

**OWNER-DRIVERS (CONTRACTS AND DISPUTES) BILL 2006**

*Referral to Standing Committee on Legislation*

Resumed from an earlier stage of the sitting.

**HON PAUL LLEWELLYN (South West)** [5.44 pm]: I was hoping that the parliamentary secretary would have responded to the Deputy Leader of the Opposition's motion to refer the Owner-Drivers (Contracts and Disputes) Bill 2006 to the Standing Committee on Legislation. I became aware of this motion only a few minutes before Hon Simon O'Brien raised the issue. To enable members to make a considered decision on whether to refer this bill to the Legislation Committee, it would be useful for the parliamentary secretary to respond to the issues Hon Simon O'Brien raised. They deserve some sort of response.

The owner-drivers transport sector is definitely in need of some kind of reform to resolve issues. I am talking to the motion.

**The PRESIDENT:** I trust Hon Paul Llewellyn is speaking to the motion.

**Hon PAUL LLEWELLYN:** I am speaking to the motion, precisely.

It is clear that the intent of the bill is to put in good order the contract arrangements and dispute procedures as they apply to owner-drivers in Western Australia. The evidence to hand suggests that things must be improved in that area.

**Hon Simon O'Brien:** I do not disagree with you on that point; that is, that there are some useful elements in the bill. I offer that; I do not disagree.

**Hon PAUL LLEWELLYN:** In speaking to his motion, Hon Simon O'Brien put forward a number of arguments. The first is that this legislation will have a profound impact on the transport sector. Perhaps the word "profound" is a bit florid; the bill will possibly have a positive impact on the transport sector. Hon Simon O'Brien explained that the impact of the bill is unclear. However, I am not convinced that there will be a profound impact.

The second point Hon Simon O'Brien raised was that the bill would undermine the future viability of independent operators. Contrary to that, there is a good argument to suggest that independent contractors are already under considerable economic pressure, not only from having poorly defined contractual arrangements but also because of the highly competitive market and other pressures such as the cost of labour - for example, mechanics - and the increase in oil prices. I am not convinced that we can be sure that this bill will be the saviour or the death knell of small independent contractors. It is unlikely to have a deleterious effect on them.

Hon Simon O'Brien referred to the possible flow-on impact to the economy and, effectively, questioned whether there was a need to undertake a cost-benefit analysis to ascertain whether the increased transport costs would have widespread damage on the economy generally. In the current highly competitive transport environment there is an unregulated relationship between independent operators and contractors and there has been a lot of cost cutting. In fact, the cost of transporting freight has been kept artificially low because of poor bargaining by operators. The assertion is that a regulatory impact statement has not been undertaken. A regulatory impact statement has not been undertaken on a number of bills that have come before this Parliament. I am not convinced that the flow-on costs to the economy will break the economy. I understand the veracity of the argument; that is, a formal assessment has not been undertaken.

Hon Simon O'Brien said that under clause 52 of the bill certain provisions of the Trade Practices Act will be suspended, and that is correct. I am not 100 per cent sure that we need to refer the bill to a committee to establish whether collusive activity and price fixing will be a consequence of suspending that aspect of the Trade Practices Act. The provisions of the bill are relatively transparent on that matter. The bill will improve rather than damage the transparency in the relationships of independent contractors. There might be a number of other good reasons, but I will deal with them one by one.

I share the concern about the way in which this bill has been structured around the Road Freight Transport Industry Council. There is a genuine concern that representation on the Road Freight Transport Industry Council is somewhat narrow; for example, some parts of the industry are not adequately represented. I would like an undertaking from the parliamentary secretary that representation on the Road Freight Transport Industry Council will be expanded so that all players in the transport sector are formally represented. It is needless to say that this bill came on relatively quickly with very little notice. It would have been better if we had had more notice. There has been heavy lobbying on this matter by a number of groups. The eighth point that Hon Simon O'Brien raised was that there was no adequate consultative process, which would have resulted in this bill being reviewed by peers in the transport sector. I cannot substantiate that claim, but if Hon Simon O'Brien is aware of that, perhaps details will emerge during the debate.

I am conscious that there is an obligation in this place to pay good attention to the way in which legislation is constructed and passed, and that we need an adequate and formal process to review legislation. I am also conscious that our committee system, although it has been extraordinarily effective in dealing with referral motions of this nature, needs to be based on genuine priorities in allocating tasks and committing resources. I am not convinced that this bill needs to be referred to a legislative committee. However, I would like a clear undertaking that we will systematically work through the bill, particularly at the committee stage, and deal one by one with the issues that have been raised. The Greens (WA) will not support the motion to refer the bill to a committee, although we agree that there is merit in some of the arguments. I will take the opportunity during the second reading debate and the committee stage to unpack the issues that Hon Simon O'Brien raised.

**HON MURRAY CRIDDLE (Agricultural)** [5.54 pm]: A number of issues need to be clarified. I note that there is no date stated in the motion of Hon Simon O'Brien. I would have preferred a date in the not-too-distant future, but I understand the numbers in this place.

I will outline a number of my concerns that could have been dealt with by a committee. The final four members of the Road Freight Transport Industry Council have not yet been determined. These are the sorts of questions I will ask when I make my substantive speech at the second reading stage, but that is one issue that I would have liked a committee to discuss further. I understand that the code of conduct has not been finalised. Of course, that code will be regulated. The rates that will be charged will be gazetted, and there needs to be some clarification of how those rates will be determined. I also understand about the code for access to records, but I do not know what sort of mechanism will be used.

Another issue that could have been discussed by the committee is that the minister will have quite a deal of influence over the bill, and in particular will have influence in intervening in the industrial relations processes. It appears that the minister will have the opportunity to make some deliberations about whether a transporting arrangement shall continue in the event that there are industrial problems. We need some clarification of that point. Those sorts of issues could have been dealt with by a committee. However, I can count the numbers and it is quite obvious that the bill will not be referred to a committee.

Having said that, at the committee stage I will subject the parliamentary secretary to some intense questioning on these issues so that I can be enlightened. I have met quite a few members of the industry and they have told me that there is a requirement for the bill to proceed reasonably quickly so that some of these owner-drivers and hirers will not be faced with difficulties. Whether this bill will overcome those issues will rely heavily on some goodwill in the industry. There is not a great deal of enforcement that can be put in place, apart from the industrial relations enforcement mechanism. I will go into further detail when I make my contribution to the second reading stage.

**HON ADELE FARINA (South West - Parliamentary Secretary)** [5.57 pm]: The government opposes the motion. The matters that have been raised by members can be addressed during the normal processes of this house; that is, during the second reading debate and in consideration in the Committee of the Whole House.

The bill recognises the peculiar circumstances and the vulnerabilities of owner-drivers and addresses the negative impacts that the industry is experiencing, which are further emphasised because of the high cost of fuel and the pressures on the pricing system for owner-drivers. The owner-drivers in this state have been waiting for this legislation for some time; in fact, in my view, far too long. Similar legislation exists in Victoria and New South Wales; in fact, the legislation in New South Wales has been in place with bipartisan support for almost 30 years. It is time for Western Australian owner-drivers to be provided with safe and sustainable rates equity in their bargaining position and security of payment. Those items are among other provisions in the bill that will enable them to enjoy the same sorts of circumstances and protections as those enjoyed by owner-drivers in Victoria and New South Wales. The government has consulted on the bill.

**Hon Murray Criddle** interjected.

**Hon Simon O'Brien**: Who did you consult?

**Hon ADELE FARINA**: Not all offers for briefings were taken up, and the government can hardly be held responsible for that. It is hardly a sufficient argument for the bill to be referred to a committee.

**Hon Murray Criddle** interjected.

**Hon ADELE FARINA**: With almost 30 years of operation of similar legislation in New South Wales, we have evidence that it is unlikely that this legislation will have any negative impact on the industry. In fact, the Transport Forum WA, which is the peak body for the industry, strongly supports the bill. As Hon Murray Criddle and Hon Paul Llewellyn have stated, they have received a lot of representation from owner-drivers arguing in support of the bill and seeking the support of those members for it. There is industry support for the bill. There is industry support to bring the bill on and to progress the matter as quickly as possible. No

justifiable reason has been given to refer the bill to a committee. We need to deal with the issues that are facing the industry as soon as possible. For those reasons, the government opposes the motion.

*Sitting suspended from 6.00 to 7.30 pm*

Question put and negatived.

*Second Reading Resumed*

Resumed from 6 December 2006.

**HON SIMON O'BRIEN (South Metropolitan)** [7.32 pm]: We are considering the Owner-Drivers (Contracts and Disputes) Bill 2006 and we are about to vote on the second reading of the bill. For the benefit of those reading the second reading debate in future, it was my hope that this bill would be referred to a standing committee to allow representations to be made directly by stakeholders to that committee and thereby be conveyed to the house. However, the house itself has decided not to pursue that course of action, a decision of course that I accept with regret.

Turning to the second reading debate proper, I am prompted to tell the house that when I took over the shadow transport portfolio, a fellow in the industry reminded me of a remark attributed to Tim Fischer, a former senior member of the federal Parliament and Deputy Prime Minister. Mr Fischer once made the observation, I am told, that if all the video shops in Australia were to close for a week or two, the worst thing that would happen would be that families might talk to each other a little more. Conversely, if the road freight transport industry in Australia were to be shut down for a week or two, the whole place would come to a great shuddering halt. Transport, road freight transport in particular, is a very important element of our economy; looking beyond that, it is a very important element of the community that we live in, and its good health is of prime importance to Western Australia. The opposition therefore takes this bill very seriously. Although we hold some contrary views to the government on some of the steps ahead - I will come to a few of those in a moment - the fact remains that we in the Liberal Party are committed to ensuring that Western Australia has a robust, efficient, safe, productive and environmentally safe road transport industry. As I go around the state and familiarise myself with road freight operations, I continually run into various symptoms of dysfunction. I find that owner-operators moving freight in the south west or moving iron ore in the mid-west complain about petty but obstructive and intractable bureaucracy. That is something that the government should be addressing. I find that there is evidence of quite extraordinary policies towards the granting or withholding of concessional road permits, particularly how that impacts on independent owner-operators - often colloquially referred to as mum-and-dad-type freight transport operators - while recognising that they are one of the great strengths of the road freight industry. It is a pity that I am hearing so much of that, as it shows that this government is out of sympathy with the real needs of the road freight industry in Western Australia.

I mention that at this time in support of my contention that this bill is out of step with the needs of the industry and of Western Australians. I come across problems of companies trying to get permits for higher wide loads in some real time. I come across a much criticised accreditation scheme that, rather than being welcomed as a measure to make involvement in the road freight industry safer for participants, simply adds to the costs of owner-operators without guaranteeing safer vehicles. I therefore enumerate those systemic weaknesses to bring them to the attention of the house to point out that they are the sorts of things that need an overhaul. That might be possible if the Carpenter government was in touch with the realities of life in the road freight industry. These are problems that reflect political interference in decision making, including routine day-to-day decision making. I am talking about the sorts of things that should be within the power of independent owner-operators to determine. I therefore believe that there needs to be a greater understanding and empathy between the government and road freight operators in this state; I do not believe this bill delivers. On one hand the government refuses to recognise many of these systemic weaknesses, and on the other hand it adds to them. It seems that the response to every challenge is further regulation and bureaucracy. This bill, I believe, is another example.

I indicated earlier today that the provisions of this bill are likely to have a profound impact on the sector generally, on the future viability of independent contractors and on the costs of transport to the economy of Western Australia, which of course are passed on ultimately to the consumers of Western Australia. I have already pointed out during an earlier part of the debate that these impacts have not in any way been quantified and there is no regulatory impact statement either. The bill suspends the provisions of the commonwealth Trade Practices Act 1974 in a number of aspects. Those aspects collectively may permit the conduct of collusive activity. We can mount a case for that argument, and I will explore that in more detail later. When I say "collusive activity", I do not mean cooperative activity. I mean collusive activity in its most negative sense. I mean activity that serves to marginalise or exclude certain participants, or would-be participants, from legitimate involvement in the industry. That is a genuine concern.

This bill also actively promotes price fixing. That is not just an accusation that I am making as some sort of ambit claim. That is one of the purposes of the bill. Let there be no disagreement about that. This bill will promote collusive price fixing - or collective bargaining - across the board. We believe that is the wrong remedy. However, the government, as the proponent of the bill, obviously thinks it is the right remedy. Therefore, we differ from the government on that point. I will deal with that in more detail during the committee stage. We on this side are not in favour of state-controlled prices being inflicted across the sector as a one-size-fits-all remedy. We believe that will have adverse consequences.

The range of consultation on this bill has been very narrow. The government has pointed out that a peak transport association - the Transport Forum WA - has been intimately involved in the development of this bill. The government has pointed out also that a peak union body - the Transport Workers Union of Australia - has also been intimately involved in the development of this bill. That is all very well. The participation of either, or both, of those bodies in the development of this legislation is not bad. However, what is bad is that the government has excluded other parties that not only want to be, but need to be, involved in the development of this bill. This bill has now been introduced into the Parliament and is being proceeded with by this government. Unfortunately, because this government has opposed a committee inquiry to permit people to make representations to members of Parliament, either in writing or in person, these same bodies that have been excluded thus far will still not be given the opportunity to be heard before these measures pass into law. That is a bad thing.

**Hon Paul Llewellyn:** Can you indicate the kinds of organisations that you are talking about?

**Hon SIMON O'BRIEN:** Yes, I can, and I thank the member for the interjection. Perhaps now is an appropriate time to refer to a document. I can table the document if members wish. This is just one example. This letter is the latest in a chain of correspondence from this particular organisation. I think it will answer the member's query. The letter is from the Chamber of Commerce and Industry Western Australia and is dated 6 December 2006. It is signed by J.L. Langoulant, chief executive, and is addressed to Hon A. MacTiernan, MLA, Minister for Planning and Infrastructure, Floor 13, 2 Havelock Street, West Perth WA 6005. There is a CC to me, to Mr Brendon Grylls, MLA, and also, as it so happens, to Hon Paul Llewellyn. The letter reads in part -

Dear Minister

**Owner-Drivers (Contracts and Disputes) Bill 2006**

I refer to our letter to you dated 17 November 2006 in which we expressed a number of concerns about the impending legislation for owner-drivers in the trucking industry.

You will recall our letter requested that you delay consideration of the bill to allow CCI the opportunity to consult our members, which in turn would enable CCI to provide more considered comments on behalf of industry.

CCI's Transport Committee has now had an opportunity to meet and discuss the Bill.

The Committee is strongly opposed to this legislation on the following grounds:

- recommended minimum contract rates for owner drivers will prevent these businesses achieving efficiency through competition. The legislation is in fact a step backward to 'collective bargaining';
- costing models for determining rates would be meaningless due to the variability of financial positions of respective owner driver businesses;
- potential conflict between this Bill and the federal government's impending independent contractors legislation will add further complexity and confusion to the sector, resulting in additional costs and inefficiencies

While CCI is opposed to this Bill, it strongly believes that in the event the legislation is enacted it should be represented on the proposed Industry Council on behalf of the more than 150 businesses and organisation in our membership that are directly involved in the transport sector, and also to represent the interests of businesses generally, including our members, who are the principal customers of the sector and are surely entitled to a seat at the table.

We would welcome the opportunity to discuss this matter with you in greater detail . .

That letter is interesting, because it is from another peak organisation - the Chamber of Commerce and Industry Western Australia. That CCI has many members, great and small, who are involved in the transport sector. It also has many members, great and small, who are serviced by the transport sector. Those members will be directly affected by this bill. The CCI has engaged in a chain of correspondence with the government. It is saying to the government, "You said that we could be involved in the development of this legislation. This

legislation is now imminent, yet you still have not spoken to us. Can we please at least have a seat at the table so that we can draw our legitimate concerns to your attention?" That would have been good fodder for a committee inquiry. In response to the member's question, that is just one example of a vitally affected part of the community that has been excluded from the consultation process on this bill. I understand that another group that believes it has been excluded from the consultation process on this bill is courier drivers. There are a number of courier-driver companies in this state. Members may think they are the people who drive the little one-tonne vans that zip around town. I can tell members that a 4.5 tonne vehicle is not an uncommon piece of inventory for many courier companies. These people are concerned that this bill will eventually be extended to capture not only the people who drive one-tonne vehicles but also the people who drive 4.5 tonne vehicles, thereby creating a two-tiered system. I want the parliamentary secretary, as the government's representative on this bill, to know that the courier-driver industry is very concerned that that may occur.

There has been no general consultation with the public on this bill. In fact, it appears that the preparation of this bill has taken place behind closed doors. There also appears to have been no general consultation with independent owner-drivers. The government knows who all the independent owner-drivers are because they are the ones who have to comply with the government's bureaucracy on permits and all the rest of it. The government has databases full of the contact details of a lot of interested parties. I wonder whether it would have been so much trouble to engage those people by calling for some feedback or input during the development of the bill, which has happened over a year or more. Apparently, it has not happened.

I mentioned earlier that we on this side of the house believe in a robust and independent transport and logistics sector. That goal is not very well served by legislating for price fixing. It is not well served if a commercial arrangement between two parties is dictated by a third party that has nothing to do with the principal transaction. I am referring to the sentiments expressed and stressed in the second reading speech, in which the government stated -

The purpose of the Owner-Drivers (Contracts and Disputes) Bill 2006 is to provide legislation that ensures safe and sustainable rates . . .

That is very commendable. That is the stated purpose of the bill in the second reading speech. We will examine that a little more when we get to the committee stage - if we get there. I will return to the very question of safe and sustainable rates in my closing remarks on my contribution to the second reading debate in a few minutes.

Turning briefly to the provisions of the bill, part 1 makes it clear that this proposed law usurps the normal right of two parties wishing to do business together to arrive at commercial terms. It is black and white; it is as simple as that. That is what the government is proposing and we do not think that is a good thing. Parties should be able to come to their own arrangements without being dictated to by outsiders about the limits of what they can broadly do. Most particularly, the fine detail of those arrangements should not be dictated in every respect. It is a recipe for inefficiency, inconvenience and, ultimately, not greater income but greater costs - as we will see.

We will look at the clauses individually in committee. I do not want to hold up the process. I will refer just to the parts of the bill. Part 2 of the bill, which is headed "Content of owner-driver contracts", warms to the theme that I introduced in my remarks on part 1. Part 2 contains provisions that prohibit certain provisions in owner-driver contracts, such as contingent payments, extended payment periods and other provisions prescribed by regulation. Some provisions can be attractive propositions. It is probably not unfair for legislation to consider the proscribing of extended payment periods and contingent payments because those things can be used unfairly against owner-operators. I am very interested to find out what the minister can advise about what will be proscribed under provisions prescribed by regulation. We are in the process of passing a proposed law that is very prescriptive - to use that word again - but we do not know the full extent of what is to be prescribed. We know that there is a heck of a lot of fine detail that will definitely be prescribed. We are also told that there will be further prescriptive measures brought about by regulation. We do not know what they are and we need to know what they are before the second reading vote is held.

Part 3 establishes the Road Freight Transport Industry Council. The Road Freight Transport Industry Council will consist of up to eight persons appointed by the minister. According to clause 18, members may be appointed on a full-time or part-time basis and the minister may seek nominations for appointments to the council from a number of areas -

- (a) the chief executive officer of the Department; and
- (b) the Transport Forum WA Inc.; and
- (c) the Transport Workers Union of Australia, Industrial Union of Workers Western Australian Branch; and
- (d) any other person or body from which the Minister considers it appropriate to seek nominations.

- (4) The Minister must consider nominations lodged under subsection (3) but may appoint a person as a Council member whether or not the person has been nominated under that subsection.

From a letter I have read out, we have already heard that at least one peak body is mightily miffed - with some justification - that it is not included in the list. This legislation is a closed shop; it is a deal worked out between the government and the TWU with the Transport Forum as the conduit. Everyone else has been excluded. That is made explicit by the provision I have just read out as part of clause 18 under part 3. It basically says that the minister can seek nominations from anyone the minister likes and can have regard for nominations received or not. It specifies two bodies that have the right to nominate, and no-one else.

The functions of the council are quite sweeping. Under clause 19, they are -

- (a) to provide advice and recommendations to the Minister in relation to the development and review of the code of conduct . . .

That is, a code of conduct for the industry. In addition, the council is -

- (b) to prepare and review on a regular basis the guideline rates; and  
(c) to promote, and to encourage compliance with, the code of conduct and the guideline rates . . .

I do not know how it is supposed to promote and ensure compliance with those rates but that is what it has to do. In addition, it is -

- (d) to develop, publish and promote model owner-driver contracts; and  
(e) to provide advice and recommendations to the Minister in relation to any other matters relevant to -  
(i) owner-driver contracts; or  
(ii) the commercial practices generally engaged in by owner-drivers and hirers in relation to each other.

Membership of the council is pretty important concerning the sort of view that is conveyed to government about what sort of environment should exist in the road freight industry. It appears to me that it is something of a closed shop in which those who have the ear of the government get the input and control the agenda to the exclusion of others. That is a theme I referred to in earlier remarks today.

The guideline rates are an interesting phenomenon because it appears that elsewhere in the legislation there is adequate provision to make sure that the guideline rates become minimum rates. Guideline rates already exist. There have been efforts by the Transport Forum over the years to produce them. It is a very complicated exercise having regard to all the variables that can exist in vehicles of 4.5 tonnes and above: the nature of the load, the overall vehicle mass weight, the distance of travel and a range of other factors. We have here an attempt to impose minimum rates through these provisions - and others that are yet to come - in the bill.

That takes us to part 4 of the bill, which provides for a prescriptive code of conduct to be created by regulation. The code of conduct that is to be developed through the work of the council will be prescribed in regulation and will become law. This is how the entire industry will ultimately be pinned down in non-discretionary provisions, some of which may well be very advisable. However, others will be a yoke around the collective neck of the industry. We will have the opportunity to consider part 4 and its provisions later.

Part 5 concerns negotiations for owner-driver contracts. This is where it really starts to get interesting for this side of the house. Part 5 prescribes that owner-drivers or groups of owner-drivers may, by instrument, appoint a person or group of persons to be their negotiating agent in the making, variation or termination of owner-driver contracts. There is nothing wrong with a person having a negotiating agent to help with entering into contracts. It happens all the time and it is a good idea. Indeed, as one's independent road freight business grows, as many wish, the time will come when one will employ someone full time to make those sorts of arrangements. Why do we need it here in part 5, clause 28? It is related to future provisions in the bill that make very clear why this part has been introduced. Part 6 is entitled "Unconscionable conduct", and it contains provisions that tell us that the hirers and owner-drivers are not to engage in various forms of unconscionable conduct.

Part 7 is entitled "Inspectors". The bill creates a role for industrial inspectors to be the inspectors and enforcers for the purposes of this legislation. This is not a transport matter; it is an industrial relations matter. Two parties wishing to come to an arrangement over a commercial contract can get together, if they want to, and hammer out a deal on commercial arrangements that suit them. If they do not want to do that, they do not have to, but they can nut out between them the terms on which they will both participate and willingly engage each other to get the job done. However, part 7 now tells us that the supervision of contracts - with all the negotiating agents,

prescriptive prohibitions from contracts and all the rest - will be overseen by industrial inspectors. This gives a real clue to what this bill is in large part about.

As we move to part 8, I am sure that members on this side will begin to see where we are headed. The part is entitled "Rights of entry, inspection and access to records". We need to stop and look at this part right now. In relation to access to records, a creature has been created called a "relevant person". The relevant person is the owner-driver concerned, and in matters concerning the owner-driver concerned, I would say that he is a relevant person. It is very big of the government to acknowledge this. The other definition of a relevant person is a person authorised in writing by the owner-driver to act on behalf of the owner-driver for the purposes of this section. Clause 34(2) states -

A hirer, on written request by a relevant person, must -

- (a) produce to the relevant person the records relating to the owner-driver concerned that are required to be kept by the hirer under the code of conduct; and
- (b) let the relevant person inspect the records.

Among other things, the part goes on to state that there is a right of entry by a representative to investigate breaches of the provisions of this legislation, the code of conduct or an owner-driver contract. Clause 35(1) defines a person called a "representative". It states in part -

**"representative"**, in relation to an owner-driver, means a person authorised in writing by the owner-driver to act on behalf of the owner-driver for the purposes of this section.

Clause 35(2) states -

A representative of an owner-driver may enter, during working hours, any workplace where the owner-driver works, for the purpose of investigating any suspected breach of this Act, the code of conduct or an owner-driver contract to which the owner-driver is a party.

This is part 8. What happened to the provision for industrial inspectors in part 7? Apparently they are not there for this purpose. Who will be the representatives who enter to examine the records? They will be Transport Workers Union officials, exercising a right of entry into any workplace to demand that hirers produce records relating to the owner-drivers they engage. That is what it is all about; it is about control and about bolstering the membership and the coffers of the TWU. It has nothing to do with the interests of owner-drivers who want to be independent and forge their own commercial destinies. It is about entrapping them in a cycle they cannot get out of and in which the only hope they have of any variation in the conditions is the TWU. In effect the so-called guidelines for commercial transactions become a sort of award for people who are meant to be self-employed. The opposition certainly opposes that provision. We do not think it is in the interests of real, independent owner-drivers. A lot of the independent owner-drivers I have spoken to also do not believe it is in their best interests, but it appears that they will not have an opportunity or a choice in this matter.

I will tell the house what will happen when guideline rates and codes of conduct are enshrined in the statute, and industrial inspectors and union representatives are going around making sure that there is a single, common denominator for every class of truckie. There will be a minimum rate, and will that minimum rate be higher than it is now? Of course it will be higher. That is the carrot that will be extended and embraced by some independent owner-operators. They are doing it hard in a cutthroat industry, and perhaps finding that they cannot compete. Perhaps their dream of owning their own business, purchasing their very expensive equipment and making a go of it is not being realised, so they find it attractive to be given rates that cover all their overheads - insurance, superannuation, fuel, wear and tear, downtime and every other input - together with a decent profit. That is a very attractive carrot to dangle in front of an owner-operator who is finding it very hard to make ends meet. However, what will be the actual result of creating that sort of common rate right across the board? So-called independent owner-drivers will be more expensive than they currently are, and there is no way around that. There is no way they can make themselves more attractive by finding efficiencies. What will hirers do? I ask members to consider hirers who are in the market to engage transport services to move their goods, and are confronted by a regime that has resulted in a situation in which wherever hirers go, they encounter a person who cannot be dealt with on a one-on-one business basis, but is some sort of de facto employee that the hirer does not actually have control over and who will cost the hirer a heck of a lot more than some alternatives. Will hirers hire the independent owner-driver at the compulsorily required lowest common denominator price? Of course they will not. Big companies, in particular, will soon work out that it is far better for their bottom line to simply engage their own drivers and use their own trucks so that they can find the efficiencies within their organisation that are not available through a mum-and-dad operator or an individual owner-operator-driver. Where does that leave the independent owner-operator-drivers, the little guys who are feeling the squeeze? It will finally push many of them out of business. It will not be their salvation; it will be the final nail in their

commercial coffin. If they cannot find business, or if they are having trouble finding enough business now, how will they find business when their rates have been compulsorily raised and they have to accept that deal whether or not they want to? There are hirers that might otherwise have actually given them some business.

That is one of the outcomes I predict. It will not happen overnight, but it is one of the trends that will come about if this proposed law and the regime that goes with it become entrenched in Western Australia. Unfortunately, I fear that a number of people will be affected and they will not find out about it until it is too late.

**Hon Paul Llewellyn:** Can you outline an alternative solution to the current situation?

**Hon SIMON O'BRIEN:** Can I come back to that theme in a minute? I will pursue the canvassing of the bill, but I will come back to it. I ask the member to pick me up if I do not.

Part 8, with its elements encompassing right of entry, inspection and access to records, suddenly take this bill away from an environment that can be said to be promoting the sustenance and support of so-called small business people or independent owner-drivers. It makes them de facto employees - the very thing that so many of them wanted to get away from. To follow the very realistic scenario I have described, many of them - if they stay in the trucking industry - will lose their truck and probably end up doing the only thing available to them, which is to return to being actual employees at a truck company because they have nowhere else to go. I say to them, with sympathy, that if they think some of those nasty big trucking companies have got them by the short and curlies now, they should wait until the scenario I have described unfolds, and they have no other option. At least truckies have some options now. They can seek to enter into their own business by buying their own vehicle and, if they want to, go it alone and take the risks, but they will not be able to after these provisions become firmly established.

Part 9 continues in support of my statements that this is really an industrial matter. It establishes a thing called the Road Freight Transport Industry Tribunal. As members would guess - if they are not immediately familiar with the bill - the tribunal is there to adjudicate, conciliate, rule or intervene on all those matters that have until now been prescribed. The tribunal will deal with cases in which there have been disagreements or disputes over contracts, short-payment, non-payment or whatever it might be. Members should not for a moment think that another tribunal is being created complete with its own offices, desks and bureaucracy. Comfort is at hand. Yes, it is technically a new tribunal, but there will be none of the other things I have mentioned going with it, because the Road Freight Transport Industry Tribunal will actually be the Industrial Relations Commission, sitting as the tribunal. We have come a very long way, have we not, from part 1, which relates to contracts being entered into by two willing parties that will have third party involvement thrust upon them? This is the final evidence that this is an industrial matter and not purely a transport matter. To use a terrible and unintended pun, the transport sector is purely the vehicle, at this time, for this article of ideological policy. This is an industrial relations matter, and it projects the standing of the union movement within the Australian Labor Party, as it flexes its muscles and says, "This is what you're going to do". Indeed, the government is snapping to attention and it is doing it. I might also return to that theme in a moment.

Part 10 is a miscellaneous part and kicks off with clause 52. That is the clause I alluded to earlier, which simply states -

For the purposes of the *Trade Practices Act 1974* of the Commonwealth and the Competition Code the following things are authorised by this Act -

It lists many things -

- (a) the making of a code of conduct; and
- (b) anything done by a person in order to comply with this Act or a code of conduct; and
- (c) anything done by an owner-driver or group of owner-drivers preparatory to entering into, or in anticipation of, joint negotiations with a single business, including the appointment of a negotiating agent to conduct those joint negotiations; . . .

There are some other provisions, but let us consider the last provision -

anything done by an owner-driver or a group of owner-drivers -

That is a group of pseudo, de facto employees who will now be signed up by the Transport Workers Union -

preparatory to entering into, or in anticipation of, joint negotiations with a single business, . . .

That is a situation in which they all gang up on one business - something that is presently outlawed by the provisions of the *Trade Practices Act 1974*. However, these provisions must be included in clause 52 because it



is clause 52 that says it is all right; the Trade Practices Act does not have to be complied with. Clause 52 allows these people to do a range of things that are actually against the law and have been banned.

What does the government have against the Trade Practices Act 1974? What is it so scared of? It is prepared to do away with those provisions in relation to these matters, and that should alarm everybody. However, there are obviously some who think it is a good thing. They think it is a good thing because it advances their own interests and the interests of their colleagues. That is why the government is saying that it is all right to do these things. The government will make it all right and lawful to do things that are otherwise unlawful; it will make winners of certain members of the transport industry and to hell with the overall health of the sector. That is what the government is doing with clause 52. I would like members to think about that between now and the second reading vote.

The bill also contains a couple of schedules, which I will not canvass at length now. I return to the purpose of the bill, which is said to be to provide legislation that ensures safe and sustainable rates for drivers in the transport industry. Where is the evidence that the rates produced by this regulatory machinery will be sustainable? What does sustainable mean? This is a highly competitive industry. Owner-drivers have many pressures on their businesses and none more so than those who are contracting exclusively to one hirer. That is the problem when an owner-driver has only one vehicle, possibly a large specialist vehicle. He may find himself in a difficult situation because there are limited places to go for contracts and he may end up working exclusively for one firm. That makes things difficult because the owner-driver feels more like an employee. He is also responsible for the vehicle and paying it off. He has all the risks and overheads of being self-employed. That makes it hard. They are the people who are being targeted by this government in a push to give more control to and increased membership of the TWU. I do not mind the government doing that, if it can be done legitimately. However it should not be necessary to change the law to do it. The government should not say that the things that are currently unlawful will be all right for a certain group of people. That is not right, and it is a very good reason to oppose this bill.

Under the proposed regime, these so-called sustainable rates will be prohibitive. It is the argument I expounded a few minutes ago. I pointed out that large transport companies would choose to exercise economies by employing their own drivers rather than take on contractors at these new, uncompetitive rates. Under the bill, owner-drivers will go out of business. It will not improve their position. Where is the sustainability in that? How does that make for sustainable rates? I challenge the parliamentary secretary when she replies to demonstrate that the rates produced by this proposed regime will be sustainable and worthy of the word "sustainable". I reckon that is a false promise. It is a bit of PR, a bit of spin put out to owner-drivers who are feeling the pinch and looking for comfort. It is a false hope, and ultimately a very cruel one, because I do not believe it is true.

The final naive, or perhaps cynical, flourish is the assertion by the government that this bill will make trucking safer. Again, I invite the parliamentary secretary in reply to tell the house where in this very prescriptive bill it is mandated that any payments made under this proposed law will be applied to safety measures. There is diddly-squat in there. Apart from the opening remarks in the second reading speech and the spin put out by someone in the TWU, I see nothing in the bill that refers to safety. It is meant to be taken on faith that at the moment there are truckies who are so irresponsible and so close to the wall that they are cutting corners, but that if we force up the rates artificially, somehow they will all apply lots of money to safety measures, greater fatigue management, maintenance of vehicles and replacement of tyres and other wearing parts; indeed, to the updating of capital equipment. I see nothing in this bill that gives substance to those claims. There is nothing that requires that to happen.

I note how closely Hon Paul Llewellyn has been engaged in this debate. He asked me to discuss this point and questioned what the alternative was. What other hopes, comforts or assistance could be offered to this vital industry, which is populated by so many dinkum, hardworking people who are trying to make a go of it? In my opening remarks, I alluded to the sorts of things that can be done. I pointed out the dysfunctional attitude of the government in its policy on road freight in this country. It cheerfully piles on the costs but shows no understanding of what the extra costs will do. I listed a number of things: problems with getting permits for concessional and high and wide loads, and this nonsense in which an owner-driver has to pay to get his vehicle accredited. It is a safety examination but it is called accreditation, and an owner-driver has to pay hundreds of dollars for someone to come and examine his truck. He pays someone to come and tick a few boxes on a piece of paper in his office, without going near the vehicle to look at it, and the government says that that is adding to safety. It adds to costs, but it adds nothing to safety. They are a couple of examples, and I hope I have responded adequately in a general way to the member's question. There are plenty of ways the government can get off the backs of struggling owner-drivers. I have not mentioned stamp duty on transfer of vehicles and all the rest of it.

I have raised a number of points of concern that will require closer examination in the committee stage. I understand that the parliamentary secretary will not be replying forthwith to the second reading debate. That is good; she can get some advice on the matters I have raised. I hope the parliamentary secretary has plenty of advisers for the committee stage because we have questions that need answering. I am not happy with some of the answers we received earlier in the piece. In the spirit of constructive participation in the debate, I advise the government and the house that we oppose the bill.

**HON MURRAY CRIDDLE (Agricultural)** [8.27 pm]: We have to understand the genesis of this bill. The owner-drivers and the hirers were concerned about their future, particularly when fuel prices were out of control. That was when this proposal was put forward. I remember driving from the eastern side of town to Parliament House in a truck and having a conversation with the owner-driver. I made the main speech at the gathering outside Parliament House. I was not quoted by anybody and someone came along later and got all the kudos for what I had said. There was a real issue in the industry about its viability. I think to some extent that issue remains. There is a major issue with regard to the cost of truck drivers, which is escalating rapidly across the industry, particularly in the mining industry. There is a very heavy demand for drivers, fuel prices are rising, tyres and maintenance are expensive, and people are calling for a more equitable basis for contracts. That is the genesis of the bill. As an aside, when the government puts out its contracts, it may well be advisable to outline some of the requirements for consistency in contracts for the trucking industry.

I want to touch on accreditation, to which Hon Simon O'Brien referred. Our government did not introduce accreditation, for the reasons that he outlined in his speech. Although there is an audit system and an inspectorial system under which people go onto premises, they do not actually get down and look at the vehicles. The answer to that, for those who want an alternative way of going about it, is to have the vehicles inspected every year or so, so that everyone can compete on a level playing field. In other words, they would have their axles, brakes and tyres inspected. They would then all start from the same basis when competing for contracts. I wanted to indicate that that is where the motivation for this bill started. I have spoken to the unions and the owner-operators. I know the whole industry quite well. The issue of providing a rate for the trucking industry will be very interesting. As people know, the price of fuel in the outlying areas is exorbitant, as are a range of maintenance costs, including tyres and the like. That is an issue for school bus operators who, similarly, have a pricing mechanism within their contracts. It will be very interesting to see how the access code, the term used by the rail industry - the price of entering into the industry - will be finalised. People should not hang their hat on some of the systems in place, including accreditation. From my observation and from comments from industry, there are some real holes in that process. If what was termed TruckSafe in the early days had continued, the inspection system would have been far better. As I say, this bill has the support of a number of people in the industry, including the Transport Forum, which has endorsed it.

I will refer to some of the other issues. Hon Simon O'Brien has covered a lot of issues so I will not cover them in great detail. I want to cover the points about rates. I want to know from the minister how the rates will be compiled and what arrangements will be implemented across the board. Clause 27 provides for the content of the code of conduct. The following dot points are set out in the explanatory memorandum -

- provide for negotiations for owner-driver contracts, whether on an individual or joint basis;

It will be very interesting to see how agreement is reached among the various owner operators. They will be competing with one another to get the job. The method of determining who will get jobs will be very interesting in the final analysis. It continues -

- require the hirer to pay an owner-driver at a safe and sustainable rate and to describe how such a rate is to be determined;

That is the issue I just talked about. It continues -

- require a hirer to adopt standards set out in the code;

We do not yet know what the standards or the code will be. Why are we introducing bills before these things are known? I have discussed this with the people in the Department for Planning and Infrastructure, and they have not come back with the full, bottom-line information. If the parliamentary secretary knows how it will be put in place, I will be more than interested to know the basis for the code. To continue -

- require a hirer to keep records in a manner set out in the code;

Truckers must comply with very many requirements now. I have seen some very thick wads of paperwork relating to permits. They must comply also with a network. There are a range of issues that I do not think are absolutely necessary. If all that is needed is a network for truckers to travel on, there should be a network for each individual truck, whether it be a triple road train, an ordinary road train or a B-double. It will be very

interesting to see how on earth rates and the like will be determined from the various categories of trucks. It will be even more interesting to see how they will be policed. To continue -

- require a hirer to provide owner-drivers with information specified in the code, including the current guideline rate;
- confer power on the Council to determine, amend or revoke guidelines rates for the purpose of providing guidance to owner-drivers, hirers and the Tribunal. Once a rate is established, the Council can then vary the rate on an as-needs basis.

If a contract is struck and it contains a variation, will that contract reflect the variation in the future? Some contracts are written into the system now. How will the current contracts be amended to satisfy what is outlined in this bill?

We have heard from Hon Simon O'Brien on issues concerning the Industrial Relations Commission. The commission will be part of the decision-making process, and it will appoint people to make decisions as final arbiters in this system.

I refer now to the role of the minister, particularly in picking the members of the council, of which eight are specified in the bill. An outline is provided for the way in which four of them should be selected. Clause 18(3) states that the minister shall seek nominations for appointments to the Council from -

- (a) the chief executive officer of the Department

That in itself is quite interesting because the definition of "Department" at the beginning of the bill states -

**"Department"** means the department of the Public Service principally assisting in the administration of this Act;

Which department is that?

**Hon Adele Farina:** The DPI.

**Hon MURRAY CRIDDLE:** The head of the DPI will be on this council. Further nominations will be made by the Transport Forum, the Transport Workers Union of Australia, Industrial Union of Workers Western Australian Branch and any other person or body from which the minister considers it appropriate to seek nominations. I presume the other four nominations will be according to subclause (4), which states -

The Minister must consider nominations lodged under subsection (3) but may appoint a person as a Council member whether or not the person has been nominated under that subsection.

This means that the minister can pick the group who are represented on the council from anywhere. That seems to offer a wide open choice. I wonder exactly what the result will be.

I will pick up a number of other areas in which the minister is involved. Clause 41 provides that the minister may intervene in a dispute or matter being considered by the Road Freight Transport Industry Tribunal if the tribunal agrees. The explanatory memorandum states -

This is necessary because deliberations about the owner-driver/hirer relationship and a sustainable rate for transportation of goods, particularly when these issues are being considered at an industry level, are of considerable importance to the maintenance of commercial processes.

I take that to mean that the minister can intervene when the continuation of services to the community is under threat. I am interested to know how the minister will become involved in that. Most ministers have a full-time job looking after the lay party and, as will occur in this case, a few other things. It will be very interesting to see how that will be resolved. I will not go any further with this matter. I think I have outlined some of the issues I have concerns with.

I also have concerns with the inspection services and the fact that, as I understand it - I will ask this question in committee - the inspector must give written notice of his intention to intervene in an issue, and he can deal with the issue only within the written access requirement. I am interested to know whether that is accurate. It seems to me that this could have far-reaching consequences because the inspectors will have extensive powers. I give due notice that I will ask some relevant questions in committee because some important issues are at stake. I realise that one section of the industry is waiting with bated breath for this bill to pass. I appreciate the industry's concerns. However, ultimately the industry must go on. There is a definite relationship between owner-drivers in WA and big trucking companies. We must keep that in mind, as there must be a level playing field across the board for everybody. That is the issue I referred to when I talked about accreditation, overload permits and axle loadings. The axle loading issue is very important for the competitiveness of owner-drivers and big companies. In some cases big companies have an opportunity for extra axle loadings whereas owner-drivers

do not; that is not fair. Everybody in the industry should have the same axle loadings. A company that can carry a couple of extra tonnes has a distinct advantage over other people in the industry, and of course those other people lose the opportunity to be competitive.

**HON PAUL LLEWELLYN (South West)** [8.40 pm]: As with most of these issues, the Greens (WA) must listen very closely to the arguments put forward by members. I appreciate that Hon Simon O'Brien gave a fairly detailed rundown of his concerns. He started his discussion on the importance of the road freight industry to the whole fabric of our economy and referred to the dependence that our economy has on a reliable, efficient, robust and, indeed, competitive road freight sector. Those are certainly the parameters that we must maintain: reliability, robustness, competitiveness and good service delivery.

This is the Owner-Drivers (Contracts and Disputes) Bill. The intention of the bill is to clarify the relationships between owner-drivers who operate isolated services and very large transport companies that in turn subcontract out the services. The bill is really about the relationships and the power relationships in those contracts and the way in which they are impacting on the delivery of service. Ultimately, what we want is an effective and competitive industry, but the Greens would argue that the industry must be based on a fair and equitable sharing of rights and responsibilities.

Hon Murray Criddle said that this bill gained some traction at the time fuel prices were increasing. That may well be true, but I believe that the road freight sector has gone through a slow and long-term process that has put owner-drivers more and more under the pump, not only because of increases in the price of fuel, but also because of a lack of power in relationships when the parties are negotiating contracts. Hon Murray Criddle said that a certain kind of truck operator is almost obliged to accept a particular kind of contractual relationship with a very specific transport firm, which in fact limits the truck operator's capacity.

Let us go back to the fundamental issues that this bill is trying to address. I will not speculate on who is right and who is wrong; however, the bill sets out to establish sustainable rates of engagement between owner-drivers and the companies that hire them. I ask exactly the same question that other members asked: what precisely is meant by the word "sustainable"? The bill should say "fair" instead of "sustainable". Its objective should be to promote a fair deal for all parties involved in transactions and contracts. It is fair to say that the erosion of some safety conditions for long-haul freight drivers is not just a rumour or unsubstantiated hearsay. There has been public debate on the impact on drivers who work extraordinarily long hours, who use stimulants to keep awake and who compromise their personal safety and the safety of other people. The debate is not in the domain of hearsay and rumours; in fact, there is reasonable evidence to suggest that those are features of the industry. We must address the issues that have given rise to those very undesirable aspects of road freight schedules.

I take Hon Simon O'Brien's point that there is no explicit provision in this bill on the industry's obligation to meet safety standards. This is not a bill about occupational health and safety standards; it is in fact an industrial relations bill. It is in effect a bill for redefining the relationships that, on the balance of evidence, are regarded as existing between owner-operators and transport companies, for preventing the erosion of safety and for improving the economic viability of the industry. One way of addressing some of those almost systemic problems within the transport industry, particularly the long-haul freight industry, is to address the inequities and the inequitable relationships and power relationships in the way in which contracts are negotiated. Rightly or wrongly, that is what this bill does.

I turn to the bill itself. Hon Simon O'Brien referred to the bill in great detail and outlined some clear anomalies that must be addressed at the committee stage. The Greens will raise those issues but I want to refer to the long title of the bill, which has two specific objectives. One is to promote a safe and sustainable road freight transport industry by regulating the relationship between persons who enter into contracts to transport goods in heavy vehicles. That is a way of addressing some of the systemic failures of the marketplace to deliver a safe working environment and a sustainable long-term industry - I prefer the phrase "fair industry". The second objective of the bill is to establish the Road Freight Transport Industry Tribunal and the Road Freight Transport Industry Council to give effect to those relationships.

Hon Simon O'Brien mentioned that this bill is in effect about over-regulation and price fixing because it sets out a mechanism for negotiating effectively fair prices for various types of road transport. He was suggesting that it would be too complex to set out such a mechanism. I do not think it would be. I believe that what is absent from the current negotiating environment is the fact - Hon Simon O'Brien used these words himself - that this is a cutthroat industry in which people are fighting each other to get contracts. However, it is fair to say that the value of transporting one tonne of goods in a particular kind of vehicle for 500 kilometres or 1 000 kilometres is a knowable quantum. The bottom line is what is left over for the owner-operators after all their costs have been taken into account. If I understand the arguments that have been put in the media and in representations from unions and other people, it is not unusual for owner-drivers to earn only \$15 or \$16 an hour by the time their costs have been taken out. When it is considered that it costs between \$50 and \$75 an hour to employ a

mechanic to repair a vehicle, the problem is obvious. There should not be such a large discrepancy between the rates of pay of owner-operators and the people whom they employ to service their vehicles. There is a clear inequity and lack of power in these relationships.

Truck owner-operators may have spent between \$250 000 and \$500 000 to purchase their asset. They then have to make interest payments and comply with maintenance schedules and so forth. The fact that they are operating a small business in a fully deregulated market has meant that they have not been able to absorb their administrative costs within the business but have had to bear those costs by making only a small return on their investment. The ultimate return on investment is what the average owner-driver is earning. It is true to say that if we over-regulate this market and enter into a complex series of artificial market arrangements, we may achieve exactly the opposite of what this bill is intended to achieve. We may crush the industry. The industry may become so highly regulated that the owner-operators will be forced out of business and will end up being the employees of the large trucking companies. However, it is worth giving this a go. Not only the owner-operators but also the Transport Forum WA are calling for this legislation, because they believe it is an appropriate reform in an industry that has been left to run feral for too long.

It is extraordinary that at a time when mining industries and supermarket chains are posting massive profits, they are putting a price squeeze on the transport industry. They can afford to pay more to the transport industry to allow it to improve the stock of vehicles and so on. However, they are effectively asset stripping the very industry that is servicing them. I do not have empirical evidence for this - perhaps the parliamentary secretary will raise this - but that running down of the stock in the heavy freight industry is lowering the safety and vehicle standards in that industry.

I will now go through the various parts of the bill, for my own purposes as much as for anything else. Part 2 of the bill deals with the content of owner-driver contracts. It also sets out some payment parameters. One of those is time for payment. Time is money. Interest rates are going up. It is fair to say that some trucking contractors have not been making timely payments, at the cost of operators. That matter needs to be given fair consideration.

Part 3 of the bill deals with the proposed Road Freight Transport Industry Council. I have some concerns about the proposed construction of the council. The council is to consist of not more than eight persons appointed by the minister, having regard to their experience, skills and qualifications in various areas. The minister shall seek nominations for appointments to the council from the chief executive of the department - I think that is the Department for Planning and Infrastructure - the Transport Forum WA and the Transport Workers Union of Australia. I understand that last year, the Labor Party received a donation from the Transport Workers Union in the order of \$30 000. In this climate of paybacks, I wonder whether that played some kind of role in this legislation. I do not know how much the Chamber of Commerce and Industry of Western Australia gave to the Labor Party. The prescribed list of people who may be appointed to the council should be extended so that it will reflect all the people who are involved in the industry, not just the people and bodies that I have mentioned. I would like the parliamentary secretary to give serious consideration to that during the committee stage.

The functions and powers of the council are reasonable. They will go a long way towards addressing some of the issues that we have identified. One of the functions of the council is to provide advice and recommendations to the minister on the development and review of the code of conduct. The code of conduct certainly needs to be cleaned up. Another function is to prepare and review on a regular basis the guideline rates. That is a fair process. Another function is to promote and encourage compliance with the code of conduct and the guideline rates. Another function is to promote model owner-driver contracts. One of the weaknesses in the current relationship between owner-drivers and the transport industry is that at times contracts are verbal and not fair and reasonable. The council will certainly play an important role in determining what is a fair and reasonable contract, particularly as these contracts may need to be adapted from time to time as prices change and as the pressures on the industry change.

I will now talk about part 5 of the bill, which deals in part with the negotiations for owner-driver contracts. It is fair to say that the representations I have had suggest that the transparency of the negotiations for contracts has been questionable. It is quite important that we put the industry and its operations on a transparent footing. In many ways this legislation will help that.

I note that there is reference to unconscionable conduct in part 6 of the bill. It is fair to say that, because of the poor power relations in the industry, there has been exploitation of some owner-drivers. That is illustrated by the fact that the owner-drivers and the Transport Forum are calling for this arrangement to be put in place.

Part 7 refers to the role of inspectors. I note that we run a serious risk of putting in place an over-regulated and overly bureaucratic framework. I would like to get some clarification on why there are several roles for inspectors and several ways of having third parties act on behalf of a contractor and why it is that that power

would be duplicated. I would like the parliamentary secretary to provide some clarification on the way in which the inspectors will operate.

I take the point of Hon Simon O'Brien that the Road Freight Transport Industry Tribunal will effectively be a de facto industrial relations commission.

**Hon Simon O'Brien:** In actual fact.

**Hon PAUL LLEWELLYN:** Yes, in actual fact. I do not necessarily see that that is a bad thing. I can understand the member's point that a Road Freight Transport Industry Tribunal should be established and that it is a de facto industrial relations commission.

**Hon Simon O'Brien:** It underscores the industrial relations nature of the regime. It would normally go to the State Administrative Tribunal if there were a commercial dispute.

**Hon PAUL LLEWELLYN:** I follow the logic of the member's concern. Having said that, the Western Australian Industrial Relations Commission has the machinery and capacity to discharge its responsibilities under the State Administrative Tribunal quite well. If there is a need for a tribunal to resolve disputes, it is just as capable, if not more so, than any other body. However, I see the point the member is making, which is that this is a de facto industrial relations bill that is attempting to address some of the wind-back issues that have come from the federal industrial relations debate. We need to make it quite clear and transparent that we see this coming.

I am conscious that the road freight sector is a very large sector and that this bill does not cover the entire sector. It would be useful in the parliamentary secretary's deliberations and discussions for her to tell us what fraction of the road freight task is covered by this bill and where it fits into the road freight industry so that we can see whether we are dealing with just a fragment of it or whether this legislation will apply across a very large part of the industry.

This is price fixing; this is a price-fixing arrangement. I do not think that it necessarily means that it is price fixing in the same sense as insider trading and people getting together to collectively bargain or collude to set a price that is unreasonable. This is price fixing in the sense that it is price setting. It is price setting as opposed to price fixing because it is a more transparent process. In fact, it involves negotiation and a conciliation process between people on a relatively even playing field. It is tempting to say that this is price fixing, but I think it is actually price setting. It is price setting in a market that has become lopsided and not level. To some extent, this legislation is levelling the market so that we can get a fairer outcome for owner-drivers. I heard and understood the implied risk that this could actually work against owner-drivers and against the independence of owner-operators if they go overboard in their price setting - as opposed to price fixing. There will be some checks and balances in the way in which the negotiations pan out. In other words, there will not be the capacity for extortionate, lopsided bargaining. I believe that very large transport companies, for example, already have a collective bargaining power of their own by virtue of their size and that owner-operators, by virtue of their isolation, have been disadvantaged in the market. The Greens (WA) are committed to looking for fairness. We are highly concerned that we should become more dependent on road transport. As members know, the Greens are committed to looking at how we can transform the transportation industry into a rail-based industry wherever possible. However, we are also committed to fair and just terms whenever possible in the economic and financial relationships that emerge in the transport industry.

On first reading the Greens have said that we are prepared to support the bill and that we will look at the details on the floor during the committee debate. We will need some assistance in getting some concessions, particularly in relation to the make-up of the Road Freight Transport Industry Council, because we have some concerns about that. With those remarks, the Greens will support the principles of the bill. We look forward to having a robust discussion in the committee stage.

Debate adjourned, on motion by **Hon Adele Farina (Parliamentary Secretary)**.