

MOTOR VEHICLE REPAIRERS BILL 2002
MOTOR VEHICLE DEALERS AMENDMENT BILL (NO. 2) 2002

Cognate Debate

On motion by Mr J.C. Kobelke (Minister for Consumer and Employment Protection), resolved -

That leave be granted in accordance with Standing Order No 169 for the Motor Vehicle Repairers Bill 2002 and the Motor Vehicle Dealers Amendment Bill (No. 2) 2002 to be considered cognately, and that the Motor Vehicle Repairers Bill 2002 be considered the principal Bill.

Second Reading - Cognate Debate

Resumed from 5 December 2002.

MR D.F. BARRON-SULLIVAN (Mitchell - Deputy Leader of the Opposition) [4.54 pm]: I will start by stressing that the Liberal Opposition has indicated that it is prepared to deal with these Bills cognately in order to process this legislation as swiftly as possible. As I understand it, the industry has been waiting for this initiative for at least 11 years and, having decided that we will not oppose this legislation, it is appropriate that we do our best to expedite its passage through this House. The Liberal Party will raise some serious questions about how the provisions in this legislation will be implemented and it will highlight a preferred way of going about policing the industry.

First, I will refer to the main objectives of the legislation. The Motor Vehicle Repairers Bill 2002 can be summarised as an attempt to improve consumer protection in a number of areas involving the motor industry. The intention is to formalise the quality standards within the industry and to provide a regulatory regime to improve consumer confidence and to provide responsiveness in the industry to consumer needs. In particular, the Bill provides for a licensing regime for businesses involved in motor vehicle repair work. Clause 5 covers this aspect and provides a very broad scope.

The Bill contains a repairers' certification process that is based on the qualifications and experience of repairers in the industry. The nature of the qualifications and the experience requirements for people practising in the industry will also be touched on in some detail later. Provision is made for that indirectly through the operation of a new board, which will be known as the Motor Vehicle Industry Board. It will be responsible for the licensing and certification requirements under this new regulatory regime. This is provided for in the Motor Vehicle Dealers Amendment Bill (No. 2) 2002, with which we are dealing cognately, and it is important to point out that this new board will take the place of the existing Motor Vehicle Dealers Licensing Board. It could be argued that, as a result, the intention is not to create a new body but to streamline existing arrangements and have just one board instead of two operating in the whole area of vehicle repairs and vehicle dealing.

This legislation imposes an obligation on licence holders to ensure that the repairs they effect to motor vehicles are conducted by or under the supervision of certified repairers. It provides for the Motor Vehicle Industry Board to conduct a conciliation process between licence holders; that is, motor vehicle repairers and the owners of motor vehicles, or the consumers. This Bill provides for the issuing of infringement notices where offences have occurred. It also provides for the disciplining of licence holders and motor vehicle repairers by the new Motor Vehicle Industry Board.

The Bill establishes a compensation fund to compensate vehicle owners who suffer any loss in the event that the repairer with whom they are doing business becomes bankrupt or insolvent. I am also advised that it provides for compensation in the case of incompetent repairs. This legislation will also establish an education and research fund that will enable additional research work or educational programs to be carried out. I am advised that any other public service in connection with motor vehicle repair work can be carried out using the proceeds from that fund. It is important to point out that these activities will be funded by a system of licence fees that will fall directly on the businesses operating in the motor repair industry, and we will touch on that a little later.

Importantly, the Bill provides for transitional arrangements so that people who currently work in the motor vehicle repair industry will have up to 12 months from the time the relevant provisions are proclaimed to obtain their licences or the necessary certification as repairers under this legislation.

It is our advice that no regulations are available at this stage. We will question the minister on this in more detail during the consideration in detail stage. However, I understand that the regulations will be formed during the transitional stage and that the development of those regulations will involve the board in consultation with people in the industry.

A number of exemptions are provided under the Bill. One exemption worth mentioning is with the repair and servicing of agricultural equipment and off-road vehicles. Other exemptions include the carrying out of warranty work on motor vehicles and work by businesses on their own vehicles. The legislation also exempts individuals who carry out work on their own vehicles, so that people who wish to save a few dollars through

their own handiwork will not be drawn under this legislation, nor will enthusiasts involved in club activities and that sort of thing. These exemptions are important. In particular, they enable vehicle dealers who operate their own workshops to escape the licensing requirements provided under this legislation for other motor vehicle repairers. That is certainly the advice that the Opposition has received and is something that we will ask further questions on later.

It is appropriate to look briefly at the history of this legislation, because it is something that, as I said earlier, has been many years in the brewing. In fact, back in 1992 a committee chaired by Hon Cheryl Davenport reported on the broad need for a regulatory regime in the motor vehicle industry. That indicates that this matter has been given serious consideration for quite some time, and that people within the industry have pushed strongly for this sort of measure to be put in place. The report by the Motor Vehicle Repair Industry Review Committee, titled "Review into the Motor Vehicle Repair Industry", was presented on 14 December 1992. As I said earlier, it set out some recommendations for a regulatory regime. Interestingly, market research was carried out in that same year. I am advised that it found that some 84 per cent of consumers favoured the idea of regulation of the industry. Again, it will be interesting to hear in detail from the minister how some of that research was carried out and the nature of some of the questions that were asked of consumers along the way. Research undertaken in 1993 found that up to 80 per cent of consumers wanted motor vehicle repairers to be licensed. Again, that is probably an indication of the broad acceptance that some sort of regulatory regime would receive in the community.

We then skip a few years, because this matter was presumably overtaken by other priorities with the change of government. I am aware, having come into Parliament at the end of 1996, that this issue was actively pursued by the previous Administration. I give great credit to the former member for Geraldton, Mr Bob Bloffwitch, who pursued the matter in earnest. It is appropriate to point out that the former member for Geraldton had extensive experience in the motor industry and knew first-hand some of the difficulties experienced throughout the motor repair arena. The former member for Geraldton eventually produced a report in December 1997 through the Motor Vehicle Repair Industry Review Committee, titled "Report to the Western Australian Government". Again, the report set out some succinct recommendations for the establishment of a regulatory regime. In particular, the committee linked its proposal to one that had been up and running for some time in New South Wales, which was co-regulated by industry, funded by licence fees and supported by legislation. That is very much the basis of what we see here. I give credit to Mr Bob Bloffwitch for the work he undertook on this matter. The industry owes a lot to his efforts and endeavours in what we see before the Parliament today.

I am advised that research carried out in 2000 showed that around 64 per cent of consumers expressed dissatisfaction with the quality of repair work carried out on their motor vehicles. In fact, around 82 per cent said that their dissatisfaction was specifically due to a perception of poor quality in the industry. As I said earlier, about 80 per cent supported the notion of regulation and only about four per cent opposed it. Clearly, there is widespread acceptance among consumers of some form of regulation or quality control within the motor vehicle repair industry.

A number of people in the industry have given good advice to two government inquiries and in the formulation of this legislation. A number of individuals have been involved in this process, as has the Motor Trade Association of Western Australia. I understand that this legislation has received widespread support throughout the industry. The minister's office advises that a number of organisations were consulted, including the Motor Trade Association, the Royal Automobile Club of Western Australia, the Australian Institute of Automotive Mechanical Engineers, the Insurance Council of Australia Ltd, the Small Business Development Corporation and others. The Liberal Party has also consulted a number of those same organisations, plus others. We have also spoken to individual business proprietors involved in the motor trades. It seems that the broad thrust of this legislation has industry support.

A number of matters need to be addressed and I will speak briefly about them now. We will touch on these matters in more detail during the consideration in detail stage. Firstly, there is the question of how much the fees will be in this licensing system. Anyone who has been in business will know that paying licence fees is not something that one relishes. However, in this case, provided that the licence fees are low enough, the advice we have received is that most people in the industry will cop it sweet, so long as some benefits can be demonstrated as a result of the introduction of the new regulatory regime. Vehicle dealers currently pay slightly more than \$900 a year in licence fees. That was the example given to us by way of comparison when we inquired of the department the level at which these licence fees might be imposed. However, there is no way of telling at the moment what it will be. I understand that an independent consultant will be employed to find out the number of participants in the industry and to determine what sort of licence fee structure should be set. It is important that one strong point is made; that is, the industry covers all aspects of business, from micro-business right through to the big end of town. I anticipate and expect that any licence fee structure will take that into account. For example, a business proprietor who operates a tyre replacement business and tows a trailer behind his or her

vehicle will obviously not pay the same amount as a multimillion dollar motor repair business of a completely different scale and complexity. Provided that the fees reflect that situation, most people in the industry will cop it sweet. We will ask the minister about some other aspects of licence fees to ensure that they do not become too much of a burden in a financial sense or a sheer hassle for small business. There is nothing small business people hate more than having to make applications or renew applications for licences, approvals or whatever every year. I hope and expect that this system will operate simply and smoothly so that it does not add to the amount of red tape and paperwork that businesses have to contend with year in, year out.

We thought we ought to ask the Department of Consumer and Employment Protection about the extent of problems within the industry at the moment. After all, we are talking about implementing a completely new regime to iron out problems and improve standards within the industry. One of the obvious questions to ask is: how many complaints does the department receive each year regarding vehicle repairs? We were told that the estimated number was between 500 and 600 complaints a year. I am very grateful to the department for providing a detailed breakdown of the number of complaints it received in 2002, because it gives a fairly precise picture of what goes on in the industry. I do not intend to go through all the complaints that were listed. I have a summary of 289 records of complaints. Some categories feature much more than others; for example, the single largest number of complaints involved cases in which an agreement was reached between the parties to settle the matter. That category accounted for almost 27 per cent of all the complaints against motor vehicle repairers. The next single largest category involved complaints that were simply not justified at all and the consumers accepted the advice given to them. That accounted for nearly 14 per cent of all complaints to the department. The third largest category involved consumers who agreed with the department that no conciliation was required and that the matter had been clarified to their satisfaction. Around 11 per cent of all complaints fell into that category. A number of other categories related to the way in which complaints had been dealt with.

It is interesting that as of last year only one prosecution had been lodged against a vehicle repairer, and it had been unsuccessful. I have a document showing that 289 complaints were recorded in 2002. The vast majority of those complaints seem to have been resolved either amicably, on advice from the department, or by agreement between the parties. There have not been any successful prosecutions whatsoever in the industry. It is important to dwell on that for a moment. We must bear in mind that we are being told that there are problems in this industry. Research into the motor trade and discussions with people in the industry indicates that there is a need for quality control and for a regulatory regime to be established to govern the motor vehicle repairers industry. I have been given anecdotal evidence of problems encountered by consumers who have dipped out as a result. However, despite that, not one prosecution has been successful. We need an assurance from the Government that it is dinkum about using this legislation to crack down on backyard dealers, to improve quality within the industry and to improve the safety standards of vehicles generally by demanding better repair standards throughout the State. I will touch on that matter later.

An obvious question to ask is: how many people in the industry would need to be licensed? This is a very interesting matter. When I asked the department for this information, I was told that the industry is not regulated at the moment; therefore, it is not known how many people are in it. The independent consultant who will be involved in helping determine the detail of this scheme has his or her work cut out for him or her. The department estimates that between 4 500 and 10 500 people are involved in the industry. That is quite a variation and gives an idea of how little we know about the detailed workings of the industry. It also goes to the heart of some of the other questions that the Opposition shall raise later, particularly what impact this legislation will have on very small businesses. Obviously many of those 4 500 to 10 500 businesses will be one-man small business operations. They may be run by people who do not have formal mechanical qualifications but have been doing the job for 20 years, and probably do it very well indeed. We must ensure that this legislation does not adversely discriminate against those people.

A couple of key points arise from the background of this legislation. Some of those points are almost philosophical and others relate to sheer practicalities. I stress that if we are to go down the path of implementing a new regulatory regime that is backed up by the force of law with an extensive licensing system, which involves potentially costly licensing requirements, onerous certification guidelines and a range of bureaucratic regulatory burdens attached to it, we must make sure that we do it for the right reasons. We must make sure that this new system works to the benefit of consumers and does not overly impact on the operations of the small business sector in particular.

The Opposition examined another area that is within the department's bounds of regulation to find out whether the Government was sincere in the way it tackled these problems and to ensure that we could have confidence in the way the Government would undertake its responsibilities in this area. Unfortunately, the news was not all that good. I refer members to the latest edition of *Motor Western Australia*, which is the publication of the Motor Trade Association of Western Australia. The publication contains a two-page spread with the headline "Dealers fume at government inactivity". The article covered the Motor Trade Association's concerns about the

Government's lack of will or ability to police illegal backyard activities. Most of the article refers to backyard vehicle dealers and it also refers to the repair of written-off vehicles and so on by backyard vehicle repairers. I accept that the bulk of the criticism was levied at the control of backyard vehicle dealers. However, the point is that when an industry organisation that is so supportive of the regulatory regime we are discussing in the Parliament today criticises the Government so strongly, we must wonder how well the Government would implement the system about which we are talking. The article states -

The motor industry is serving notice on State Government - especially Ministers John Kobelke and Alannah MacTiernan - that it will no longer tolerate being misled by their combined inability or unwillingness to put illegal backyard activities out of business.

Dealers, repairers and recyclers are teetering on the edge of viability while the Ministries for Consumer Affairs and Planning and Infrastructure bicker about who gets what access to files which are vital to the fight against back yarding.

The facts are dead straight: Department of Planning and Infrastructure (DPI) will not allow essential access to its vehicle owners records so special investigators appointed to Consumer Affairs to stop back yarding cannot trace vehicles records and effect a successful backyarder prosecution.

In the 12 months since the investigators were appointed the Dealer Compliance Unit has been rigorously checking licensed dealers whilst those appointed to investigate unlicensed dealers have their hands tied by red tape.

DCU inspectors who check on car yards are not empowered to check on unlicensed dealers or backyard sellers who might be operating only metres away.

We have a regulatory regime that is operated by a very well-funded bureaucracy at taxpayers' expense directly under the auspices of the minister who is handling this legislation, and the industry with the most at stake in the matter includes in its monthly publication a two-page spread slating the Government's inaction. It does not give people a great deal of confidence that the legislation we are dealing with will be effectively implemented when this arrangement, which has been in place for quite some time, has been simply left to rot in the gutter. This is one of the things I shall refer to later. It points to a very significant difference in approach between the current Government and the Liberal Party. We are seeing from the Government a very bureaucratic, stodgy approach to policing vehicle backyarding. The Government said it would police the system. It has not managed to do it for whatever reason, but it is still insisting that it should be the one that polices the system. We suggest that the industry needs to be given the teeth to police the system of its own accord. To stress what has happened in this area and the failure of the Government to effectively police backyard dealing and backyard repairs, I refer again to the Motor Trade Association article -

Meanwhile -

That is, while all this mess is going on -

there has not been a single prosecution for backyard dealing, despite a huge amount of evidence provided by MTA.

...

MTA says the backyarder investigators will never be successful until Department of Transport allows access to its computer data so the trail of vehicle ownership can be followed.

...

The dealer industry is hugely cynical about ministerial pronouncements like the one from John Kobelke in late 2001 when he was pictured under an overpriced, dangerously repaired Commodore prepared by backyarders. He took the opportunity to promise Government action against the illegal trade.

Guess what happened? A clue: the answer begins with a Z.

The industry which is pushing for a regulatory regime and which welcomed the Government's intentions in this area is still waiting to see some definitive action. It does not augur all that well for the legislation we are dealing with now. The article quotes the chairman of MTA's licensed motor vehicle dealers division, Mr John Singleton, as saying -

“We have this stupid situation which is happening because the Government is simply not making the tools available to do the job,” he said. “The result is huge resources are being wasted just because two departments can't achieve resolution.

“That is crazy; in the end both departments work for Dr Gallop. And he works for us”

Motor Trade Association chief executive officer Peter Fitzpatrick, who has previously discussed the issue with the minister and his staff, wrote to the minister in terms that make the industry's stance very plain. One part of his lengthy letter, which was reported in the article, stated -

Dealers have now become angry and frustrated at the lack of action by way of prosecutions. They see illegal dealers operating with impunity who have a substantial advantage over legitimate businesses because they are able to avoid providing statutory warranty on vehicles and in many cases are involved in tax avoidance and in some cases criminal activity.

Backyard dealers involved in criminal activity and taxation avoidance are performing substandard and possibly unsafe repairs on vehicles, and two government departments cannot even get their act together to assist the motor dealing industry. This has not just happened. It has come to fruition over many months. As I said earlier, the minister announced these initiatives in 2001. Through the budget he funded a compliance unit at great expense to taxpayers. Yet the very industry that has been calling for these measures is absolutely scathing in its criticism of the Government's inaction and the fact that two government ministers cannot agree on what to do about this matter. The industry's stance has even been given coverage in the mainstream Press. *The West Australian* of Saturday, 15 February contained an article about the issue. The headline sums up the problem -

Backyarders reign while Government fiddles

Consumers are being exposed to fraud and deceit on two fronts due to State Government inactivity.

My point is that we can have all the legislation under the sun, including licensing regimes and certification requirements, but unless the Government genuinely wants to do something about the problem, we will go backwards. The Opposition wants a guarantee from the Government that the imposition on the small business sector of this very bureaucratic and comprehensive regulatory system will get results. We want to know that the Government is sincere about this and is not meeting an election promise just on paper. It is all very well putting out a press release that the Government is meeting a commitment through the introduction of legislation; however, it is another issue to make that legislation work in the interests of consumers and the small business sector as a whole. Based on what is happening with backyard car dealers and repairers, I do not think we have cause for a great deal of confidence.

What is the Liberal Party's suggestion? Members may have noticed that I said that the Liberal Party will not oppose this legislation. It is not running at it wholeheartedly because, generally speaking, this sort of regulatory regime does not sit comfortably with its philosophy on how to assist the business community while protecting consumers. When members consider the scenario I have just outlined, which is of a highly regulatory regime backed by extensive bureaucratic resources but a lack of government will to make it work, they can see why we are reticent about handing the powers contained in the legislation to the Government and, more particularly, the bureaucracy behind it. As I said earlier, licensed dealers who are generally speaking doing the right thing - very few do not act according to the law - are being policed and cracked down on but the unlicensed dealers are not being touched because of the lack of willpower by this Government to do so. The Liberal Party might have been more excited if, rather than implementing this heavy-handed bureaucratic approach, the Government gave assistance to the industry to police its own neck of the woods. I give an example of where that is done very efficiently in the motor trades industry. I challenge the minister to indicate if he thinks there are any problems in the policing of the ozone requirements for airconditioning and other vehicle applications. Very strict requirements apply to the replacement of ozone in vehicles, and this is policed by the industry. All the feedback I have received indicates that the system works extremely well. It may be found that an alternative arrangement could have been involved with this legislation: instead of having compliance officers in the department, some real teeth could have been provided for the industry to police its own backyard.

The Liberal Opposition will not take it to the wire and say it will oppose the legislation unless these changes are made for a couple of reasons. First, the Government has the numbers, so the changes will not get through anyway. Second, we know the industry has problems and how long it has been pushing for some regulatory regime, so I will not hold up the process. Something needs to be done. The Liberal Party will let these matters through to the keeper. It agrees broadly with the need to ensure high standards in the vehicle repair industry, and that vehicles returning to the road need to be safe. However, the Opposition is uncomfortable with the heavy-handed, bureaucratic and expensive nature of the legislation.

The opportunity may arise down the track to present some alternative suggestions by way of new policy on how these regulations can operate hand in hand with direct industry participation. With that in mind, the Liberal Opposition is very keen to ensure that the legislation's operation is scrutinised in some detail. The minister will be asked later whether he has reservations about providing a specific review clause in the Bill. If the minister is keen on that notion, I suggest that this legislation be reviewed three years after assent, and that in the course of that review the minister consider the following points: first, the attainment of the purposes of the measure, such

as consumer protection, be reviewed. Second, the administration of the Act be considered: is it complex, and does it pose any administrative difficulties? Third, the review should consider the effectiveness of the operation of the Motor Vehicle Industry Board to be established under the legislation. Let us look at the board under its new composition. It will embrace the activities of the existing Motor Vehicle Dealers Licensing Board as well as the new responsibilities provided under the legislation. Let us see how well the board handles those responsibilities. Is it the best tool to achieve these aims?

Fourth, the Liberal Party will suggest that the impact of the Act on small businesses and consumers in the industry be reviewed. A number of colleagues - I note the member for Murray-Wellington in particular - have raised the potential negative impact of this measure on small businesses, especially those operating in country towns that do not need the additional burden of such a licensing regime and for which a \$900 bill is a substantial financial impost. We will need to look at the impact of the legislation on the small business sector as a whole. Also, will the Act favour the big end of town? I sincerely hope the legislation will not create any significant barriers for entry into the industry, and will not impact on one area of the industry more than any other. For example, I sincerely hope it will not adversely affect the very small businesses to which I referred earlier - namely, people who operate mobile repair vans - as well as not drag down the larger and medium-sized enterprises. That is probably the most important recommendation the Liberal Opposition will propose when discussing the need for a comprehensive review of the legislation.

The fifth area to be considered as part of a review is that, through extensive consultation, specific input should be sought from the representatives of the motor industry as well as individual small business proprietors. As the legislation leads up to the third year of its operation, let us go out to the industry and find out the measure's impact. That should be a simple task because, by then, all industry participants will be licensed, and feedback will have been obtained on whether businesses that have not obtained licences consider the system to be unfair or draconian in any way. It should be simple to approach the key stakeholders, such as the insurance companies and the Motor Trade Association of WA. That important recommendation goes to the heart of determining the impact of the legislation on the small business sector.

The final catch-all phrase is that the Liberal Opposition believes that any matters that appear relevant to the minister should be included in the review. Essentially, the review will see whether the Act achieves its purposes in consumer protection. In other words, what were the benefits to consumers, how do we quantify them and what was its impact on the small business sector?

The Liberal Party has adopted what may be seen to be a fiercely pro-business stance in dealing with essentially consumer affairs legislation. The intention is to ensure that this legislation is reviewed from the perspective of the small business community. The Liberal Party is not prepared to put something like this in place - albeit with all the best intentions under the sun, and with the support of the small business community - without the knowledge that we can ensure in future that it presents no unintended adverse consequences for small business operators.

Our review suggestion also provides that the minister report back to Parliament the full details of the review. We might find that we have a different Government at that time. The review may provide the basis for some fine-tuning of the system, or, indeed, a change of emphasis. We may find that my fears of a very bureaucratic approach are realised, and that a change of emphasis may be necessary to give the industry the teeth required to police itself. I hope additional information will be provided by the minister in the consideration in detail stage.

As I said earlier, the Opposition accepts that no regulations have been prepared and that a transitional period is involved, but some firm assurances are needed. For example, people in the motor vehicle repair industry who may have no formal qualifications but are good at their job will want an assurance that they will not be tossed out of business as a result of this legislation. If they find that they cannot meet the new board's certification and qualification regime, they will be upset if they are chunked out of business after 20 or 30 years' successful involvement. The craftsmen and women in the business community very often have learnt their skills over many years involvement in their industry. Some may have a mechanical ticket, but have no formal qualifications; they have learnt to specialise in an area through hands-on involvement. I seek a firm assurance from the minister that people operating legitimately in the industry today providing a quality service for consumers will in no way have their livelihood jeopardised through the introduction of this system. I understand that the assurance will be difficult to provide without knowing in detail how the system will operate. However, it is very important that something be put on record during the second reading debate, so that, if there are any complaints in this area, there is something official to fall back on. There will then be a record in this Parliament of the minister of the day giving a clear indication of his intentions for people already in the industry.

As I said earlier, the Opposition will also be looking for assurances about the fee structure, to not only ensure that it will not be too burdensome on any business, but also take into account the fact that small business and micro-business are simply fed up with licence fees, red tape and paperwork. We want to make sure that the

process is as simple as possible. Hopefully, they will pay a one-off licence fee, and will not have to fill out a form every year, asking their wives - who very often do the paperwork in the smaller mechanical businesses I have spoken with - to spend their Sundays filling out licence application forms. We want a simple system that will not hurt the hip pocket nerve of small business people.

We also need some indication of the type of certification that will be required of businesses to obtain licences in the different categories under this legislation, as well as the kind of equipment that will be required of businesses to perform their functions in accordance with this legislation. For example, if someone is involved in motor vehicle or truck repairs, what equipment standards will be required? One area of considerable contention in the panel beating industry is the need to provide extensive extractor equipment when a business carries out spray painting on trucks. What size of truck will necessitate that sort of large-scale fume extraction system? What sort of equipment would a micro-business be required to provide? I know all this is in the detail, but it is important to get something from the minister at this stage, because I want to be able to sleep at night knowing that I have passed legislation to uphold standards in the industry and provide consumer protection, and not placed a barrier to entry to the industry. I hope no-one in this Chamber would agree with the notion of bringing in legislation that suddenly safeguards one area of business against competition, unless there are very good reasons for doing so. In this case, we can have the best of both worlds - a system that does not raise barriers, and therefore stimulates and fosters competition in the industry, and still provides consumer protection.

I need to touch very briefly on the other legislation with which the House is dealing cognately, the Motor Vehicle Dealers Amendment Bill (No. 2) 2002, which is the mechanism by which the new Motor Vehicle Industry Board will be established. This legislation will do away with the existing Motor Vehicle Dealers Licensing Board. The Opposition supports the notion of having one board covering the industry, rather than creating an additional board to cover repairers. The composition of the new board seems to be appropriate under the circumstances, and I am aware that much consideration and discussion with industry has taken place about that. One potential concern relates to the fact that the new board will include a nominee of the Royal Automobile Club of Western Australia. I have nothing against the RAC - it is a tremendous organisation - but it strikes me that perhaps its nominee might be wearing two hats. The nominee will be representing an organisation involved in the insurance industry and also in consumer protection. The RAC is also involved in an accreditation system and in ensuring good quality motor repairs, so it could almost be said that the RAC nominee will be wearing three hats. I will be interested in the comments of the minister later, if the possibility of a conflict of interest has been raised with him, in the sense that an organisation dominant in the insurance industry should be involved in the operations of this board. I understand that including two representatives of the vehicle dealing sector takes care of what has come through from the former Motor Vehicle Licensing Board, but there are only two members with experience in the motor vehicle repair sector on the new board. I wonder if the opportunity may have existed for stipulating that someone from an organisation such as the Motor Trade Association of Western Australia could have been included instead of the RAC nominee. The Opposition has no grudge against the RAC, but it strikes me that there may be some question about which hat the nominee will wear on the board. There will be three representatives of consumers, and I will be interested to learn how the minister envisages that they will be selected. With three consumer representatives and five people from industry, it might look like the board is stacked in favour of the industry, but the two different industry sectors have two board members each. In fact, the representation of consumers on the board is very strong, because there are more consumer representatives than there are representatives of any one of the industry sectors.

The Motor Vehicle Dealers Amendment Bill (No. 2) 2002 also empowers the board to conciliate disputes between dealers and motor vehicle purchasers. Again, it will be interesting to hear whether the minister anticipates that a different process or style of conciliation will be undertaken, as opposed to what the department has been doing to date. I mentioned figures earlier that indicated that many of the complaints that come to the department at the moment are dealt with, in effect, by conciliation. The final point about this Bill is that it provides, under proposed new section 12B, for the minister to direct the board. The Opposition will be seeking an indication of the sorts of circumstances that might require the minister of the day to direct a board of this nature.

This is very significant legislation. It is intrusive, highly regulatory and very bureaucratic. It imposes a financial burden on the small business sector, and creates nothing short of a red tape hassle. However, I stress what I said at the beginning of my speech, that the industry itself wants a regulatory regime. People in the industry tell me this is not their preferred model; they would rather have a system under which the industry could engage in self-policing. However, the Opposition will not oppose this Bill purely on those grounds, because it is time to get on with the job and provide for the best possible consumer protection in this area. It is no exaggeration to say that a good regime, ensuring high standards in the motor repair industry, could very well save lives, so the Liberal Party will not oppose this legislation. It will ask a number of questions later on. I put on notice that a future Liberal Government may have another look at this matter in conjunction with industry, working hand in hand

with the small business community, to see whether matters could be streamlined to give the business community a bit more authority to police its own backyard a lot more effectively than the Government.

MR J.L. BRADSHAW (Murray-Wellington) [5.50 pm]: Although I support the legislation, it worries me that when we start to regulate areas such as those contained in this Bill, we create anomalies and problems in the community. I can see why the legislation has been brought in; however, I also understand the views of those on the other side of the fence. Many people are operating good and legitimate businesses even though they are not qualified, and they are happy with their lives as they currently exist. However, if the legislation is passed they will have to register and pay an annual fee, which, from what I can gather, will be about \$900 in the first year, and it will probably increase over time. That will be a burden on some people who are quite happy with the way their businesses currently operate. I am interested to know how many complaints the department receives about shoddy workmanship on motor vehicles, because unless there are quite a few, I do not see the need to change the situation. If many complaints are made about shoddy workmanship, we must certainly tidy up the industry.

I would like the minister to explain whether a grandfather clause will be included to cover mechanics, panel beaters and the like, who have run successful businesses over the years even though they do not have formal qualifications, and who are very good at mechanical repairs and putting cars back together when they have been in accidents. It is important that those people who have been in business for up to 30 years are not suddenly thrown onto the scrap heap. I would like an assurance from the minister that those people will be looked after, and that they will not have to jump through the hoop of sitting examinations and the like. If they are not looked after, I will probably change my opinion about the legislation and vote against it. We have to protect those in the community who run good businesses. Obviously, on the other side, there are the backyard operators who use shoddy, and possibly illegal, parts that are obtained from stolen cars, and we must certainly remove those people from the industry.

The matters to which I have referred are important. Once regulations are made it is very hard to turn back the clock. Just because we suddenly have a bee in our bonnet about regulating everybody to ensure that they are complying with the rules, some people, who are very happy with their lives, may find themselves out of a job. That may happen in a remote country town and the only mechanic or panel beater may find himself on the scrap heap. I am concerned about not only people in the country, but also those in the metropolitan area who, after years of running successful businesses, will suddenly find that they must register, and, if they cannot get registration, they will have to shut down their businesses. This is difficult legislation, and I have grave concerns about bringing in additional regulations and rules. It is my philosophy that if Australia were to start over, there should be as few regulations as possible. If shopping hours are deregulated, many people will experience pain, and problems will be created in the community. Similarly, if this legislation is passed, some people will experience pain; therefore, we must take protective measures to ensure that they stay in business.

MR M.P. MURRAY (Collie) [5.56 pm]: I spent 33 years as a mechanic and I have certainly seen some dodgy brothers during that time. There has been talk about regulating the industry since I was an apprentice, and it is finally coming to fruition. I am concerned about over-regulating the industry - where do we start and where do we stop? For example, do we allow a bloke to purchase a tin of body filler so that he can repair his daughter's car in his backyard? It is a fine line, but I certainly understand the problems that have arisen since the days when people could roll up a newspaper, put it in the sub frame and spray it with Emastak to the present day, where people cut cars in half, put them back together and change the compliance plates. Many problems must be addressed in the name of safety. However, with regulation comes cost, and when costs increase the temptation to do backyard jobs also increases.

Policing is another issue. Over the years policing the stolen car game has been very difficult, although in recent years compliance plates and other tracking methods have made it much easier. I am pleased that some legislation is coming through. Although it does not go the full distance, the Bill provides a balance, and we must be mindful to maintain that balance because the fully-blown professional and the country guy often work quite differently. For example, the professional may put through 30 cars a week while the country guy does only one or two. We must be mindful of costs, which I have already mentioned, and regulations. Recently a person in my electorate went to the Environmental Protection Authority because he was concerned about his spray booth. The decision was deferred for a year, but at what cost, because the people around him continue to complain about the fumes. Many varied problems are associated with this legislation; however, at least we will have a framework to build on. As the member for Mitchell stated earlier, there must be checks and balances and a review further down the line. However, the real issue is about getting started. A fortnight before the last election, I was still working with my tools, so I am no stranger to what has happened over the past few years. Probably some of the older blokes like me have found the changes in technology quite difficult, and shortcuts that might have been taken previously, especially if someone wanted to make a few bob, can no longer be taken. It is important that we have a starting line.

Mr D.F. Barron-Sullivan: The current review clause in the legislation provides for matters to be reviewed in five years. I would like members on your side of the Chamber to consider bringing that forward to three years - it is an issue that we can talk about constructively with the minister later on - because if we get it wrong, five years is a long time before the next review.

Mr M.P. MURRAY: I am sure that will be considered. Reviews can be brought forward or put back. I do not have a problem with that, but a review should be held at a reasonable stage to iron out any hiccups. Like any new legislation, there will be a few hiccups along the way. I commend the Bill to the House.

Sitting suspended from 6.00 to 7.00 pm

MR M.W. TRENORDEN (Avon - Leader of the National Party) [7.01 pm]: I support this Bill on behalf of the National Party. I am concerned that this Bill may lead to additional costs for consumers. On the other hand, as a country driver, I cannot remember the number of times I have followed a car that was crabbing down the road. Mr Speaker, you have probably had the same experience. I have followed cars that have had wheels that did not follow each other, and bad shock absorbers and springs. Many of those vehicles were in that condition because they had been repaired in someone's backyard. They were obviously dangerous.

Although the minister is blowing his trumpet about the advantages of this Bill, he is also adding costs. The two need to be balanced. Members have said that a car is often a family's second biggest asset; that is correct. This Bill will add to the cost of vehicles. I support this Bill and have done so since the time of the previous Government. I was amazed that the previous Government did not get this Bill through in its term. I have no objection to the Labor Party putting up the Bill in this Parliament. We must have regulation of unsafe vehicles.

There is great concern in the panel beating industry. Many panel beating shops are under pressure because of questions about spray booths, machinery that can correctly fix chassis and all the other matters of quality assurance. All those things are fine but, unfortunately, there must be recognition that consumers pay for them. That recognition is not easily accepted by the insurance industry, which goes out of its way to make life difficult for a lot of approved panel beaters. That is something we must keep an eye on. As a person who spent a long time in the insurance industry, I do not approve of locked circumstances in which an insurer either owns or controls a panel beater and the conditions of work. During my time, there were many cases of people who could not get their cars repaired after an accident until they could find another vehicle that matched. Vehicles would be cut in half and the two halves would be put together. It is not a good practice and I hope it is not continuing. Questions about panel beaters using second-hand parts and panels come into play because people need to keep costs down.

Without incriminating myself, I will tell the House about an incident on Stock Road. The police actually rang me about it. I was turning left at a give-way sign and watching traffic to my right when a learner driver in front of me stopped. Unfortunately, I ran into the back of the learner driver at about five kilometres an hour, possibly less. I could not believe it when a police officer telephoned me and was quite angry that I had not reported a serious accident. The damage to my vehicle was paint scratched off my numberplate. I did not know how to estimate the cost. The damage to the other vehicle totalled \$2 000. I found that absolutely amazing. It was a small car and mine was a Ford. I hit the car above its bumper and pushed the back in. As all members know, once the cost of an accident exceeds \$1 000 it becomes a reportable offence. I had not reported the accident because damage to my car was virtually nil. In the end, I received a caution. I thought that quite reasonable, as the car in front should have been moving on, because there was no oncoming traffic to the right. I am making the point that it is not very hard these days to get stung by the costs of panel beating and repairing cars.

The National Party supports this Bill, and has supported it for some time. I have visited the Motor Trade Association on three or four occasions over many years to tell it I supported its Bill. I support qualified panel beaters who do the right thing. I am concerned about the cost pressures put on panel beaters by the insurance industry. This is one area in which the minister likes to peddle the insurance industry. He should keep a very firm eye on the insurance industry and ask the Department of Consumer and Employment Protection to do the same. If it does not, he will cause some unfair pressures to build up in the system and it may explode and get out of control. With those few words the National Party supports this Bill.

MR J.C. KOBELKE (Nollamara - Minister for Consumer and Employment Protection) [7.07 pm]: I thank members for their contributions and support for the Bill. I will try to take up the key matters raised. I understand we will go into consideration in detail. If I miss any matters, they can be taken up then.

The Deputy Leader of the Liberal Party raised the issue of fees. They will be roughly comparable to current fees for motor vehicle dealers. It is not possible to quantify them at this stage. The member is aware that the Government has committed to a consultancy. He did not mention that the board will have some say in that. The industry will have representation about what the final fees will be. Nevertheless, it is an impost on the industry and on consumers, as costs will be passed on to them. The judgment of this Government and key industry

players for many years is that the costs are more than outweighed by the benefits of ensuring that standards are maintained in the industry.

The Deputy Leader of the Liberal Party also suggested that because this is consumer legislation it is being pushed by consumers and the industry is somewhat more tentative about it. That is simply not the case. This has been pushed by the industry. The industry does not want to be undercut by cowboy operators and backyard dealers who do work that is substandard and leaves unsafe vehicles on the road. The stories that flow from the small number of unskilled operators and people who cut corners cast a slur on the whole industry. The industry is keen to make sure that decent standards are set. This model has been developed over many years and has very strong support from industry. Naturally, industry is a bit tentative about the costs, and we understand that. Until the proper process has been developed, in which industry will be involved because the board will have a say, clearly there will be some apprehension about the full impact of the Bill. The industry has been making a very strong call for some regulation of this form.

The Deputy Leader of the Opposition suggested self regulation. That was not suggested to the Government at any time. This model is based on that which the Bloffwitch committee recommended and on the New South Wales regulations. The industry has been working with the previous Government and with this Government. We prepared a Green Bill for community consultation, which the industry could examine, and to promote discussion. Industry has consistently supported this regulatory approach rather than a form of industry regulation. The suggestion that self regulation might be preferable was a surprise to me.

The article in the Motor Trade Association of Western Australia magazine on the lack of successful prosecutions, which I have read, was a gross misrepresentation and very unfair. Perhaps Peter Fitzpatrick, the Executive Officer of MTAWA, is a mate of the Deputy Leader of the Opposition. I took that article to be playing party politics.

Mr D.F. Barron-Sullivan: What do you mean by saying that perhaps he is a mate of mine?

Mr J.C. KOBELKE: I am suggesting that Mr Fitzpatrick is playing party politics.

Mr D.F. Barron-Sullivan: Do you think he wrote that article for the party political benefit of the Liberal Party?

Mr J.C. KOBELKE: I do not know what benefits he would gain. The Deputy Leader of the Opposition can assume that. I am saying that it is politically very biased.

Mr D.F. Barron-Sullivan: Are you saying that the executive officer of the MTA is being political?

Mr J.C. KOBELKE: I am saying that the article, for which I assume he has some responsibility, is very politically biased. I will explain why. It relates not to the matter before us, which is motor vehicle repairers, but to motor vehicle dealers. When the Liberal coalition was in government for eight years, it promised to do something about the difficulties involving backyard motor vehicle dealers. It did nothing about introducing legislation into this Parliament to address problems with backyard dealers. When the Labor Party took office, it passed that legislation within about a year. This Government provided resources from a very tight budget to provide extra officers to follow it up. The Government pursued the matter. It would have liked to be more effective. As the Deputy Leader of the Opposition is well aware, charges were laid against a certain member of this Parliament, which on the surface, according to advice to me, provided a very strong case. We lost that in the courts, with some embarrassment. It is not easy to secure successful prosecutions. A lot of work has been done to ensure that the new resources and legislation can be productive. The article in the MTA magazine accused the Government of doing nothing. The previous Government had done nothing for eight years, but this Government acted decisively and introduced legislation. It provided extra resources to train people to detect, catch and prosecute backyard dealers. We were not as successful as we would like. Issues were involved in trying to obtain information from other agencies. We were open with Mr Fitzpatrick and pointed out to him that some difficulties had to be overcome. The article was written as though those difficulties were no more than red tape and the Government was not addressing them. By the time the article was published the problem had been largely fixed, yet that is not reflected in the article. If the Government works cooperatively with industry groups and one or more players in those groups want to play petty party politics he puts in jeopardy government's willingness to deal openly with them. I will be taking that up.

Mr D.F. Barron-Sullivan: That is nothing more than a direct threat to industry.

Mr KOBELKE: It is not a threat; it is the way the Deputy Leader of the Opposition works.

Mr D.F. Barron-Sullivan: That organisation was critical of the previous Administration. It does not play party politics. It is looking after its industry. It is appalling to make a threat like that.

Mr J.C. KOBELKE: The Deputy Leader of the Opposition makes threats. I am not making threats; I am saying that the Government was totally open and provided all the information only to have it misused. It is obvious that the people responsible did not respect that confidence and it will not enjoy that confidence again. That is not a

threat; it is a matter of fact, given the way the article was written. It was highly biased and unfair considering all the work the Government has done in this area.

The Deputy Leader of the Opposition suggested a three-year rather than a five-year review. I have nothing against a three-year review. However, the Deputy Leader of the Opposition has overlooked the fact that it will be two years from when the legislation is proclaimed before it is fully operational. People must have time to register their business and acquire whatever else they need. If the legislation provided that a review was required after three years, it would be operating for only one year before it was reviewed. That would not be adequate. With a five-year review, after the two-year phase-in period, it will be operational for three years, which will be five years from proclamation.

The Deputy Leader of the Opposition also expressed concern about the RAC having membership on the board because it is an insurance company. The RAC is a representative organisation and a service organisation for motorists. It runs a very large insurance company as one of its divisions, so there is a potential crossover. However, insurance is not the primary business of the RAC. Its primary role is as a mutual organisation for the benefit of motorists. The motor vehicle dealers legislation requires that the RAC have a position on the board. This legislation will not change anything. It is not fair to suggest that the RAC would come to the table with the view of an insurer. That part of the legislation will allow the minister to make the appointment. If the RAC decided its representative should be someone from the insurance arm and the minister of the day did not think it was appropriate, the minister could advise the RAC of that and the RAC would not be able to make that appointment automatically. The minister will have the final say. It is not fair or reasonable to characterise the RAC as primarily an insurer.

The member for Murray-Wellington was worried about what would happen to existing trades people. Transitional arrangements will allow those people to continue in business and to ensure they are recognised for the purposes of these amendments. We can go into that in more detail if the member wants, but I do not think there is any problem.

Mr J.L. Bradshaw: Are there no problems?

Mr J.C. KOBELKE: The regulations are designed to ensure that problems do not occur. People will have 12 months to consider the matter and another 12 months for registration. Through that process they can be sure to acquire registration. Registration can be based on educational qualifications or on a clearly proven record of performance. Our training sector recognises prior learning. Operators can sign up for a course without having to sit through every lesson, prove they have adequate prior learning skills and receive accreditation fairly promptly.

Mr J.L. Bradshaw: It will be no good if they have to do a course. They would have a proven track record.

Mr J.C. KOBELKE: The member for Murray-Wellington does not understand what I mean by recognition of prior learning. It means that the educational qualifications are provided after the operator has proved his capability. He would not have to do a six or 12-month course. However, he would have to be properly assessed or have an assessor visit his place of work, for which obviously a cost would be involved, to show that he had the skills that would enable him to receive the accreditation for that qualification.

Mr J.L. Bradshaw: Surely if a person has been successful in business for up to 30 years that is a proven track record.

Mr J.C. KOBELKE: Yes, and a method will be in place for assessing that. It is possible for someone who is pretty hopeless to have been in business for 20 years. Some shonky operators are operating in the community. The point is, a process will be laid down. This legislation does not lay out the fine detail. The regulation and the board will be able to do that. The industry will be represented on the board, and it will want to ensure that it continues to function effectively. Surely the consumer representatives will want the industry to operate effectively. If there is a shortage of skilled tradespeople, prices go up and the consumers miss out. The practitioners and the board must be left to decide how tight they should be. I have confidence that we will get good people on the board. There have been many people - some of whom are in the gallery tonight - who have committed themselves to this process over many years -

Mr J.L. Bradshaw: It is not the people on the board but the people that adjudicate -

Mr J.C. KOBELKE: But the board has control of that. The board will be responsible for helping to set the criteria.

Mr J.L. Bradshaw: But it still comes down to the interpretation of the board's decisions by the people who go out and do the assessments. The concern I have is that they might -

Mr J.C. KOBELKE: The fear raised by the member is a marginal one, but I accept that people will be worried about it. However, the board will look after the interests of the industry and the consumers. Those people are

not served by putting in place a system that is so restrictive and confining that the operators are locked out of the industry. That would be totally counterproductive.

There will also be appeal processes. If an officer were found to be overly officious and was not picked up by his superiors for not doing his job properly, the board could act as a double check and say, "These are not the standards we are seeking to have implemented and upheld through this process."

Mr J.L. Bradshaw: It sounds good to have appeal processes but many people do not understand that they exist because they are not told about them. They do not necessarily read *Hansard* and the information that is produced. They might operate their business in their own way and they might not be a member of the Motor Trade Association. Therefore, they have no access to that sort of information. All of a sudden, somebody comes in and they get crunched. They do not understand that they can lodge an appeal.

Mr J.C. KOBELKE: I can understand that that has happened in the past, but those instances are becoming more isolated. In terms of administrative processes, people are now more readily advised of their rights. With the establishment of the state administrative tribunal - hopefully from early next year - the process will be more standardised and people will know that if they get an adverse finding with respect to licensing in any industry, they can go to that tribunal and lodge an appeal. It will be a low-cost jurisdiction that will give oversight to all those administrative decisions. We are already putting in place those processes to make sure that people know their rights and are not simply left in the dark. That will be taken one step further when the state administrative tribunal is put in place.

I think I have answered the main issues that were raised and I am sure that there will be discussion on further matters when we consider the two Bills in detail. Therefore, without further ado, I commend both Bills to the House.

Question put and passed.

Bill (Motor Vehicle Repairers Bill 2002) read a second time.

Consideration in Detail

Clauses 1 to 4 put and passed.

Clause 5: Repair work, prescription of -

Mr D.F. BARRON-SULLIVAN: This clause provides for the scope of repair work, which is very expansive, that will be covered under this legislation. Can the minister give us an indication of how this scope will be narrowed down - if I can put it like that? Is it the intention to have a blunderbuss approach with a scope that is as wide as possible? How does this provision differ from that in the New South Wales legislation?

Mr J.C. KOBELKE: I am advised that this provision was basically taken from the New South Wales legislation. Although the member suggests that this is a pretty broad provision, the New South Wales legislation has now been amended so that it does not even have this level of prescription, but has regulations that provide an even wider gamut. However, this is what used to be found in the New South Wales legislation.

Mr D.F. Barron-Sullivan: Why did you decide not to go down that path?

Mr J.C. KOBELKE: Sorry, I misled the member. The Government in New South Wales has now changed its legislation to this new way. We have adopted it on the advice that it is an improvement over what it had previously.

Clause put and passed.

Clause 6: Exemptions -

Mr D.F. BARRON-SULLIVAN: I think we will touch on exemptions and so on later on. However, this provision is the broad clause that relates to exemption provisions. We can deal with specific exemptions later on. Alternatively, if the minister wants to comment now, and thus pre-empt the sort of thing that will come up in clause 10 and so on, I am interested to know what the train of thought was in relation to exemptions. Why were a number of classes exempted, particularly workshops in dealers yards, warranty work and that sort of thing? I want a general comment on the nature of the exemptions and so on.

Mr J.C. KOBELKE: This clause allows regulations to be made to exempt any person or class of person from a provision of the legislation. It will provide some flexibility, because in certain parts of the State one may simply not have access to a tradesperson who has the necessary certification. If someone is willing to try to do the work, and if people have nowhere else to go, we may wish to allow that flexibility. That is clearly stated. There may be other classes of a similar nature, in which case there will be flexibility. This has to be done by regulation. These regulations are disallowable, so if the Government of the day decided that the standards would

no longer apply to anything on the other side of the Darling Scarp, and if there were a good case for that, it would get up. I doubt that it would be disallowed, but it would be disallowable in the Parliament if it looked as though it was an attempt to simply water down and overcome what was a demonstrated need. This clause provides that flexibility. New technology may be introduced on which the Government may wish to provide an exemption for a limited period. The provisions provide that flexibility. Without that, there could be unforeseen consequences. Flexibility is being provided to overcome any unforeseen events or consequences that might arise. The legislation will contain the power to provide an exemption.

Mr D.F. Barron-Sullivan: What exemptions are provided in New South Wales generally, and what new or unintended exemptions have they brought forward?

Mr J.C. KOBELKE: I am not aware of the exemptions that apply in New South Wales.

Mr D.F. BARRON-SULLIVAN: I find that rather unusual. We are once again finding that a piece of legislation is before this Parliament that provides a broad framework but on which we have not been given the detail. I often get frustrated by this and must rise to say that I cannot tell what is likely to happen because I cannot see the regulations. In this case it is clear that little thought has been given to the intention of the legislation, as the Government has not even looked at the situation in New South Wales. As the minister himself indicated, this legislation is based on what happened in New South Wales. However, I asked a basic question on what exemptions have been allowed in New South Wales and was told that the Government does not know because it has not followed that up. A number of concerns have been raised with Liberal Party members. For example, situations may arise in small country towns in which somebody who predominantly works on farm equipment may occasionally work on licensed vehicles. Consequently, if this legislation is read to the letter of the law, he would need to go through this rigmarole of licensing and so on. It is not the intention of the legislation to catch some small business person who operates in a small country town in a highly regulated and bureaucratic regime such as this. It is certainly not what the industry has said that it wants. It does not want to catch the honest small business person who operates in a small country town. The industry wants to stop the backyard operators and some of the serious problems that predominantly occur in urban areas of Perth and regional centres. Have any country towns or individual operators in New South Wales been exempted because it has been determined that the right thing should be done by them to make their lives easier?

I heard the answer given to the question asked by the member for Murray-Wellington. I will question that point when we get to the relevant clauses. I am starting to be a little perturbed about the attitude of the Government on this legislation. With the Motor Vehicle Dealers Amendment Bill (No. 2), the Government is prepared to put in place strong, bureaucratic, regulatory and centralist legislation without doing the follow-up work to make sure that it works. I thought that the Government might have looked at the New South Wales situation. If it has not, which is what the minister seemed to indicate, I wonder whether we can get a commitment from the Government to do some homework before this legislation gets to the upper House. Otherwise, I suppose that role will have to be filled by the Opposition. I did not think that I would have to make those inquiries. I genuinely assumed that as this legislation was based on the New South Wales legislation, that sort of information would be to hand.

Mr J.C. KOBELKE: The member was not listening when I said earlier that this legislation is about providing room for unforeseen circumstances that may arise. The New South Wales legislation contains the same provisions. The point is that these provisions can be used if the need arises. The needs that may arise in New South Wales will not necessarily be the same as those that may arise here. This legislation has been operating in New South Wales for more than 20 years. It has a proven track record. Industry members have carefully considered this issue and picked over it. We have made a few changes to the legislation that is in place in New South Wales, but this Bill basically mirrors what is in place there. It is enabling legislation; it does not go into the fine detail. That is the strength of the legislation. The board and the industry can monitor the fine detail, and any changes can be made as the need arises. If the member has asked me to get into the detail of what would happen in certain circumstances, that is not the purpose of the legislation. The purpose of the legislation is to provide flexibility to the board, so that industry and consumer representatives can use those powers to make sure that the legislation runs well and meets whatever events may arise.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Authorised officers -

Mr D.F. BARRON-SULLIVAN: This clause allows the director general to designate authorised officers. Can the minister spell out what role those authorised officers will perform? This clause requires those officers to produce their certificates of authority in certain circumstances. I would like a run-down of who this relates to and how many authorised officers there are likely to be. The minister said that this legislation has been industry

driven, but did the Government consider making this more of an industry-oriented policing system? Who are these authorised officers, how many will there be and what will they do?

Mr J.C. KOBELKE: Taking the second question first, the Government has not looked at any alternatives. That was not put to us. The model we are working off came basically from the Bloffwitch committee, which worked off what the Cheryl Davenport committee started with. There was strong industry support for that model and we have taken it up. As I indicated, the Government drafted a Green Bill. Thorough consultation has occurred and no-one suggested that we should go another way. This clause will enable the director general to properly authorise people to do this work. The number involved will depend on the needs at the time, the budget and how much work can be done. There will be a balance between the needs and the ability to fund it, to make sure that it runs effectively. Clearly, that will be different at different times. There will be problems in getting the whole thing up and running. A lot more work will go into providing various guidelines and educational material to the various participants and players. That will change from time to time. We will be guided by the available funds and the size of the task.

Clause put and passed.

Clause 9: Licensing requirement -

Mr D.F. BARRON-SULLIVAN: Clause 9 requires anyone carrying on business in the repair field to hold a business licence for that class. I will ask specific questions on the cost of those licences. We can talk about the renewals and so on now or later, wherever it appears in the relevant clauses. The minister indicated that the costs might be comparable with a vehicle dealers licence. As I said, those licences cost around \$907. I may be slightly off on that figure.

Mr J.C. Kobelke: I accept that. I am saying that around the \$1 000 mark is roughly where it is envisaged. We have indicated that there is a whole lot of work, which the board will have to tick off on. For example, the plumbers registration board, which was set up by the previous Government and which this Government strongly supports - it is under my portfolio - has come up with proposals for licence charges etc. It has included that in its funding plan so that it can put its inspections in place. The situation will be no different under this Bill. Following the consultant's report, the board will have to look at how much money will be raised, certain levels and different categories of fees and the needs of its inspectors and how much that will cost.

Mr D.F. BARRON-SULLIVAN: Will the minister provide an assurance that the small and micro-businesses will have very low, if any, fees imposed on them? Does the minister envisage that there will be a cut-off amount? I use the example of tyre fitters who usually own four-wheel-drive vehicles and trailers that are fully kitted out. They pick up their tyres from a warehouse or directly from the supplier and they operate from their vehicles and trailers. I cannot comprehend people in that position having to pay a \$1 000 fee. I hope that is not the Government's intention. I would like the minister to put something on the record now to give an indication to the board, when it is established, that those people might pay a one-off fee of \$20 or whatever, but they will not be hit with an excessive fee every year. Ideally, they should not be hit with an annual licence fee. A later clause refers to the period that licences will apply. In this case, we need an indication from the minister on the record -

Mr J.C. Kobelke: There are other clauses we will come to.

Mr D.F. BARRON-SULLIVAN: I acknowledge that and I am happy to deal with the matter either now or later.

Mr J.C. Kobelke: It would be better if we dealt with the relevant clause because there are provisions relating to premises and licence fees. We can deal with them under their respective clauses.

Mr D.F. BARRON-SULLIVAN: Will the minister provide specific responses on those matters?

Mr J.C. Kobelke: I will respond to the member's questions.

Mr D.F. BARRON-SULLIVAN: I put on the record that this is the first mention of the licence fees. We will need a firm assurance from the minister that an excessive cost burden will not be placed on small business and that it will not be an excessive hassle for them.

Clause put and passed.

Clause 10: Exceptions to section 9 -

Mr D.F. BARRON-SULLIVAN: This clause provides a limitation on the activities of the authorised officers who were referred to earlier. It will ensure that the licensing requirement does not cover people or firms that carry out repair work only on motor vehicles owned or used by them, licensed motor vehicle dealers who perform only warranty work on motor vehicles sold by them and people who carry out repair work in the course of their employment with another person. I can understand the last provision, because the Government is not aiming to cover employees in different situations. However, could the minister explain the logic behind the first

two provisions? One covers people or firms that carry out repair work only on vehicles owned by them. It must be borne in mind that a firm might have a number of vehicles on which it carries out repair work, and it might sell them either on the commercial or private vehicle market. Why is there an exemption on warranty work?

Mr J.C. KOBELKE: I thought it was self-explanatory. It is okay for a person who owns a vehicle or who is licensed to carry out repair work. A company that owns a fleet of vehicles can repair its own vehicles and people working for that company can repair their own vehicles. That is an exemption. They do not have to be covered by the licensing requirement.

Warranty work can be undertaken on used motor vehicles that are to be sold. For example, this clause will exempt a person from a second-hand car yard who works on vehicles and prepares them for sale, given that those vehicles are likely to be captured by an alternative statute, which has provision for certain guarantees on the work etc.

Mr D.F. BARRON-SULLIVAN: Will the minister draw a comparison with the alternative statute with regard to warranty work? In the past several years, whenever I have gone to a mechanic to have my vehicle repaired, it has usually been after the warranty has expired. I want to make sure that the statutory protection for consumers is the same in each situation.

Mr J.C. Kobelke: Which two situations?

Mr D.F. BARRON-SULLIVAN: I refer to warranty work. The minister is saying that an alternative statute is in place to protect the consumer with regard to warranty work and, therefore, that protection does not need to be provided for in this legislation. I want to know what difference there is in the legislative provisions under that alternative statute compared with this one.

Mr J.C. KOBELKE: It is as it reads. Section 9 relates to licensing requirements. Clause 10, states that section 9 does not apply to certain classes. Clause 10(1)(b) states -

a person or firm so far as the person or firm -

- (i) holds a licence under the *Motor Vehicle Dealers Act 1973*; and
- (ii) carries out repair work for the purposes of section 34 of that Act, but not otherwise;

If a person or firm carries out other work relating to vehicles, we must read section 34 of the Motor Vehicle Dealers Act, which states -

... the dealer who sold that vehicle -

to which this provision applies -

shall, at his own expense, repair or make good, or cause to be repaired or made good, that defect -

for which he is responsible under sections 34(b)(i) and (ii) -

so as to make the vehicle roadworthy and to place that vehicle in a reasonable condition having regard to its age;

The guarantee is in the Bill. If the exemption applies, it is caught by the guarantees available in the Motor Vehicle Dealers Act.

Mr D.F. BARRON-SULLIVAN: I understand the difference and I understand what the Act says. I will give the member a simple example. Suppose we both own the same model of car and mine is covered under warranty but the minister's is not and I go back to the dealer who sold me my car or to the agent who has a provision to carry out warranty work. Straight away my vehicle is not covered under the legislation with which we are dealing; it is covered under the other statute to which the minister referred. However, because the minister takes his vehicle to a mechanic and pays for the repairs directly rather than through the warranty, it is covered under this legislation. We might have exactly the same car and exactly the same fault, but my car is covered under warranty, whereas the minister's is not. Why is there a difference in the way the two cars are treated? For example, if my car is not repaired properly, do the same penalties apply under the alternative statute compared with those in this Bill? Also, must the person repairing my car under warranty have the same qualifications and experience as the person repairing the minister's car, which is not under warranty?

Mr J.C. KOBELKE: We are seeking to put in place a system that regulates car repairers. When the exception applies to a motor vehicle dealer who is carrying out work for the purposes of selling that car, the dealer could use someone who was not licensed for that purpose. The guarantee is part of the existing Act. In all probability the companies are likely to have on staff people who are licensed. It might be only minor work that is required, but the guarantee will still exist because it is provided through the Motor Vehicle Dealers Act 1973.

Mr D.F. Barron-Sullivan: Will the mechanics who operate on vehicles to which a warranty applies be required to have the same qualifications and experience as the mechanics who will be covered by the legislation we are dealing with now?

Mr J.C. KOBELKE: My understanding is that under the Motor Vehicle Dealers Act the dealer is required to make sure that he has a certified repairer do the work.

Mr D.F. Barron-Sullivan: Will that certification be exactly the same as is required under this legislation?

Mr J.C. KOBELKE: Yes.

Mr D.F. Barron-Sullivan: Thank you.

Clause put and passed.

Clause 11: Advertising -

Mr D.F. BARRON-SULLIVAN: Clause 11 makes it an offence for someone to advertise that he is carrying out a motor repair business that includes a class of repair work for which he does not hold a licence. Again, I am probably pre-empting a later stage of the debate. I hope that the minister does not mind me doing it this way. It is better to kill two birds with one stone rather than drag things on by going through every clause. Could the minister give us an indication of what penalties will apply in a case like this? Presumably, there will be some sort of grading system for these licences. A mechanic with the top-level grading - I do not know exactly how it will work - might carry out repair work that requires a lesser degree of technical expertise. Would that repairer be in breach of this provision, even though for all intents and purposes he or she could do the job just as well as someone with the relevant licence? It is important to know how the licensing system will work and whether it will be sufficiently flexible to cover people's hands-on expertise and take into account the experience they have gained over the years. Alternatively, will the situation be, as the minister indicated earlier to the member for Murray-Wellington, that a repairer will do a course in a particular area and get a licence for that, and it will be tough luck if he can do work in other fields for which he does not have a licence?

Mr J.C. KOBELKE: I think it would be more productive to deal with those parts of the question that relate to other areas at a later stage. This clause deals simply with advertising. It makes it very clear that someone cannot hold out or advertise that he can perform a particular class of repair if he is not licensed to perform it. That is all it is.

Mr D.F. Barron-Sullivan: I realise that. However, the minister could answer my first question now. Can he see what I am driving at? A mechanic -

Mr J.C. KOBELKE: I think that gets caught up with the classes of licensing and other things.

Mr D.F. Barron-Sullivan: Will we have a regime that goes strictly by the letter of the law in regard to these matters?

Mr J.C. KOBELKE: The clause relates to people advertising or holding out that they can do something. That is different from someone looking at a particular job and determining what class it relates to. If someone is paying for an advertisement in the newspaper or for a sign out the front of the shop, he should take care to check that what he is advertising to do matches his licence. That is all we are talking about here. The other issues about extending licences and taking up a different category of work relate to the classification part of the Bill and not the advertising clause.

Mr D.F. Barron-Sullivan: I am trying to ensure that there will not be a heavy-handed approach. This is the sort of clause that an officious police regulator could have a field day with. He could tell a repairer that he knows he fixed an automatic injection diesel motor even though it was slightly outside the terms of his licence.

Mr J.C. KOBELKE: The member is misunderstanding me.

Mr D.F. Barron-Sullivan: The repairer might have advertised that he could fix diesel motors or whatever, although his licence covered only certain aspects of diesel repairs. The problem is that we do not know what might occur because we do not know the detail of the licensing system. I can envisage a situation in which people will genuinely consider that they have the ability and the right in accordance with this legislation to do certain work. They might advertise that they can do that work and technically, according to the letter of the law, be in breach of this provision.

Mr J.C. KOBELKE: The point of the member's concern is one that I took up with the different investigative branches in the agency at a very early stage. I am also totally opposed to that nitpicking approach in which the inspector ties up the operator and company in red tape and does not make sure that he deals with the substantive issue of improving standards. I have gone to lengths to talk to people and say that that is not the way we do things and to make sure that the training of inspectors gets us away from that approach. That is the stereotype we hear stories about. There was an instance years ago in which an inspector put someone through the hoops

simply to show that he had the upper hand. The inspector was totally inconsiderate of the practicalities of a person working in that particular industry. We all know those stories, and they are a problem when they arise. We address them not through legislation but through the management of the inspectors. As I have indicated, it is a matter that I find totally unacceptable, and I have taken steps to make sure that that is not happening with the inspectors in my department. If on the odd occasion it crops up, we will make sure that that is not the way we continue to pursue the matter.

Mr F.M. Logan: What is prescribed in the clause happens now. If a company advertises itself as a certified Mercedes-Benz dealership, we expect it to be qualified to work on a Mercedes-Benz. Similarly, if a company advertises that it is a licensed repairer under this scheme, we will expect it to be licensed. That is all the clause says.

Mr D.F. Barron-Sullivan: That example is a lot more clear-cut than what could arise out of this because of the different categories of repair and so on. Without having had the categories spelt out, we cannot be sure what will happen. All I am trying to say is that this is the sort of thing an officious bureaucrat could have a field day with. I wonder whether the clause should contain some sort of safeguard. A suggestion off the top of my head - it might not necessarily be the way to do it - is for the clause to make it an offence at the discretion -

Mr J.C. KOBELKE: I totally reject that. The issue of an officious bureaucrat, which I think arises on only the odd occasion, can be dealt with administratively. If an officious bureaucrat wants to step on people's toes and push them around, it will not matter how good the law is, because he will always find a way of doing that. Those people do not have a role, and to my knowledge we do not have any in the Department of Consumer and Employment Protection.

Clause put and passed.

Clause 12: Interpretation -

Mr D.F. BARRON-SULLIVAN: Clause 12 defines sufficient resources in relation to someone's application for a relevant business licence. The definition refers to tools and equipment that may be prescribed by the regulations and sufficient material, manpower, financial resources and so forth. Again, businesses, especially small businesses, find that this is the stuff nightmares are made of. How will the minister oversee the operation of this division of the Bill to ensure that it does not become an excessive barrier to entry for small business? I assume that this division has been modelled on the New South Wales legislation. Can the minister give us some advice about how the definition and provisions have been applied in New South Wales? Does the minister have examples of the relevant licence categories and the sufficient resources that apply in each case? It would be interesting to see a list of the different licences in New South Wales, and the tools, manpower, materials and equipment requirements in each case, to give us something to take out to the small business sector. People could then say whether the requirements would be appropriate or too much of a burden.

Mr J.C. Kobelke: We could get specific information from New South Wales. However, the point is that the process relies on the board to manage the situation so the industry works. We have strengthened this area further than the situation that applies in New South Wales, where these matters are determined by way of a code - therefore, they are not disallowable. The conditions in the WA measure are to be applied by way of regulation, and are disallowable. If Parliament thinks the regulation relating to, say, tools or equipment is over the top, it is disallowable. The equivalent is not disallowable in New South Wales.

Mr D.F. BARRON-SULLIVAN: Is the code enforceable by law in New South Wales?

Mr J.C. KOBELKE: It is by board policy, which is required to be met under the licensing requirement.

Mr D.F. Barron-Sullivan: If in New South Wales they do not meet a provision of the code -

Mr J.C. KOBELKE: It is applied by broad policy, so code is perhaps not the correct word. The broad policy determines requirements with tools, equipment etc. From time to time the board in NSW may change those requirements with no accountability to Parliament. This legislation applies the conditions by regulation, so the Deputy Leader of the Opposition or other members of Parliament who think it is not adequate can potentially disallow the regulation.

Mr D.F. BARRON-SULLIVAN: If someone is in breach of one of the provisions of the code in New South Wales, does a penalty apply or is his licence taken away?

Mr J.C. Kobelke: It is invoked when people apply for a licence. If the criteria are not met, the licence is not issued.

Mr D.F. BARRON-SULLIVAN: If a person does not meet the criteria - a later similar reference is made to holding licences - he or she will not get a licence; is it that simple in NSW?

Mr J.C. Kobelke: Correct. It is to be done by regulation here, and it is applied only by policy in New South Wales.

Clause put and passed.

Clause 13: Application requirements -

Mr D.F. BARRON-SULLIVAN: Does this application process relate only to new applications? I presume it does, as renewals are covered in later provisions.

Mr J.C. Kobelke: Correct.

Mr D.F. BARRON-SULLIVAN: What happens if someone has a certain class of licence and needs to apply for another class? I presume that clause 13(2) indicates that people must go through the same process for another licence. I am angling to find out whether an applicant will end up with two licences or just have the original licence further endorsed.

Mr J.C. Kobelke: A person will have only one licence and it will be endorsed.

Mr D.F. BARRON-SULLIVAN: Will the licence be upgraded?

Mr J.C. Kobelke: Yes.

Clause put and passed.

Clause 14: Notification of changes to information provided -

Mr D.F. BARRON-SULLIVAN: This clause requires an applicant for a licence to advise the board of any material change in the information provided in respect of an application if a change occurs before the licence is granted or refused. An obvious question arises: how long will it take to get a licence issued? The wording of the clause rings alarm bells for me. Such a provision indicates it might take a while for a licence to be approved.

Mr J.C. Kobelke: It is my expectation that it will take a few days, and a maximum of a month. It depends on the board and the procedure it puts in place. The board may wait for the next board meeting, and it may potentially delegate the powers. If certain requirements in certain categories are met, the application may be ticked off within a day or two.

Mr D.F. BARRON-SULLIVAN: How long does it take businesses to get licences in New South Wales?

Mr J.C. Kobelke: That is not the relevant issue. Although the legislation reflects the New South Wales measure, this is the enabling legislation. Under the legislation, the administrative procedures are then to be put in place by the board. I would like to make a comparison of the processes of other boards here. Some boards enable licences to be granted within a few days; others may wait for the next board meeting to give approval.

Mr D.F. BARRON-SULLIVAN: Will the minister set targets; that is, does he expect the licences to be issued in three days or anything like that?

Mr J.C. Kobelke: I am asking boards in a range of areas to do it quickly and to get rid of backlogs. If it were to take an unacceptable time for licences to be issued in this case, I would do the same.

Mr D.F. BARRON-SULLIVAN: These sorts of things get on the goat of small business people. The minister told the member for Murray-Wellington that certain courses must be done, and then the application can be lodged. One must then wait. Somebody might be on leave in the department or the board, and the application may not be processed that week. Before long, three weeks pass and the applicant would not have a licence. If he hangs out his shingles stating "I repair diesel motors", he would be breaking the law. He wants to earn a quid. I do not raise these questions by way of lip service, as these matters affect small business. It has no bearing on consumer protection. The quicker the applicant has a licence and is working, the better. These sorts of things need some leadership at the minister's level. I would like the minister to put on the record right now that he expects each of these licences to be issued within three days; if not, he expects reports on his desk so he knows what is happening. This will ensure it happens. I would like to hear about what happens in New South Wales. Are complaints being made by business people there? I do not know. I did not think the onus would be on me to ring up panel beaters and mechanics in metropolitan and rural NSW to find out how it is working. I thought we would be told about that system. I accept the minister's comments that the legislation is consumer orientated, but the Liberal Party has made a conscious decision to evaluate everything going through Parliament for its impact on small business. These sorts of things really upset people in business. It is not the money or the hassle; it is the inconvenience of not being able to get on with the work. Give a firm commitment of a number of days: "When it is up and running, we will try to issue them within a week." At least that way affected people will have that information.

Mr J.C. Kobelke: The member's target is an excellent one, and I hope the vast majority would have them within three days.

Clause put and passed.

Clause 15 put and passed.

Clause 16: Grant of business licence to individual -

Mr D.F. BARRON-SULLIVAN: I thank the minister for going on the record with his comments a moment ago. It is greatly appreciated. The more specific we can be about these things, the more confidence it will give to people in small business.

Clause 16 relates to the granting of licences to individuals, and indicates that each individual must meet certain criteria. For example, he or she must be over the age of 18 years, and must be a person of good character and repute. Why over 18? I imagine that people go into business under that age. Is there some reason for that age cut-off?

Mr J.C. Kobelke: Remember that this relates to a business licence. A person under 18 is a minor and would have problems entering a contract etc. It is pretty standard.

Mr D.F. BARRON-SULLIVAN: When the minister says they have problems with contracts, are they precluded? People under 18 years get involved with business contracts and so on.

Mr J.C. Kobelke: I think you will find they often have to have a guarantor.

Mr D.F. BARRON-SULLIVAN: So what?

Mr J.C. Kobelke: The age of 18 is a standard age for these types of things.

Mr D.F. BARRON-SULLIVAN: I am trying to find out whether there is any practical reason a person aged 17 should not be able to get one of these licenses, if that person meets the qualifications and experience criteria. Let us take a 17-year-old who goes out and buys a franchise for the sort of business I referred to earlier - changing tyres. The father might operate a tyre-changing company, and the young person has been helping him out at work for the past 10 years, and knows the job backwards. I do not know what certification and qualifications would be required in that situation, but let us say the folks set up young Bill in a tyre-changing franchise. He has a smart little four-wheel-drive vehicle with his name on the side, and a trailer. The problem is that he is only 17 and cannot get a licence according to this clause.

Mr J.C. Kobelke: I agree with you - a person aged under 17 would not be able to get a license.

Mr D.F. BARRON-SULLIVAN: This is obviously a very definite barrier to entry into the market.

Mr J.C. Kobelke: That is correct.

Mr D.F. BARRON-SULLIVAN: Essentially, the minister is saying that a person under the age of 18 cannot run a business repairing vehicles.

Mr J.C. Kobelke: Such a person cannot get a business licence, according to this provision.

Mr D.F. BARRON-SULLIVAN: I have a very serious concern about this. I assumed that, somewhere in the legislation, there would be some leeway, so that someone under the age of 18 could get a licence. Is there any practical difficulty giving a licence to a person under the age of 18? I know it will depend on the category, but using the example I have just given, is there any practical difficulty for a 17-year-old operating a mobile tyre changing service?

Mr J.C. Kobelke: I would have to get further advice on that, because 18 is generally accepted as the standard age. That age may have been set as standard in a whole range of statutes for specific reasons depending on the circumstances, or it may be just a general application. I must get more information about why that is so.

Mr D.F. BARRON-SULLIVAN: We have the luxury of a House of Review in this State, unlike in Queensland, which is renowned for creating template legislation, but that could be the subject of another Bill tonight. We are fortunate to have such a House. I suggest that we let this one slide at this stage. Even if the Opposition ultimately voted against this, it does not have the numbers. Will the minister get back to me before this Bill gets to the upper House?

Mr J.C. Kobelke: I will certainly provide the member with an answer about the 18-year age limit before this matter is dealt with in the other place.

Mr D.F. BARRON-SULLIVAN: That would be excellent. The following paragraphs of clause 16 require that a person be of good character and repute, have sufficient resources, and have other qualifications as may be required. How are good character and repute defined, and what are sufficient resources?

Mr J.C. KOBELKE: "A person of good character and repute" is a phrase used regularly in these things. There are plenty of examples of other areas where it has been used. Sufficient resources is a matter that can be set from time to time, and judgment made as to what resources might be needed for a business licence in a particular area.

Mr D.F. Barron-Sullivan: So really this is to give the board a degree of leeway in rejecting or accepting applications?

Mr J.C. KOBELKE: They are definite criteria, but the amount might change from time to time and from sector to sector. I am very concerned, currently, in an area I know the member for Mitchell is concerned with - home indemnity insurance. One of the ways of helping to provide a better deal for small builders would be to have the Builders Registration Board consider whether builders have sufficient resources. Currently they must meet that qualification to get their licence - as is the case here - but, once licensed, they no longer have to do so. One of the many considerations I have about builders' regulation is to do regular updates on whether builders have sufficient resources, and their financial affairs are in good order. That would provide less risk, and make it easier to get insurance. That is a discussion for another day, but this Bill has a similar provision, that a person have sufficient resource to carry on the business.

Clause put and passed.

Clause 17: Application by firm -

Mr D.F. BARRON-SULLIVAN: An obvious question arises from this clause, which provides for licence applications to be made by two or more people who constitute a firm. Can the minister explain the legal liability implications where a licence of this nature is held by a firm rather than by an individual? If a company holds a licence to carry out a designated category of mechanical repair work, for example, where do the liabilities lie?

Mr J.C. Kobelke: This clause refers to a partnership. I am no expert on partnership law, but it is well practised in a whole range of businesses beside this area. It is quite common for businesses to be run by partnerships and the law applies to partnerships in areas of legal liability, taxation and a whole range of other areas.

Mr D.F. BARRON-SULLIVAN: What, then, is the legal definition of a firm, because I assumed the minister meant a company?

Mr J.C. Kobelke: Basically this clause refers to a partnership.

Mr D.F. BARRON-SULLIVAN: So "firm" does not relate to "company".

Mr J.C. Kobelke: Two people could also have an incorporated body. They could have a company.

Mr D.F. BARRON-SULLIVAN: Where the partnership is in the form of company, and the two people are directors of that company, what does that say for the legal liability of those respective directors if, for example, there is inappropriate advertising or whatever, and the board must make an investigation of the matter? Are they held to be jointly liable, or is there some other provision, so that we have to go to Corporations Law to see what the implications are?

Mr J.C. KOBELKE: The member is asking questions that go beyond the expertise I have. We are using standard terms that relate to a range of other areas of law, and they have simply been picked up. We talked about a firm; clause 111 of this Bill relates to liabilities of directors and officers of bodies corporate. That will relate to clause 19, which mirrors the provisions of clause 17 for bodies corporate. Clause 17 deals with partnerships, so the liability rests under what is common legal understanding about partnerships. When we consider bodies corporate, which have other implications, clause 111 picks up some specific issues for directors. That is not seen to be necessary when dealing with a firm, which in this case is a form of partnership.

Mr D.F. BARRON-SULLIVAN: I need to ask this question although it relates to clause 18 as well. A licence can be given to a firm if each relevant person meets the different criteria. If there are two directors, for example, and one is actively involved in the workshop and the other is involved in the sales or promotional side of the company, according to this they both need to meet all the different criteria. There is a reference for each relevant person.

Mr J.C. Kobelke: The member is correct in that, except in the case of clause 18(2)(b), which requires only that the persons collectively have sufficient resources. All the other provisions apply to each of the members.

Mr D.F. BARRON-SULLIVAN: Again, we could have a business or a partnership, albeit in a company structure, with two directors, which happens quite a lot in these types of businesses. The company structure may be set up for whatever purpose, for example, taxation, and one of the partners in the workshop does the hard yakka under the cars, while the other one runs around doing the marketing and sales. That happens quite a lot. As I read the Motor Vehicle Repairers Bill, unless they are both suitably qualified, they will not get a licence. I

would have thought that a provision in the Bill would enable a business such as the one I described to still obtain a licence.

Mr J.C. Kobelke: The member referred to companies, but we will deal with companies and the different rules that apply to them when we reach clauses 19 and 20. Clause 17 refers to firms that are basically partnerships. Therefore, an individual can set up a company, as an individual operator, and employ other people. A company set up as a body corporate has different rules, and we will discuss them when we reach clause 19. Clause 17 refers to a firm that is basically a partnership, and the requirement is that the two or more members who constitute the firm must meet the criteria set out in clause 18(2)(a). The difference is in clause 18(2)(b), which relates to sufficient resources.

Mr D.F. BARRON-SULLIVAN: I refer to the example of a husband and wife partnership. The wife does not have a clue how to change a spark plug. I will change that around so that I am not being totally chauvinistic. The wife does all the mechanical work - in my experience it is usually the other way around - and the husband, who does not have a clue how to change a spark plug, does the book work. As I read the Bill, they both have to meet the provisions of clause 18(2)(a), which includes having the qualifications as may be prescribed by the regulations. In my example, one of the partners hardly ever goes into the workshop.

Mr J.C. Kobelke: The sticking point is "qualifications". We are dealing with the qualifications prescribed by the regulations and not those of the trade. This refers to the application to constitute it to be licensed, and for a business licence to constitute a firm. The firm would then be required to employ the licensed repairers. The qualifications referred to in clause 17 do not necessarily refer to trade qualifications.

Mr D.F. BARRON-SULLIVAN: What qualifications are we talking about?

Mr J.C. Kobelke: The qualifications prescribed by regulation.

Mr D.F. BARRON-SULLIVAN: So we are not talking about certification and the like?

Mr J.C. Kobelke: No.

Mr D.F. BARRON-SULLIVAN: What types of qualifications could that refer to?

Mr J.C. KOBELKE: This clause leaves the situation open for the occasions on which certain qualifications may be required. That matter will be dealt with by way of regulations, which are disallowable. However, a head of power exists to specify qualifications, should that be necessary at any time.

Mr D.F. Barron-Sullivan: Will the minister provide an example of the qualifications that may be required ?

Mr J.C. KOBELKE: Legislation in this type of area is often drafted so that, if unforeseen circumstances arise or if the board is of the opinion that an issue should be dealt with, we do not have to come back to Parliament to change the legislation. The board can proceed to require that certain qualifications be prescribed, and that will be done by way of regulation. Parliament will still have control of the legislation, but we will not have to make an amendment to the Act.

Mr D.F. BARRON-SULLIVAN: I do not expect a response to this, but that opens up the same issue that if qualifications are prescribed by regulations, we could catch out people who are in a partnership if one of the partners does not meet the criterion or criteria set out in the new qualifications, whatever they may be. Is that similar to what happens in New South Wales?

Mr J.C. Kobelke: As far as I am aware, that is correct.

Mr D.F. BARRON-SULLIVAN: Does the minister know whether any qualifications have been prescribed in that State?

Mr J.C. Kobelke: No, I do not.

Clause put and passed.

Clause 18: Grant of business licence to firm -

Mr D.F. BARRON-SULLIVAN: This clause raises the issue of licences being made available only to people over 18 years of age. As I described in an earlier example, one member of the partnership may be under 18 or a person may marry a 17-year-old. I can think of a number of potential circumstances. Wherever the Bill stipulates that a person must be over 18 years, we would appreciate it if the minister could address that in his advice.

Mr J.C. Kobelke: I will.

Clause put and passed.

Clause 19 put and passed.

Clause 20: Grant of business licence to body corporate -

Mr D.F. BARRON-SULLIVAN: I refer to the legal implications for a company. Will the minister run through how this will apply in practice? The Bill states that each director in a company of two directors must be over 18 years, of good character and so on, even though in a practical sense one of the directors may have nothing to do with the work in the workshop. I understand that we do not want a person of ill repute anywhere near that business structure, nor do we want him to have a licence. However, it would be lovely if we could be given something a bit more definite and an idea of the circumstances in which a person may be precluded from obtaining a licence. At the moment, it is pretty vague.

Mr J.C. KOBELKE: I am not sure what the member means by “precluded”; a person is precluded if he does not meet the criteria. Again, it states, “such qualifications as may be prescribed”; that is, until regulations are put in place they are not applicable, but it leaves it open as to what the qualifications may be.

Mr D.F. Barron-Sullivan: I refer to a situation in which a man’s workshop operates under the name of a company even though his wife, who is one of the directors, has nothing to do with the workshop. Even if the wife has nothing to do with the workshop, if she does not comply with the criteria, the husband may be unable to work because the company cannot get a licence.

Mr J.C. KOBELKE: Clause 20(2)(a) refers to “each relevant person”, so if the wife were simply assisting her husband, she may not be classified as a relevant person. Subclause (3) states that -

“relevant person” means an individual who is concerned in the management or conduct of a body corporate.

Mr D.F. Barron-Sullivan: Of the body corporate, but not of the workshop.

Mr J.C. KOBELKE: That is what is required for the licence.

Mr D.F. Barron-Sullivan: That is my point. It may be that the wife is a director of the body corporate but has nothing whatsoever to do with the workshop. However, because she does not meet the criteria, the husband who is also a director of the body corporate, and involved in the workshop, is unable to carry on working because he cannot get a licence through the company. The minister may suggest that he obtain a licence in his own name, but if he does that we will be dictating how people should go about their financial affairs and how they should structure their businesses. It basically means that if one director has nothing to do with repair work and one is directly involved, and the one who is not involved does not meet the criteria then the business cannot proceed because they will not be able to get a licence.

Mr J.C. KOBELKE: That is correct.

Mr D.F. Barron-Sullivan: Is that fair?

Mr J.C. KOBELKE: The legislation is mirrored to reflect closely what is used in New South Wales. The industry has been consulted. No concerns have been raised. I presume that means there are no corporate structures that would run foul of this or that are concerned about it. Many of these businesses are small family companies in which one person becomes the principal or it ends up as a partnership. If, for other purposes, people want a different structure they would have to comply with this.

Mr D.F. Barron-Sullivan: Why not provide some leeway for the board? As an example, if a mechanic and his wife were in a company structure but the wife, as a director, had nothing to do with the workshop operated by the husband and it is discovered that the wife is carrying out prostitution, is she then deemed to be a person not of good character or repute?

Mr J.C. KOBELKE: At the current time I would say no. That may change in the near future.

Mr D.F. Barron-Sullivan: The fact that she is suddenly not a person of good character and repute has nothing to do with whether her husband should be allowed to continue operating as a mechanic.

Mr J.C. KOBELKE: That would be captured only if she were a relevant person and only for the purposes of licensing.

Mr D.F. Barron-Sullivan: In my example she is a relevant person.

Mr J.C. KOBELKE: The other point made to me is that the decision is also appealable. If the decision about good character and repute were seen to be unreasonable, an appeal mechanism is available.

Mr D.F. Barron-Sullivan: If it is deemed a person is not of good character or repute - although I am using an extreme example - the letter of the law under clause 20 states that the company cannot have a licence. I am trying to demonstrate there could be problems that affect individual businesses. In a case like that, the mechanic would have no choice but to restructure his business. That could cost him significantly.

Mr J.C. KOBELKE: He could simply change who are the relevant persons.

Mr D.F. Barron-Sullivan: Yes, but I am sure the minister is aware that the reason that many small businesses - husband and wife teams - have company structures is for their own administrative and taxation purposes. They are not about to put on someone else as a director of their family company. With this provision a person would not be able to get a licence. Here we go again with another delay. A person would not be able to carry out work as a mechanic while this is going on. He would have to form some other business structure, which could cost him significantly. I know it is an extreme example and will, hopefully, never happen. This is why, in a number of these cases, it would be nice to see some leeway or safeguard in case any unintended consequences arise. This also goes to the amendment I suggested for the review clause. It would be far better that we pick up on any niggly problems like this as quickly as possible. I can see that the minister is not about to rush in and change this provision. I do not envisage that it will be a huge problem but I can see circumstances in which it will be a problem. These sorts of things could hopefully be resolved through the good auspices of the board turning a blind eye.

Mr J.C. KOBELKE: I would not say that it would turn a blind eye but it might be more accommodating about the criteria it sets.

Mr D.F. Barron-Sullivan: The minister is more diplomatic in his language.

Clause put and passed.

Clause 21: Notification to Commissioner -

Mr D.F. BARRON-SULLIVAN: This clause requires the board to send a copy of every licence application received to the Commissioner for Fair Trading to give him or her the opportunity to submit to the board "any matters he or she considers relevant to the application". There is a lot of work in this provision! Bearing in mind there could be 10 500 licences in this State, will the minister explain how the Commissioner for Fair Trading will be able to keep up; how will he assess each application; will he assess each application; and, if he is not going to, why is this provision here? Will the minister give some background? This clause is either totally meaningless or it means an awful lot of work for the bureaucracy. What are the criteria that the commissioner will use to evaluate applications?

Mr J.C. KOBELKE: The provision is already in the Motor Vehicle Dealers Act and is simply being reflected here. It is already in practice. In part, it is simply enabling. If the commissioner is aware of something it may be passed on to the board. The result of the Temby royal commission - it may also have come out with Gunning - indicated that some people with bad records or adverse findings in one industry often went to another industry. The department is trying to have such people listed on computer systems. When the department was formed through different agencies a range of different computer systems was used. A centralised computer system across these industry boards makes it foreseeable to easily run checks on names to see whether adverse findings or complaints have been made in another industry. If that is put in place the commissioner will have the power to notify the board of matters to be brought to its attention.

Clause put and passed.

Clause 22: Board must refuse to grant business licence if applicant or other person disqualified -

Mr D.F. BARRON-SULLIVAN: This clause requires the board to refuse to grant a business licence when an applicant is disqualified under the Act from holding or obtaining a licence etc. Does this mean that a person who currently holds a licence can be refused a licence under the Act?

Mr J.C. Kobelke: We are currently dealing with the granting of a business licence.

Mr D.F. BARRON-SULLIVAN: Yes.

Mr J.C. Kobelke: Clause 22 deals with the refusal, which is also referred to in clause 18.

Mr D.F. BARRON-SULLIVAN: This provision requires the board to refuse to grant a business licence when an applicant is disqualified under the Act from holding or obtaining a business licence or being concerned with management. This provision is really saying that if a person does not meet the criteria for a licence specified under the Act the board is required to refuse to grant one. There is no leeway whatsoever?

Mr J.C. Kobelke: That is my understanding. One of the key requirements is that if a person is disqualified he could simply reapply. Clause 20 states that the board must grant a licence provided it is subject to certain things. It then comes back to the good character test and whether a person is fit and proper. The provision may not be as strong legally as some people would like. Clause 22 states that the board must refuse to grant a licence to a person who has previously had his licence removed.

Clause put and passed.

Clauses 23 to 26 put and passed.

Clause 27: Conditions may be imposed by Board -

Mr D.F. BARRON-SULLIVAN: This clause allows the board to amend the conditions or restrictions on a licence at any time. The explanatory memorandum states that it -

Requires the Board to give applicants and licensees the opportunity to make submissions prior to a condition or restriction taking effect. Also requires licensees to return their licence to the Board for amendment upon request.

What sorts of circumstances is this provision likely to embrace? This could constitute quite an inconvenience for a business if, for example, its licence was downgraded or it was restricted in the area in which it could operate and so on. Once an operator has gone through whatever rigmarole is necessary to get a licence and is working on his diesel motors, doing his panel beating or whatever, he may then gear up his business to cater for the work he is doing. To suddenly have someone say that his licence is to be restricted so he cannot carry out certain aspects of that work would be a significant restriction on his business. The explanatory memorandum states that the clause -

Allows the Board to attach . . . restrictions on a licence, at any time.

I envisage that the board would not do this in a ruthless or draconian way. However, I would not mind knowing what is envisaged and whether this is a clause that operates in New South Wales and, if so, what sorts of the circumstances have given rise to this provision being used in that State?

Mr J.C. KOBELKE: This provision gives greater flexibility to the board. Rather than the board simply telling a licensee that he has made a mistake or had a complaint made about a particular aspect of his work and withdrawing his licence in whole or for that category of work, this provision enables the board to place certain conditions or restrictions on a particular deficiency in the workplace whilst allowing the licensee to continue to work in that area. It might be that the business is not carrying out fuel injection jobs very well. The board can then say that until someone with expertise in that area works for the business or until someone in the business has completed a course or something, the business is restricted from carrying out that particular, limited area of work.

This provision gives the board the power to be flexible and to ensure that industry comes on board when working to raise standards. We would prefer that the board have the flexibility to use interim measures to help people through, rather than providing it with a blunt instrument so that all it can say is, "You have made a mistake. Because you have failed in one area, we will restrict your business in a major way by reducing the range of categories in which you can work or take away your licence altogether."

Clause put and passed.

Clause 28 put and passed.

Clause 29: Regulations may require licensee to hold insurance policy -

Mr D.F. BARRON-SULLIVAN: Can the minister provide us with some details about this provision? This clause provides for regulations that will require licensees to take out and maintain a policy of insurance in regard to their business. What sort of insurance does this relate to, what is the gist of this clause and are there any cost implications for business?

Mr J.C. KOBELKE: The power of the clause is in the fact that the board can "require" or "not require" a policy of insurance. As we all know, insurance is very important and there are troubles with insurance in a range of areas. This provision allows the board to prescribe that the licensee take out and maintain particular types of policy insurance, or it may simply remove that requirement. It is the flexibility to be able to manage it that is important in the current times.

Mr D.F. Barron-Sullivan: What insurance are we talking about?

Mr J.C. KOBELKE: It depends. Companies deal with a range of different insurances, as the member well knows. In terms of the financial viability of a particular company or with particular types of operations, certain types of insurance are required.

Mr D.F. Barron-Sullivan: This legislation says that regulations can be made. Therefore, the minister can tell businesses that they must take out business insurance. What sort of insurances will the minister force businesses to take out?

Mr J.C. KOBELKE: The provision is there so that it can be done if required. A particular business itself might say that good operators in the area are taking out a certain type of insurance and that it thinks it absolutely essential that it too should have it. The board might decide that standards require that a certain type of risk

insurance be taken out with certain products or types of equipment. If that business designates, in discussion with industry, that it should have that insurance, this provision enables that to happen. It is done by regulation. If industry came up something that was a real impost and a number of businesses were against it, they would approach me and we could simply not proceed with it or knock off the regulations.

Mr D.F. Barron-Sullivan: However, there is a provision in here that enables a minister of the Crown to tell small businesses directly how they should run their business: "You must have a particular type of insurance." Yet I cannot get one example from the minister as to when that would be needed. Is this provision in the New South Wales legislation and, if so, has it been made use of?

Mr J.C. KOBELKE: No, I am advised that it is not in the New South Wales legislation. There was a clear suggestion that public liability insurance should be in the legislation, given that we are seeking to guarantee that these people can perform to certain standards. However, given the problems that currently exist in the insurance industry, we did not want to put in a specific requirement such as that, because if it is not readily available at a competitive price, it would be too big an imposition to put in place.

Mr D.F. Barron-Sullivan: If all businesses were compelled to take out public liability insurance for \$10 million or whatever, how would that improve the quality of repairs done by panel beaters?

Mr J.C. KOBELKE: If these people are being asked to stand behind their work, we want to ensure that they are not going to be swept away by some legal action by some party. We are providing them with greater security and the certainty that they will continue to operate. The whole point is that, given the current state of the insurance market, we would not want to put an impost onto the industry with respect to insurance that it is not willing to bear. Therefore, the provision clearly outlines that the decision would be made only in consultation with industry if it saw it as something that should be put in place.

Mr D.F. Barron-Sullivan: If I were in the motor repair industry and I had a friend who was in the building industry, I would not have too much faith in this clause at all. In the case of builders, the Government would be telling them that they must take out a particular type of insurance. As the minister well knows, many might not be able to get that type insurance or they might have to pay through the nose for it. If this is not in the New South Wales legislation, who came up with the idea of putting in a provision that enables small businesses to be told how to run their own affairs?

Mr J.C. KOBELKE: The answer is found in clause 28, where the regulations relate to general things, and the power contained therein. Due to the problems with insurance, instead of leaving insurance under that provision it was given its own heading under this clause. Here it is made absolutely clear that insurance may be required. Clearly, with the current state of the market, it is unlikely to proceed unless an overwhelming case is presented by industry.

Mr D.F. BARRON-SULLIVAN: By giving the example of public liability insurance, the minister has demonstrated what the Liberal Party has indicated about this legislation; that is, while the intention of the legislation has our broad support, it has the potential to be extremely intrusive into the affairs of small business. I thought that it would be up to individual managers to choose the insurance taken out by small businesses. I do not see that that has any bearing on the quality of repairs carried out to a vehicle, how quickly a tyre can be changed or anything like that.

Mr J.C. Kobelke: Keep in mind that a compensation fund is required, to which the industry will contribute.

Mr D.F. BARRON-SULLIVAN: That is separate from this.

Mr J.C. Kobelke: Yes, but it may be that certain forms of insurance may mean that there would be less likelihood of calls being made on the compensation fund. It can be a balancing act. Industry may prefer to take out its own insurance rather than put more into a fund. That will be judged from time to time on the circumstances.

Mr D.F. BARRON-SULLIVAN: If a business takes out insurance, does that mean that it does not have to contribute to the fund?

Mr J.C. Kobelke: It may have to contribute less. This is simply enabling those judgments to be made by the board and the industry at the time.

Mr D.F. BARRON-SULLIVAN: We are again entering grey territory, because we do not know how the whole thing will operate. This points to the need to review the legislation as quickly as possible once it is up and running. I express concern at these catch-all clauses. It highlights the need to review the situation as quickly as possible.

Clause put and passed.

Debate adjourned, on motion by Mr J.C. Kobelke (Minister for Consumer and Employment Protection).

