer have a need for large, multideck car parks and that street parking will also probably not be required if people use autonomous vehicles to come into the city. At the moment, some people

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use a rideshare service. There will be less need for people to park vehicles if there is an increasing capability for rideshare services to easily and conveniently pick people up. The annual reports of many local governments clearly show that they have a huge dependency on car parking fees. That presents a challenge for governments going forward, particularly in the case of Western Australia. I do not know the number of car parks in the CBD, but there would be a large number. When we hopefully see an increase in the use of autonomous vehicles or at least increased dependency on rideshare services for convenience in a decade or so, how those car parks will be repurposed will be a challenge. The disposal of those sites will present an interesting concern. I will be interested to see how future governments respond to that.

Local governments have a heavy reliance on car parking fees. Car parking revenue is in the order of tens of millions of dollars for the City of Perth. There is significant cash flow coming through to local governments in our capitals, and they need that revenue to ensure that they remain viable. What will happen when that revenue starts to drop off? That might have been brought forward by COVID-19. We know that plenty of companies in Perth now have split rosters, with only one-third or two-thirds of the workforce coming into the office blocks. I suspect we will start to see a decline in inner-city parking. How will a local government reorient if it has been dependent on tens of millions of dollars of parking revenue? That will be an interesting discussion about car parking fees. I have thought about that mainly in the sense that I expect autonomous vehicles, rideshare or some form of public transport to be used at a higher rate. Perhaps in a post-COVID world, people will prefer smaller vehicles to larger vehicles to meet their transport needs. The ongoing risk that poses to the financial viability of local governments is a conversation that is at least worth thinking about now, because we should be trying to futureproof our local governments for the inevitable situation in which there will no longer be such a revenue stream. When we were dealing with Hale House, for example, the local government charged the state government for the car parking bays that we built there. Back then, it was maybe in the order of \$4 000 a bay, because we were within the bounds of the City of Perth. For example, BGC, where I previously worked, had a large number of car parking bays right across the city. A lot of money goes to local government from car parking and that revenue stream will no longer exist if people do not constantly come into the CBD to meet their workplace needs.

I encourage members to read a really interesting article by James Altucher about the future of New York City. It effectively suggests that New York City is dead—that dense cities in a COVID world do not have a future, because people will flee to the suburbs, towns or regional centres. A good place would be Cottesloe, member for Cottesloe, or Mandurah—that is a good regional city to come to.

**Ms R. Saffioti:** Mandurah is more dense than Cottesloe.

**Mr Z.R.F. KIRKUP:** We are very forward thinking in Mandurah; we have many different densities. The member for Mandurah in particular loves a good bit of density.

**Mr D.A. Templeman:** I am very keen on density.

**Mr Z.R.F. KIRKUP:** He loves density.

**Mr D.A. Templeman:** As long as it's not in my backyard!

**Mr Z.R.F. KIRKUP:** As your local member, member for Mandurah, I promise we will not have it in Falcon!

**Mr W.R. Marmion:** Here is your backyard; you've subdivided it.

**Mr Z.R.F. KIRKUP:** He comes to me when he has concerns about the government! Of course not.

It is an ongoing concern. The post by James Altucher was interesting, because we can imagine people not going into cities. For what it is worth, property prices in New York City have dropped quite significantly. That apparently relates to international investors no longer wanting to invest there. There is a conversation to be had about density in cities. I expect we will start to have a more mobile workforce now. With COVID-19, fewer people have been coming into the CBD to work because they can effectively work from home. One of the major consultancy firms is doing one-third–two-third split shifts, for example. Basically, on a three-week rotating basis, one-third of the entire workforce is not there. That is a big reduction. We obviously know the economic impact of that, particularly on vendors in the CBD, but it will inevitably also have an impact on car parking. It is just interesting to think about what the administration of our capital will look like when that revenue source is no longer available.

In the remaining time, I would like to talk about an issue that the member for Nedlands and I think other members have articulated here. I was not here, so later I will read the member for Cannington's contribution in *Hansard*, given what appears to be a terrible stoush he has managed to have with a local landlord, whom he said was acting unlawfully. With vehicle towing in the City of Perth, I find it interesting that there is not a requirement to provide signage to let people know what has happened to their vehicle. The City of Perth came up with the idea, I think during the term of the former government, to free up the flow of traffic in the city, when everyone was going into the city. For some bizarre reason, I remember it ticking over as an issue of concern. I think it was a contentious issue on

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which we were providing briefings. It is an established practice now, but people are still quite uncertain about where their vehicle goes when it is towed in the City of Perth. I have thankfully never had my vehicle towed, but some mates of mine have. Plenty of times when people walk out of wherever they are, even on a weekend—it was something like that —

**Mr W.R. Marmion:** They think their car's been stolen.

**Mr Z.R.F. KIRKUP:** They think their car might have been stolen, member for Nedlands. It is simply not there.

**Ms R. Saffioti:** That's because they all drive Jaguars.

**Mr Z.R.F. KIRKUP:** Apparently. I am sure there is a range of vehicles. I think in the CBD in Sydney—I am not too certain—if a car is towed from a clearway, the signs provide the number for the driver to call. I appreciate that this is not something that the state government needs to regulate, but I find it bizarre that the City of Perth does not put on its signage that if a car is not there, the driver should call this number. I am surprised that that is not the case. The City of Perth has not, in this case, made it particularly user friendly for somebody who has gone through what could actually be quite a traumatic experience. Unlike many people who get parking fines and see the parking inspector there, who has come five minutes after their time has expired, I do not go up to them; I just wait, because I would find that an awkward conversation. I am not going to try to engage them in a conversation about how I am only five minutes over time or something like that; I will just wait. I would feel uncomfortable talking about that. If my car has been towed, I could not imagine going to explain that I was in a clearway. Some cars remain in holding yards overnight. Some people do not have the money to have their car released. The member for Mirrabooka made a point about cultural differences. To be perfectly frank—I apologise, because the member for Mirrabooka has far more experience in this area than I do—the cultural concerns are real and present. I had not considered for a moment the impact that could have. The member told a story about a Muslim woman. I obviously understand the barriers that that presents to engaging in a conversation with someone who is typically deliberately imposing looking, I would argue, in terms of the people who are chosen for wheel clamping. The language barrier would be a problem. In the case the member raised, I imagine that other cultural issues would also present a barrier. That is not a particularly easy process. For a professional outfit like the City of Perth, it would take nothing to put up a sign next to a clearway, for example.

**Mr W.R. Marmion:** I think there is also a problem about when they shut. If you finally work out where your car is and you ring up, they say, "You're too late. We close at six o'clock." That can be another issue when you've lost your car.

**Mr Z.R.F. KIRKUP:** Sure. There are plenty of issues with the ease of access to it. The idea that there would not be the opportunity for someone to easily retrieve their vehicle is a concern. I personally hate Wilson Parking. I do not think that is a good organisation. I do not like it. I think it sometimes presents its car parking signage in a way that is not particularly easy to understand or read.

**Mr D.R. Michael:** It would be terrible to give them hospital car parking then, wouldn't it!

**Mr Z.R.F. KIRKUP:** In that case, I am sure it is well laid out, member for Balcatta. I am aware of some City of Perth car bay signage, for example, that is not easy to follow. I think that perhaps sometimes they are deliberately not easy—in some but not all instances. There is a lot of improvement that could be made with car parking, wheel clamping, towing and the like. I think this is a really important step and I welcome the bill that has been brought to the house. It is one thing that I think we might consider, given everything we have dealt with during this pandemic. It is not as big as everything else, but I think the impact will be quite considerable. I support the bill.

**MS R. SAFFIOTI (West Swan — Minister for Transport) [5.59 pm]** — in reply: I thank members for their contributions to the debate on the Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020. A number of questions were raised, which I will try to answer.

*Sitting suspended from 6.00 to 7.00 pm*

**Ms R. SAFFIOTI:** I will try to address the questions that were raised during the second reading debate by members opposite and also on my side. First of all, I will try to answer the questions of members in the chamber at this point in time and wait until the rest all come flocking back. The member for Vasse —

**Mr D.A. Templeman:** I thought you said something else, but I am leaving it now!

**Ms R. SAFFIOTI:** I said "flocking back"!

Regarding who covers the cost of the release of the vehicle, when the vehicle owner returns before the vehicle has been towed away and it is released without charge, the costs of the tow truck driver will be covered by arrangements between the parking landowner and the tow truck company. The legislation requires a signed towing agreement between the landowner and towing company with standard wording that will be approved by the CEO of Transport. Another question that the member for Vasse raised was how this legislation will affect crash and breakdown towing.

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This scheme applies only to vehicles towed away from private parking areas because they are causing a hazard or are not parked in accordance with posted conditions. The scheme does not apply to crash or breakdown towing. This work makes up the majority of towing. The Department of Mines, Industry Regulation and Safety is currently working on proposals to regulate crash and breakdown towing. It has recently released a consultation document about the regulation of the towing history as a whole. We are currently preparing the regulations governed by the Department of Transport, and these will include vehicle roadworthiness inspections and the disclosure of towing and storage fees prior to the vehicle being towed away.

The member for North West Central asked in what circumstances a vehicle could be towed away. Towing will be the last resort for parking management. If a property owner wants to have a vehicle towed away from their property, a number of steps must be followed. First, there must be signage in the parking area that warns about the possibility of towing. This signage must be in line with the requirements outlined in the regulations. The owner must have a towing agreement with the tow truck operator. This is an agreement in a template approved by the CEO of Transport. There is a 30-minute waiting period before the vehicle can be towed, unless it is causing a hazard. In this period the tow truck operator can search for the owner and load the vehicle. If the owner returns before the vehicle is loaded, the vehicle must be returned without charge. If the owner returns after the vehicle is loaded, the vehicle must be returned for a set charge. The member talked about a \$200 fee, but we are looking at whether that could be a bit lower, and we are working on that at the moment. The figure in Queensland is slightly more than that. Regarding what happens when the car is gone—that towing situation—the parking signage will include a telephone number that the owner or driver can call to find out whether the vehicle has been towed and where it is. The responsibility for servicing this number is currently under investigation. It could be staffed by government officers or maybe managed by the landowner or towing company. Regarding vehicles being towed excessive distances, the vehicle must be taken to the nearest appropriate approved storage yard. Fees will be capped, again, to ensure that longer distances cannot be chosen.

The member for Mirrabooka commented that under proposed section 92 a vehicle owner may give consent that is explicit. This means the express words by the driver in that particular occurrence of parking. Please note that this legislation does not affect the use of breach notices and a breach notice will not provide consent and has no bearing on the use of clamping.

The member for North West Central has disappeared. I am sure he appreciates all of those answers to his questions!

There were very useful contributions by everyone. I thank everyone for their contributions. As the member for Mirrabooka has raised previously with me and as the member for Balcatta has outlined, the City of Stirling has been very proactive on this issue. I think last year at a community cabinet meeting in Mt Lawley, Mayor Irwin spoke directly to me about it. At the time I was not quite sure whether the issue fell under my portfolio; I think it could have fallen under three or four portfolios, but here I am bringing in the legislation. I am very happy to do so. I think we have seen very bad behaviour in this area. For example, someone wrote to the Premier as late as a couple of weeks ago outlining how a wheel-clamping company clamped her car in Scarborough. They seem to have targeted and been very aggressive in Palmyra, Scarborough and Cannington, and I think it should not be allowed. The other issue, even compared with towing, is that wheel clamping is a pretty easy thing to do from a cost point of view—very, very low cost, with a very high return. The cost is very limited and that return is \$170 straight away. There is incentive for unscrupulous wheel clampers to make a quick buck, because there is a very low cost, it is very quick to implement and there is a very high return that can be gained very quickly. One of the other issues about wheel clamping is that it is such an easy thing for someone to do to another person's vehicle. I am very happy to bring in this legislation. I thank everyone for their support and comments and look forward to consideration in detail.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

*Consideration in Detail*

**Clause 1 put and passed.**

**Clause 2: Commencement —**

**MSL. METTAM:** I hope I might be able to ask some general questions at clause 2 that I cannot see relate specifically to other clauses of the bill. These are just questions that have been asked of me by the industry. One question posed was: what consultation has the government and/or its relevant departments had with stakeholders with a direct interest?

**The DEPUTY SPEAKER:** I am just querying. This is clause 2, member, "Commencement".

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**Ms L. METTAM:** It relates to the commencement of the bill and whether that has an impact on stakeholders in the industry. I just wonder whether the minister or the department have had discussions about what that commencement would look like and what the impact would be.

**Ms R. SAFFIOTI:** The Department of Transport has consulted with the Western Australian Local Government Association; specific local governments, such as the City of Stirling; security companies undertaking wheel clamping activities; strata companies; Western Australia Police Force; the Department of Local Government, Sport and Cultural Industries; the Department of Mines, Industry Regulation and Safety; and the Road Safety Commission. The statement of intent was placed on the Department of Transport website on 25 May 2020 and circulated to relevant parties, including tow truck owners, strata agencies, parking organisations and security agencies that are engaged in wheel clamping.

**Mr V.A. CATANIA:** Further to that, with regard to the commencement and being prepared for when this bill is enacted and we cannot clamp wheels anymore, when is that going to occur—when this becomes law? When the legislation becomes law, will the property owner have to put up signs with phone numbers to call if someone's car is towed away? With regard to being ready to have the infrastructure in place at businesses, will they have to be in place before this bill is enacted?

**Ms R. SAFFIOTI:** Before cars can be towed there needs to be an agreement between the landlord and the tow truck company. The regulations will also specify the size of the signs, and there will be a phone number there. Sorry; I answered that question before. There will be a phone number on the sign in relation to towing.

**Clause put and passed.**

**Clauses 3 and 4 put and passed.**

**Clause 5: Part 6A inserted —**

**Ms L. METTAM:** This clause contains definitions, and I refer to the definition of “controller”. Can the minister further define what a controller actually is and how this will work if, for example, it is not the owner of the property but somebody who is staying at that property?

**Ms R. SAFFIOTI:** It is the person in charge of the storage facility where a car may have been towed to as a result of this legislation.

**Ms L. METTAM:** With regard to parking facilities, how does this work in relation to towing from verges or other places? There is a definition, and obviously this bill relates to wheel clamping or towing from parking bays. I just wonder what the situation is when we are talking about parking in public places.

**Ms R. SAFFIOTI:** It is not intended to cover any public verges or public land.

**Ms L. METTAM:** I imagine that the issues relating to having to move a vehicle would still exist in those circumstances. I just wonder whether it has been considered as part of the bill if the vehicle could be, for example, out the front of an aquatic centre or another area.

**Ms R. SAFFIOTI:** Again, this is intended for private parking facilities. It is not really intended for verges or government-owned land.

**Mr V.A. CATANIA:** I refer to paragraphs (a) and (b) of the definition of “parking agreement”. Is it incumbent upon the tow truck driver to take photographs of the vehicle before the vehicle is towed away as part of that agreement, to ensure that no damage is done to the vehicle and to provide cover for the tow truck operator and the owner of the vehicle? Would that include photographic proof so that everyone is clear that there is no damage to the car?

**Ms R. SAFFIOTI:** The regulations will cover the procedures for the towing of the vehicle, and those regulations are in the process of being drafted. We will, of course, be waiting for the passing of this legislation before the regulations can be finalised. But those procedures will be covered through regulations.

**Mr V.A. CATANIA:** Are there any conditions attached to the parking facility for maintaining distance between vehicles? For example, in a situation in which a vehicle is impounded, are there any requirements on the piece of land that houses the vehicles for them to be a certain distance from other vehicles, or can they be put in stackers? What are the requirements to ensure that the vehicles are not damaged? Are there any requirements around the size of land and how many cars it can hold—all those sorts of potential requirements to ensure that damage is not done to the vehicle?

**Ms R. SAFFIOTI:** Is the member talking about the storage facility when a car is towed? That will be looked at as part of the regulations, but also more widely as part of the reforms of the tow truck industry. We are doing work on that. We are doing some work and the Department of Mines, Industry Regulation and Safety is also doing some work under the consumer protection hat with regard to the regulation of tow trucks. There is a consultation paper



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out at the moment, so if there is a particular issue around storage yards, it may be worthwhile going through the consultation that DMIRS is undertaking on the regulation of the tow truck industry more widely.

**Ms L. METTAM:** I return to the matter of the parking facility, which we touched on earlier. I imagine that private parking facilities rely on the local government agreement that was pointed to in the second reading speech. I understand a bit of work needs to happen between local governments and the state government to ensure that these parking facilities are effective, if you like. Can the minister outline where we are with that body of work, and who is on board?

**Ms R. SAFFIOTI:** A number of councils across the state have established parking agreements, particularly across the metropolitan area. There has been a lot of consultation and liaison with WALGA about making sure that those councils that do not have agreements seek to implement them. As I understand it, a model parking agreement has been established, so it is relatively easy for councils to adopt that model parking agreement, which will help govern private parking facilities in council areas.

**Ms L. METTAM:** What is the situation in regional Western Australia? How many local governments are involved?

**Ms R. SAFFIOTI:** The parking agreements are available for regional councils but none has those parking agreements in place yet.

**Ms L. METTAM:** I have a question on towing charges.

**The DEPUTY SPEAKER:** Is that under clause 5, member? The minister is happy to take that question.

**Ms L. METTAM:** Will the charges for loading a vehicle onto a tow truck and the towing charges, or a breakdown of these charges, be defined in the regulations that will be prepared?

**Ms R. SAFFIOTI:** Yes. The regulations will set the maximum fee.

**Mr V.A. CATANIA:** The minister may have mentioned this in her second reading reply speech, but would she like to see a cap for towing charges to be set at \$200? To get it on the record, can the minister perhaps outline the charges that she anticipates will be set by the regulations? Exactly how much does the minister anticipate the charges will be for an individual who gets their vehicle towed away? If an individual sees their car being towed away, what will it cost them to retrieve their vehicle on the spot? If an individual's car is impounded, what does the minister anticipate it will cost them on a daily basis until they take their car out?

**Ms R. SAFFIOTI:** As the member outlined in his contribution to the second reading debate, the cost in Queensland is \$250. We are currently looking at \$200 as the cap, but we want to bring that down further. We are also looking at a daily storage fee of \$25 through regulation, but we are hoping to bring that down. We are consulting heavily with the Western Australian Local Government Association and local governments on those fees.

**Ms L. METTAM:** I refer to page 9 and division 2, which relates to penalties. Proposed section 95(1) states that there is "a fine of 100 PU". My question follows on somewhat from the member for North West Central's comments; can the minister explain how this fee or charge will be determined?

**The DEPUTY SPEAKER:** Do you need any information further to that, minister, or are you okay?

**Ms R. Saffioti:** I'm good.

**The DEPUTY SPEAKER:** Minister.

**Ms R. SAFFIOTI:** The PU is valued at \$50, so the maximum penalty is \$5 000.

**Mr V.A. CATANIA:** I refer to proposed section 93, "Terms used: authorised enforcement action", which states —

A motor vehicle is immobilised, towed or detained in the exercise of authorised enforcement action if the immobilisation, towing or detention is done —

In my contribution to the second reading debate, I brought up whether there is a time frame. If a person has their vehicle towed away and that costs, say, \$200, and they do not have \$200 on their person, in another week, another \$100 may be added to the cost, but perhaps the person does not have that money. Is there a limit on how long one can hold a vehicle and what happens to a person who is unable to, or chooses not to, reclaim their vehicle? What process is in place and what is the time frame in which a towing company could hold or impound a vehicle on its premises? What will happen after, say, 30 days, two months or whatever the time frame is? Does it become the government's responsibility? Do they sell or crush the vehicle? What happens then?

**Ms R. SAFFIOTI:** The next clause refers to towing motor vehicles. The proposed section the member referred to explains when immobilisation can happen under authorised enforcement action. More generally, the member's questions about how tow truck operators and storage yards run their operations are, again, subject to further review. Daily costs and what happens to unclaimed vehicles are subject to the current consultation process being undertaken

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through the Department of Mines, Industry Regulation and Safety. The issue of general regulation and the running of both the towing and the storage of vehicles for tow trucks is being picked up in the other reform process. This legislation is basically to stop wheel clamping and to say that in extraordinary circumstances there can be towing. The towing has to be regulated in this form but more generally the regulation of storage facilities and other parts of the tow truck industry will be picked up as part of other reforms.

**Ms L. METTAM:** I referred to the costs associated with the towing arrangement in my contribution to the second reading debate. This bill fairly outlines that if someone approaches a vehicle that is being loaded to be towed, it will not be pursued. If someone shows up while the tow truck driver is about to move the vehicle, it will not progress. Industry raised with me the question of who would pay the cost of the tow truck going to the site.

**Ms R. SAFFIOTI:** I addressed that particular issue in my second reading reply speech. There will be an agreement between the tow truck company and the landowner. That agreement between the landowner and the tow truck company would include, for example, that should the tow truck driver be there loading a vehicle and then have to unload it, the cost of their time would have to be covered by the landowner. They may have a shared cost structure; the landowner might bear it or it might fall on the tow truck company, but it will be according to the agreement that has been struck.

**Ms L. METTAM:** I refer again to page 9 and proposed section 95(2), which refers to motor vehicles not to be immobilised. What can be immobilised? Will it be the same as in Queensland? Can the minister give an indication of how this proposed section will be utilised? Is there an opportunity for the industry to take any of this work and, as part of that, has the department liaised with the towing industry?

**Ms R. SAFFIOTI:** The sheriff or other similar enforcement powers, for example, may use third parties to assist them with immobilisation. This is not something we have the answers for here. This basically says that in some extreme circumstances or if the sheriff is involved or if a person needs to have their vehicle immobilised for a particular reason, this allows that to happen. Can the industry be involved? I suspect that it may be already involved in some arrangements with the relevant enforcement powers, but those would be arrangements between, for example, the sheriff and those relevant parties.

**Ms L. METTAM:** On page 10, proposed section 96, the reference to roadside towing says —

- (2) This Division does not apply in relation to —
  - (a) the towing of a motor vehicle —

Can the minister provide a time frame of where the Consumer Protection division work is at?

**Ms R. SAFFIOTI:** As I said, it has a consultation paper currently available on its website proposing different models of regulation. I think five models are out there for public comment, from very little regulation to significant regulation, and it is seeking a response from industry now. I suspect that once the Consumer Protection division gets that feedback, it will be in a position to provide some recommendations to the government. It may require some legislative or regulatory change, but the current process is under significant consultation.

**Ms L. METTAM:** Are we talking of a time frame before the end of the year?

**Ms R. SAFFIOTI:** If it requires legislative or regulatory change, I am not sure whether that would happen; if it requires legislation in particular, I suspect not. The Consumer Protection division will probably have recommendations to the government by the end of this year, but I am not sure and I cannot really speak on behalf of the Minister for Commerce, as much as I would love to; I cannot do that. We are taking this seriously. It is an industry that we believe—I believe, in particular—needs better regulation and that is what we undertook to do and that is what we are consulting on now.

**Ms L. METTAM:** I refer to clause 5, page 13, proposed section 98, “Regulations relating to towing requirements”. There is a reference to notifying the CEO of the Department of Transport prior to towing. How will this happen in a 24-hour setting and does the CEO nominate somebody else in their absence? How will this work, around the clock, outside of business hours?

**Ms R. SAFFIOTI:** It will work either through a phone call or email. I suspect it will be a relevant officer with delegated authority from the CEO.

**Ms L. METTAM:** I appreciate that we are talking about situations of last resort and extraordinary circumstances. Is the minister confident that measures are in place to enable an urgent response when a vehicle needs to be moved?

**Ms R. SAFFIOTI:** I think the member’s question is on behalf of a business owner having access to that type of authority; is that correct?

**Ms L. Mettam:** Yes.

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**Ms R. SAFFIOTI:** If the landlord or the landowner, in particular, has that agreement, I am confident that they will have mechanisms in place. I know how quickly tow truck operators sometimes attend scenes. We do not want to see cars towed at the drop of a hat. We do not want to see that at all. A big part of the bill is overseeing the towing rather than just the immobilisation, because the experience of other states that banned wheel clamping without the right structures in place was a quick move to towing. As I said, towing is more difficult and more costly than wheel clamping. One of the reasons people have clamped a lot of vehicles is, as I said, it is very low-cost and very quick and it is a big deterrent; however, it is now against the law. Having the right procedures in place will allow the landowner and business owner to make sure that they are not having people parking in their car bays for days on end with no repercussions, but also to protect the people who we hear about who are grabbing a coffee next door before visiting a shop.

I take the point raised by the member for Dawesville that more and more as we move forward, the flexibility of parking arrangements is going to be very important, such as the idea of fixed parking bays for each shop and each centre as we grow towards autonomous vehicles. More generally, as public transport becomes more prevalent, but also as ridesharing becomes a bigger part of what people do and as we try to get multi-use facilities and have more available car parks, we cannot have sterile land that is not used for 16 hours of the day.

We are looking more and more into how we can use all our infrastructure more productively, whether it be for car parks or anything. Going forward, as part of the planning project, the whole idea is how car parks can adapt and change for the different needs over the 24-hour period.

**Mr V.A. CATANIA:** Proposed section 99, “Release of motor vehicle that is being loaded onto tow truck”, states —

(1) This section applies if —

- (a) the process of loading a motor vehicle that was parked at premises onto a tow truck has begun but has not been completed; ...

Can the minister explain whether that means that if an individual sees their car being put onto a tow truck, they can stop it and have the tow truck driver release that vehicle? Is there a charge associated with that? It continues —

- (b) a relevant person for the vehicle agrees to remove the vehicle from the premises within a reasonable time.

This is commonsense. It continues —

- (2) The tow truck driver for the tow truck must immediately release the vehicle to the relevant person without charge.

Is there a charge involved if the vehicle is put on the tow truck and the owner arrives and says they want their car off and the tow truck driver responds: “Yeah, sure. No worries. I’ll take it off for you.”?

**Ms R. SAFFIOTI:** If the car is in the process of being loaded, they have to release at no charge. In relation to the recovery cost of the tow truck company, as I stated before, that will be part of the agreement that is struck between the landowner and the tow truck company. There has to be an agreement for the tow truck company to be able to access that vehicle. Part of this legislation and the regulations will provide that in order for people to be able to contact a tow truck company to remove a vehicle, there has to be an existing agreement, and that agreement has to be approved by the Department of Transport. Cost-sharing responsibilities will form part of that agreement. For example, if a car is being loaded but is stopped in that process, there may be a sharing of costs between the landowner and the tow truck company. It may all rest on the tow truck company or on the landowner; it depends on the agreement that is struck. If the truck is fully loaded and about to depart, there will be a discharge fee. That will be worked through in the regulations. If it is fully loaded, locked up and the driver is about to take off, there will be a discharge fee. We do not believe it will be the same as the towage fee, but there will be some fee.

**Mr V.A. CATANIA:** Can the minister see where this can go a little wrong? Say the agreement between the tow truck driver and the landlord is that it is the tow truck driver’s cost to load it up. If the person comes, they bear that responsibility and that cost. Obviously, a tow truck driver makes money from towing vehicles away. Is there any penalty if the tow truck driver demands payment? Say they are told, “No, you’re too late.” He or she is tying up the last wheel on the vehicle that is being towed away, but they are not leaving for another five minutes, and the person is demanding, “The legislation says that you have to allow me to take my vehicle at no charge.” He or she is going to miss out; therefore, they get in the car, they bolt with the vehicle and ring the number to get their car because it will cost them. That is how they are going to make their money. What penalty is there for the tow truck driver or the company who sees that as an opportunity to make money? What is the penalty if they do not comply with this legislation—that is, it is not completed and has not been tied up to be taken away? As we have seen with wheel clamping, some tow truck drivers—not all—have not had the best relationship with the individual whose car they are clamping. There is no regulation or tightening up of the requirements for trained tow truck drivers. Can the

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minister see that this potentially could be a situation in which that angst between the tow truck driver and the owner of the vehicle being impounded will be much the same as it is with wheel clamping? Is there any penalty that the tow truck driver can incur if they do not follow the legislation?

**Ms R. SAFFIOTI:** First of all, I was asked whether I can see how things can go wrong—no answer. My parents are Calabrian, so I always think everything is going to go wrong! That is how I was born. I am always a glass half empty.

I have three things to point out. Firstly, there is a penalty in proposed section 100(2). The penalty for a tow truck driver not releasing a vehicle is \$5 000—100 times 50. Secondly, it relates to the regulation of the tow truck industry. The situation outlined by the member happens on the side of the road at accidents. The concept of a fit and proper person test and other tests are potentially being looked at as part of the proper regulation of the industry. Thirdly—I refer the member to proposed section 103—the legislation requires that if an owner follows the person who is towing their vehicle to the storage yard, for example, the vehicle has to be released at no cost. The owner cannot be charged at that point. They can be charged later, but that vehicle has to be released straightaway. There is really no incentive in a sense because by that stage the owner would have all the evidence to say that it was done illegally and could follow it up with the Department of Transport. There is not a lot of incentive to do it as opposed to wheel clamping, which is easy—they get the money and move on. This is far more rigorous.

The member asked whether I can see how this can go wrong. I was being a bit flippant before. Of course, we always have to try to get the balance right. The balance is banning wheel clamping and allowing landowners a legitimate pathway should people abuse the situation on purpose, but then protecting the innocent shopper who gets the coffee or accidentally parks there occasionally. I think this gets it right. The mechanisms are there. If someone is going out of their way, day after day, to park in a car bay they should not be in, this pathway will be a good one. But for the person who is there for 15 minutes, it will not be worth someone sitting there watching, taking photos and then clamping their vehicle just because they have gone into the shop next door. It has the balance right. With all legislation and regulations, there is always concern about how they are implemented, but I think the team has done a very good job. We have used the experience from over east, too, to try to get that balance right. Because this pathway has been undertaken by others, we have been able to learn from some of that experience. We always try to use our best endeavours to get that balance right.

**Ms L. METTAM:** Given that a vehicle has to be released on demand without payment, is it foreseeable that this may create further issues in trying to follow up on such payments? We are not talking about people who are parked for 15 minutes at the front of a store, but someone perhaps who has left their vehicle at a location for an extended period and that vehicle has been towed to a facility. The legitimate business has done the right thing in moving that vehicle but is then not paid. Can the minister see that there may be some issue, potentially even with the courts having to bear an added workload? What considerations were given to that?

**Ms R. SAFFIOTI:** Proposed section 105C clearly states the liability for those charges. I understand the member's point that it becomes a potential court issue, but, again, I always believe that most people are law abiding. That is my view of life. There are always some people who will not abide by the law, but in general most, especially in a country like Australia, are law abiding, and if they are required to pay that charge, they will. I start from the premise that most people abide by the law. I think, as I said, that that is probably what happens in a place like Western Australia.

**Clause put and passed.**

**Clauses 6 to 13 put and passed.**

**Clause 14: Part 4 Divisions 6A and 6B inserted —**

**MS L. METTAM:** I refer to clause 14 and page 27. Proposed section 61B(2) states —

A police officer may search —

Rather than inspect —

premises for RTA Part 6A compliance purpose.

Concerns have been raised that the powers set out in proposed sections 54(4), 54(9) and 61B are in addition to the powers already bestowed upon WA police in the normal course of their duties. Are these additional powers, and can the minister provide some clarification on the powers that are spelt out in this proposed section?

**Ms R. SAFFIOTI:** The reason this is in the legislation is we are basically replicating the powers that Main Roads has for mass, dimension and loading requirements for heavy vehicles. The idea is that there will be consistent powers for heavy road or mass and loading compliance and parking enforcements, and police will have the same powers.

**Ms L. METTAM:** On these powers, there is perhaps a better clause of this bill under which I can ask this question, but have any additional resources been provided to either WA police or local governments in support of the proposed new regulations?

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**Ms R. SAFFIOTI:** We are just having a discussion. I thought there was an allocation already, but we are going through that process. I am seeking some further allocations for undertaking this work, so I can get back to the member on that, or maybe we can provide an answer tomorrow in the chamber. But there will be some further allocations to undertake these types of activities.

**Ms L. METTAM:** Can I just clarify whether that is in relation to WA police and local governments? I acknowledge that I am not asking this question under the right clause.

**Ms R. SAFFIOTI:** It is the Department of Transport, because the Department of Transport will be undertaking the compliance activities.

**Ms L. METTAM:** Obviously, this will put additional pressure on local governments as well. Will additional resources be provided, or how will it work?

**Ms R. SAFFIOTI:** As I have said already, some councils have parking agreements, so I am not sure about additional pressure. I do not think I have had that feedback yet from the Western Australian Local Government Association or from councils directly. This creates a new activity for state government and the Department of Transport. That is where it is creating the extra workload, because we will be administering and undertaking compliance with the act. As I see it, the direct cost will be to the Department of Transport, because that is the agency that will administer the provisions of this bill and the relevant section of the act.

**Ms L. METTAM:** I turn to page 29 and proposed section 61C, “Direction to produce records, devices or other things”. It states —

A police officer may, for RTA Part 6 compliance purposes, direct a person to produce any of the following —

Can I just clarify whether these powers already exist and can already be exercised, or are these new powers?

**Ms R. SAFFIOTI:** Yes, these powers already exist—for example, when Main Roads is dealing with mass, dimension and loading requirements.

**Clause put and passed.**

**Clauses 15 to 27 put and passed.**

**Title put and passed.**

Leave granted to proceed forthwith to third reading.

*Third Reading*

**MS R. SAFFIOTI (West Swan — Minister for Transport)** [7.56 pm]: I move —

That the bill be now read a third time.

**MS L. METTAM (Vasse)** [7.56 pm]: I will just make a couple of brief comments. I speak on behalf of the Liberal opposition, and we certainly support the Road Traffic Amendment (Immobilisation, Towing and Detention of Vehicles) Bill 2020. This has certainly been well supported by the community. I think local government, particularly the City of Stirling, has taken a great role in leading the charge. We welcome the provisions that have been put together on behalf of the Minister for Transport. I would like to take the opportunity to thank the staff of the Minister for Transport for the assistance and information they have provided. I look forward to some clarification on a couple of questions that were asked on behalf of those in the tow-truck industry about issues that have been raised directly with me, but we certainly support what has been proposed here and commend the bill to the house.

**MS R. SAFFIOTI (West Swan — Minister for Transport)** [7.57 pm] — in reply: I thank members for their cooperation. I think everyone wants this type of practice to be made illegal. We have heard the horror stories from around the suburbs, and we really do not want people being preyed upon by unscrupulous people out in the community. As I have said, this type of practice undermines people’s confidence, impacts small businesses and costs Western Australians thousands of dollars, and we do not want this behaviour to continue.

Question put and passed.

Bill read a third time and transmitted to the Council.