

OWNER-DRIVERS (CONTRACTS AND DISPUTES) BILL 2006

Second Reading

Resumed from an earlier stage of the sitting.

HON ADELE FARINA (South West - Parliamentary Secretary) [5.33 pm]: I have a few more issues that were raised during debate that I want to cover. Questions were asked with respect to part 5 of the bill, which deals with negotiating agents. The issue raised was that this part was actually included in the bill to provide the Transport Workers Union of Australia with the ability to build up its membership base, which is just an outrageous and silly argument.

Hon Simon O'Brien: Why?

Hon ADELE FARINA: The reason for the provision for negotiating agents in the bill can be easily explained. First of all, for an exemption to be obtained under the commonwealth Trade Practices Act, one needs to be very clear about who is representing a particular party or parties. This provision in the bill will ensure that the negotiating agent is clearly identified, will provide rigour to the system and will give formal recognition to the role of the negotiators.

Hon Simon O'Brien: Are you saying the TWU reps won't be doing it?

Hon ADELE FARINA: It is also important to note that the provisions of the bill make it very clear that the negotiating agent may be an industry association, an accountant, a consultant or any other body. It does not necessarily flow as a result of this provision in the bill that the negotiating agent will be the TWU.

Clauses 28 and 29 of the bill provide protection for owner-drivers and hirers from being coerced to appoint a particular owner-driver or group of owner-drivers or negotiating agent. Therefore, arguably that provision in the bill actually protects against there being any form of coercion to adopt the TWU as a negotiating agent. In fact, the reality is that the concern Hon Simon O'Brien expresses is clearly dealt with by the bill to ensure that that situation does not arise.

Similar concerns were raised about provisions of part 7 of the bill with respect to inspectors and the ability of the TWU to, again, muscle in on this territory. The role of the inspectors is to respond to complaints about breaches of the bill - for example, non-payment or underpayment. The role of inspectors under this bill is critical because in practical terms they are the only party an aggrieved working owner-driver can turn to in confidence to have a claim investigated and dealt with against the owner-driver's current hirer. For example, the hirer may constantly be paying late or underpaying, and the owner-driver, who has invested heavily in specialised equipment and who may effectively be tied to providing a service to that company only, can be in a position of great exploitation. Therefore, to openly take a dispute to the tribunal may be a very difficult action for an owner-driver to take in those circumstances. The Transport Forum WA sees the role of the inspectors, and this clause in particular, as vital to ensure that companies that are doing the wrong thing can actually be brought to task. There is wide industry support for this particular provision and for the services of the inspectors. It is also important to note that a complaint investigated by a relevant person on behalf of an individual must actually name the individual. The TWU has no capacity under the legislation to take in-confidence complaints; therefore, those concerns by honourable members are hopefully addressed.

In relation to the right of access to records and the right-of-entry provisions provided under part 8, again it is important to note that the TWU is not the only body that can be authorised by owner-drivers. Owner-drivers can choose whomever they want to act for them in this regard. The relevant person is the owner-driver, and this part recognises that the owner-driver has a right to access his or her own records. The information that can be accessed or be specified in the code of conduct and the information to be requested is information that the hirers would be required to keep for normal taxation purposes. Therefore, there is nothing particularly onerous or of concern with respect to that provision.

The only other matter that I wish to address is the confusion about the role of the Road Freight Transport Industry Tribunal and the role of the Industrial Relations Commission. It is important for me to state very clearly that the tribunal under the provisions of this bill will not be acting as the Industrial Relations Commission. The tribunal determines disputes with regard to existing obligations and rights; it does not have the power to establish or determine new rights; and it removes the process from the common law courts to the tribunal and therefore reduces costs, which would have to be applauded by members, I am sure. It also provides for a conciliation process, and therefore provides for a quick, more cost-efficient and relatively cheap process. They are the advantages that are brought about by the provision and establishment of the tribunal.

Concern has also been raised about the minister's ability to intervene in a dispute before the tribunal, as provided under clause 41 of the bill. As the explanatory memorandum states, this is in particular related to industry-wide or multi-site disputes. If such a dispute is before the tribunal, it may be in the public interest that the state

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intervenes. If a stoppage is brewing, it may be in the public interest that the state refers the disagreement or the matters in dispute to the tribunal to resolve it before they get out of hand. This has happened in the past when owner-drivers have stopped and even conducted blockades. This bill provides a mechanism for these disputes to be mediated before the tribunal. It does not remove the right of companies to go to the courts for injunctions etc, nor does it provide protection for the owner-drivers or the TWU if they are involved. It simply provides a mechanism to conciliate a collective dispute but not to arbitrate that dispute. That is an important distinction. It will enable the conciliation of a collective dispute early in the process, without transport companies being required to go to the courts. Companies are often reluctant to do that because of the costs and the delays involved. I hope I have broadly addressed the issues that have been raised. I am happy to answer more specific issues during consideration in committee. I reiterate that this bill seeks to recognise and address the peculiar circumstances and vulnerabilities of owner-drivers and to address issues that impact negatively on the industry. It is important to note that similar legislation exists in Victoria and New South Wales, where it has existed for some 30 years. The current inequitable bargaining position for owner-drivers, which is causing great distress within the industry, must be addressed in this state. There is industry support and, in fact, a strong industry push for this legislation. I, therefore, commend the bill to the house.

Question put and a division taken with the following result -

Ayes (14)			
Hon Matt Benson-Lidholm	Hon Kate Doust	Hon Sheila Mills	Hon Giz Watson
Hon Vincent Catania	Hon Adele Farina	Hon Louise Pratt	Hon Ed Dermer (<i>Teller</i>)
Hon Kim Chance	Hon Jon Ford	Hon Ljiljana Ravlich	
Hon Murray Criddle	Hon Graham Giffard	Hon Sally Talbot	
Noes (12)			
Hon Ken Baston	Hon Donna Faragher	Hon Robyn McSweeney	Hon Margaret Rowe
Hon George Cash	Hon Nigel Hallett	Hon Norman Moore	Hon Barbara Scott
Hon Peter Collier	Hon Barry House	Hon Simon O'Brien	Hon Bruce Donaldson (<i>Teller</i>)

Pairs

Hon Sue Ellery	Hon Ray Halligan
Hon Shelley Archer	Hon Anthony Fels
Hon Ken Travers	Hon Helen Morton

Question thus passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Graham Giffard) in the chair; Hon Adele Farina (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title -

Hon SIMON O'BRIEN: The committee should probably focus on several areas, and we will come to them in due course. They will include clauses 6, 11, 13, 20, 24, 28, 29, 30, 32, 34, 35, 38, 40, 47, 48, 52 and 55, which probably do not mean much to many members. They deal with a variety of matters. The second reading debate has now come and gone. On reflection, the concerns I raised were in no way assuaged by the response I received from the government, and that is why we must look at some of these clauses. Glib reassurances that everything will be all right are no comfort when the future of an industry and people's livelihoods are at stake. I have heard some nonsense in the course of this debate so far, which, together with what else I have heard during the bill's progress through this house, causes me more disquiet than I felt in the first place. However, we will work through those matters in due course.

The matters with which I am concerned prompt me to ask the government why it is so scared of the Trade Practices Act. They include questioning the powers that this government proposes to give people to enter premises to demand and seize documents and generally disrupt legitimate operations. I query the government's new mantra of safe and sustainable rates of payment, and what the effect of that is likely to be. In the course of my remarks, I will remind the Committee of the Whole that there is no regulatory impact statement for this bill. The government is unapologetic about that. It does not care because that is not on its agenda. This is about control of an area of industrial relations and it is about transferring money from some pockets into other pockets. In the course of doing that, the Western Australian public and some other players who are already intimately involved in the transport sector will be adversely affected. Therefore, we must touch on that issue in the course of the committee stage.

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All in all, we will touch on a number of matters. It is not my intention to delay the passage of this bill, and we will not seek to do that. The consequences of this misconceived legislation can be on this wretched government's head. In 2004 it had a gun held to its head and was threatened with industrial anarchy, and so it promised this bill and its provisions. That is where it comes from. The government has again had a demand made upon it that the bill must proceed, which is why the government is trying to progress it. It is doing that despite the fact that there is great uncertainty about whether it will stack up and be enforceable in light of recent legislation passed by the federal Parliament. Also, despite the fact that this bill will not do the things the government claims it will do, the government will continue to proceed with it. As I said, on the government's head so be it. As we consider clause 1, I reiterate that the opposition is steadfastly opposed to this bill, because the reasons for its existence have not been satisfactorily explained. The documents that have been produced by the government in support of this bill are nothing more than spin. The first explanatory memorandum that was produced by this government at a briefing was not an explanatory memorandum at all; it was a press release. It did not take us through the bill clause by clause, because the government was not interested in us looking at the bill clause by clause. It was a couple of pages of pap and spin doctoring produced by an increasingly desperate administration that is trying to do what it was forced to do. I hope that the Labor Party members who owe their jobs to the Transport Workers Union and their allies in the faction do obtain some smug satisfaction from my opposition to this bill and can smile wryly as I point out to the chamber the things that they know are there but have tried to cover up with their spin. The things that were not ultimately in the so-called explanatory memorandum that was produced to us at the outset are now contained in the various clauses that we must consider, beginning with clause 1. Having given an overview of how the opposition intends to approach the bill in the committee stage, I indicate our opposition to clause 1.

Hon MURRAY CRIDDLE: I have had extensive consultation with people across-the-board regarding this issue. As I said during the second reading debate, this legislation stemmed from the time when fuel prices were very high. I travelled with people from the eastern suburbs to the Parliament when there was a protest meeting to enlighten us about the costs in the transport system. Many of those people were in favour of this legislation and I understand that Transport Forum WA also is in favour of it. However, we must clarify one point before we move through the bill itself. I mentioned that I would ask questions during the committee stage. Does this legislation cover every owner-driver?

Hon ADELE FARINA: The bill addresses all owner-drivers of vehicles of 4.5 tonnes or greater.

Hon MURRAY CRIDDLE: I understand that it covers those owner-drivers. Must they all have a contract for each task they undertake? If so, how will each transaction that is carried out under the contract be covered? There would be an enormous responsibility to police the contracts to see whether every owner-driver of a vehicle over 4.5 tonnes has a contract.

The DEPUTY CHAIRMAN (Hon Graham Giffard): Clause 4 of the bill contains a definition of "owner-driver". That might be the best place to deal with this issue, unless the member wants to raise wider issues than those contained in clause 4.

Hon ADELE FARINA: A contract will be required for each transaction. However, the contract does not need to be in writing; it can be a verbal contract or a contract as a promise. There will be no policing of the contracts. Obviously the policing will occur only at the point at which there is a dispute between the parties and the matter is brought before the Road Freight Transport Industry Tribunal.

Hon MURRAY CRIDDLE: I thank the parliamentary secretary. I understand that clause 4 concerns the definition of "owner-driver" and does not deal with the way a contract is to be carried out. That is why I have chosen this clause to raise the issue of whether all owner-drivers who drive vehicles over 4.5 tonnes will need to have a contract. If a policing mechanism will not be put in place and a verbal agreement is made, how will the rates be determined, as well as the other issues contained in the verbal contract? How will it be determined whether a contract is in place and all the issues that go along with it? During the second reading debate I said that a large class of vehicles will be covered. Everybody who knows anything about transport knows that between the 4.5-tonne vehicles and the 120-tonne triple road trains there are many classifications of vehicle. Therefore, many issues will be involved in a contract, whether it is made verbally or otherwise. Can the parliamentary secretary understand the problem I have, and can that problem be overcome?

Hon ADELE FARINA: I understand the member's concerns. However, the courts deal with verbal contracts as part and parcel of contract law. A lot of legal precedent and case law is in place with regard to verbal contracts. They have been entered into for 500 years or more. It is simply an application that occurs under common law and contract law. I expect that the same principles will apply in this circumstance.

Sitting suspended from 6.00 to 7.30 pm

Clause put and a division taken with the following result -

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Hon Adele Farina; Hon Simon O'Brien; Hon Murray Criddle; Deputy Chairman; Hon Paul Llewellyn; Hon Ray Halligan

Ayes (14)

Hon Vincent Catania
Hon Murray Criddle
Hon Kate Doust
Hon Sue Ellery

Hon Adele Farina
Hon Jon Ford
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Hon Louise Pratt
Hon Ljiljana Ravlich
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Noes (12)

Hon Ken Baston
Hon George Cash
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Hon Nigel Hallett
Hon Ray Halligan

Hon Robyn McSweeney
Hon Norman Moore
Hon Simon O'Brien

Hon Margaret Rowe
Hon Barbara Scott
Hon Bruce Donaldson (*Teller*)

Pairs

Hon Shelley Archer
Hon Kim Chance
Hon Ed Dermer

Hon Barry House
Hon Anthony Fels
Hon Helen Morton

Clause thus passed.

Clause 2: Commencement -

Hon SIMON O'BRIEN: I did not indicate, in identifying some clauses of interest, that I would be pausing on clause 2, but this seems to be the most appropriate place to raise this matter. I understand the federal Independent Contractors Act conflicts with this bill in a number of respects. In order to avoid falling foul of section 109 of the commonwealth Constitution and having a situation whereby laws conflict and the federal law overrides the state law, I understand it is necessary for an exemption to be granted from the commonwealth act to allow a state scheme to operate. I am not overly familiar with the Independent Contractors Act, but I understand New South Wales and Victoria have obtained an exemption from that act by virtue of a commonwealth regulation. I have two questions: firstly, how does this proposed law conflict with the Independent Contractors Act; and, secondly, does the government believe it will obtain an exemption from that act, and, if so, why does it believe that?

Hon ADELE FARINA: It is the case that a conflict would arise between this legislation and the federal government's Independent Contractors Act. However, given that the federal government granted exemptions to Victoria and New South Wales, the minister has sought a similar exemption for Western Australia. I understand that the federal minister has written back to the state minister advising that the federal government will not consider an exemption for Western Australia until such time as it has completed a review of all Australian owner-driver legislation. It has not ruled it out altogether. Clearly this legislation cannot be proclaimed until that process is completed or until such time as the state minister has persuaded the federal minister to grant the exemption.

Hon Simon O'Brien: Is the conflict that severe?

Hon ADELE FARINA: I am not across independent contractor legislation in any great detail. I understand that without an exemption there is a conflict. The minister has informed me that this legislation will not be proclaimed until such time as the matter is resolved. Labor spokesperson Craig Emerson released a statement advising that if the Labor Party wins government at the federal election in October, or whenever the election is held, a federal Labor government would grant an exemption to Western Australia.

Hon SIMON O'BRIEN: That is a great comfort.

Hon George Cash: Especially if he ends up being a minister for community services or the arts.

Hon SIMON O'BRIEN: Hon George Cash has shown his experience of these matters by pointing out the absurdity of that claim.

Hon Adele Farina: Perhaps I can clarify that that statement came out of a Labor shadow spokesperson caucus meeting. It would apply right across the board. I am confident that we will see a change of government in October, particularly given the federal government's attitude towards a range of public policy issues.

The DEPUTY CHAIRMAN: If members wish to address the Chair, they should be on their feet. That will make it easier for Hansard to record the debate. The Deputy Leader of the Opposition has the call.

Hon SIMON O'BRIEN: What a jolly and optimistic little caucus meeting that must have been! It is touching that Craig Emerson is here to bring comfort, secure in the knowledge that the Transport Workers Union of

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Australia will pour squillions of dollars into the Labor Party's federal election campaign to target certain marginal seats.

I note that the substance of the government's response to clause 2 is that it recognises the conflict between the federal act and this proposed law. Until that issue is resolved - that is, until a federal government of whatever colour moves to grant an exemption - this legislation will not be proclaimed. That is my understanding. Members may be interested to hear this: I have in my hand a letter addressed to Mr Murray Cowper, member for Murray, from Hon Joe Hockey, Minister for Employment and Workplace Relations. The letter is brief and self-explanatory. I will read it into *Hansard*. It is addressed to Mr Cowper in his capacity as shadow minister for labour relations. As was pointed out before - I do not think it has been contested - this is very much an industrial relations matter. The letter reads -

Dear Mr Cowper

Proposed owner-driver legislation and the *Independent Contractors Act 2006*

Thank you for your letter of 13 December to the Hon Kevin Andrews MP, former Minister for Employment and Workplace Relations, concerning the Western Australian Owner Drivers (Contracts and Disputes) Bill 2006 and its interaction with the *Independent Contractors Act 2006*. As the new Minister for Employment and Workplace Relations, I am now responding. I apologise for the delay.

That is similar to the letters I receive from Alannah's office. The letter continues -

As you are aware, the Australian Government agreed to preserve the operation of state owner-driver laws that existed at the time of the passage of the *Independent Contractors Act 2006*. Only two owner-driver specific laws existed at that time. They were Chapter 6 of the New South Wales *Industrial Relations Act 1996* and the Victoria *Owner-Drivers and Forestry Contractors Act 2005*.

Notwithstanding the preservation of these laws, the Government announced its intention to review all state owner-driver laws, commencing this year, with a view to achieving national consistency. Preserving the operation of additional state owner-driver laws has the potential to undermine the Government's review of such laws. Therefore, the Government will not amend the *Independent Contractors Act 2006* to preserve the Western Australian Owner Drivers (Contracts and Disputes) Bill 2006.

Once again, thank you for bringing these matters to my attention. I trust my comments are of assistance to you.

Yours sincerely

The letter is signed by Joe Hockey. That attitude of the commonwealth government is unambiguous. Given the direct response received about the commencement - that is, until the conflict is resolved this proposed act will not be proclaimed - it would seem that the proclamation of this legislation is not imminent. As I indicated during my remarks on clause 1, it not our intention to delay the handling of this bill. Although we are opposed to the bill, we will support clause 2.

Hon ADELE FARINA: By way of clarification, the letter that Hon Simon O'Brien just read suggests that the federal government is not prepared to consider an amendment to the Independent Contractors Act. I inform the member that Hon Joe Hockey is incorrect in that statement, because an amendment to the Independent Contractors Act is not required. Section 7(2)(c) of the act provides for an exemption by way of regulation. Therefore, the state government is not seeking an amendment to the Independent Contractors Act, nor is one required.

Hon MURRAY CRIDDLE: I understand from what the minister said that a regulation is required to allow this legislation to go forward, that the regulation must be presented to the federal Parliament, and that it will be passed if it is not disallowed. Mr Deputy Chairman, I would like to know whether this is the only place in which to discuss this issue. I understand that the federal government will carry out a review. What is the time frame of that review and how will it progress? We might be wasting our time disusing this issue.

The DEPUTY CHAIRMAN (Hon Ray Halligan): This appears to be the appropriate clause on which to continue down the path of seeking clarification.

Hon ADELE FARINA: The state government would also like clarification of that question. The only indication that we have had from the federal government to date is that it will be conducting a review to consider a national uniform system, and that the review will commence this year. A time frame for its conclusion has not been provided. However, the government considers the owner-driver issue a serious one, and it has therefore committed to deal with it. We see no basis on which an exemption should not be granted given that an

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exemption was provided to New South Wales and Victoria. The state minister will continue to pursue the matter. The minister also recognises that we may have to await the outcome of the review. However, we expect that review to be undertaken in a timely manner. As the member has acknowledged, there is a strong push by the industry to get on with this legislation because the industry desperately needs it. I am hopeful that, with the passage of this legislation, the federal government will be persuaded to review its stated position to date.

Hon PAUL LLEWELLYN: I understand that the federal independent contractors legislation is deficient in relation to owner-drivers in a number of ways and that it has been necessary to put in place the Western Australian Owner-Drivers (Contracts and Disputes) Bill. Can the parliamentary secretary tell me in which way the federal independent contractors legislation is deficient, and how does this bill address those concerns?

Hon ADELE FARINA: Although I do not have a detailed knowledge of the federal independent contractors legislation, I understand that it does not specifically deal with the issues facing the owner-driver industry. It does not provide for guideline rates, an industry council, collective bargaining or a code of conduct. These are matters that this bill addresses.

Hon SIMON O'BRIEN: I could point out at this time, without running too far afield of the Chair, that this is precisely the reason that some bills need to go through a committee process away from the floor of the house so that these matters can be pursued. The house, in its wisdom, elected not to do that with this bill when I moved that it be sent to the Standing Committee on Legislation for just this sort of inquiry. However, of course, that has nothing to do with clause 2 so I will not harp on about that point, Mr Deputy Chairman, and risk incurring your displeasure.

I think it is evident, though, that the federal Independent Contractors Act and this bill are very antagonistic; otherwise, there would not need to be, in the government's mind, this separate legislation. I doubt very much that this legislation is complementary; it is antagonistic. That is a question that relates directly to clause 2, because the undertaking from the government is that apparently it would be pointless to proclaim this legislation until an exemption from the provisions of the federal act is obtained. With that assurance, the opposition has no objection to supporting clause 2, and we probably should get on with it.

Clause put and passed.

Clause 3: Terms used in this Act -

Hon MURRAY CRIDDLE: The development of the code of conduct, through regulations, is of interest to me. It seems as though the implementation of the bill will be delayed for some time. Will a code of conduct be put in place through the regulations before the bill is given the royal assent?

Hon ADELE FARINA: The bill provides for the industry council to advise and make recommendations to the minister on the code of conduct. Therefore, the industry council needs to be established, which will require the proclamation of the bill. Consequently, the code of conduct cannot be prepared ahead of the proclamation of the bill and the establishment of the industry council.

Clause put and passed.

Clause 4: Meaning of "owner-driver" -

Hon MURRAY CRIDDLE: Clause 4 provides that a listed public company has the same meaning as it has in the commonwealth Income Tax Assessment Act 1997 and an officer of a body corporate has the same meaning as it has in the commonwealth Corporations Act 2001. This issue relates to clause 1. Can the parliamentary secretary now define the term "owner-driver"?

Hon ADELE FARINA: The meaning of "owner-driver" is provided in clause 4(2). The fundamental criterion within the meaning of the term "owner-driver" is that the owner-driver must operate a truck; that is, he must drive a truck. The owner-driver may own more than one truck, but he must be the driver of one of those trucks.

Hon MURRAY CRIDDLE: Will the parliamentary secretary clarify that this legislation provides that there may be only one owner-driver, but he may have two or three trucks?

Hon ADELE FARINA: Yes.

Hon SIMON O'BRIEN: That is fine if the person is a natural person. However, this clause also provides for the owner-driver to be a body corporate. I think that is the point Hon Murray Criddle was getting at. The clause also provides for the owner-driver to be a partnership of persons. The partnership remains an owner-driver if at least one of the persons who is an owner-driver is a natural person. It could be a bigger partnership than a two-person operation. Not only is a small independent operation - the mum-and-dad operation - but also, conceivably, a broad range of businesses are captured by this bill.

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In my comments earlier I alluded to the fact that this bill is neither innocuous nor has minimal impact, as the government has pretended. I will ask a few more questions of the parliamentary secretary to illustrate my point. If, for the purposes of the exercise, the owner-driver is a body corporate or partnership of persons that operates one vehicle that has a 4.5-tonne gross vehicle mass and also operates a heap of other vehicles that are less than 4.5-tonne GVM, are all the vehicles in the whole operation captured by the provisions of this bill because it is an owner-driver operation?

Hon ADELE FARINA: The situation is that only the 4.5-tonne vehicle would be covered under this legislation. Therefore, the contract relating to the operations of that vehicle would fall within the ambit of the legislation, provided that the owner-driver was actually driving that vehicle. If the owner-driver enters into a contract whereby the 4.5-tonne vehicle or vehicles less than 4.5 tonnes could be used in providing that service, only the contract to the extent that it applies to the 4.5-tonne vehicle would be covered by this legislation. It is fairly straightforward.

Hon SIMON O'BRIEN: Therefore, what will happen when the various representatives, inspectors and the other people we will come across later in this bill demand a right of entry onto an owner-driver's premises to inspect the books and go through them with a fine toothcomb to see who is paying what to whom and when and why and finds an owner-driver who has one 4.5-tonne GVM vehicle also providing three four-tonne vehicles under the same contract? Do they get out a thick, black pen and black out the bits of the contract that relate to the smaller vehicles, or is all of that subject to inspection at reasonable times of the night or day? I suggest to the committee that they are. Already we are starting to see that this bill captures a wider level of operation than that which it purports to capture. I would appreciate the government's response.

Hon ADELE FARINA: In the illustration the member provided, clearly the inspector would be able to inspect only those records that apply to the 4.5-tonne vehicle and the documents identified in the code of conduct as documents that can be inspected by the inspector.

Hon Simon O'Brien: What happens if they are listed on the one piece of paper of the one contract?

Hon ADELE FARINA: The nature of the business that has been contracted between the parties may be written on the one document, but the documents that need to be inspected may not necessarily be the one document because they will relate to the specific services that have been provided. I doubt whether it is likely that they will be on the same document. If a party operates a number of vehicles, it is likely to have logbooks on each of the vehicles.

Hon SIMON O'BRIEN: Courier drivers are in many cases owner-drivers for the purposes of this bill except for one thing; that is, the application of that part of the definition that relates to a vehicle with a GVM of 4.5 tonnes or more. That is the only thing that makes a difference. Plenty of courier businesses have a vehicle with a GVM of more than 4.5 tonnes as well as a lot of other vehicles. If they enter into a contract with, for example, The West Australian Newspapers that requires them to use one big truck, a lot of medium-sized trucks and a string of little trucks, due to that one large vehicle, the influence of this legislation will suddenly extend over that whole business and that single contract, whether anybody likes it or not.

As I said in my second reading contribution, courier drivers are very concerned about this law being applied to them in the future, either by amendment or some other form of contrived extension, such as that which I just described.

I mentioned in the earlier stages of this debate that these associations, including their peak organisation, had not been consulted by the government. I also mentioned that they wanted a chance to make a submission to this place through a committee process. The courier drivers and their peak organisation have no way of doing that now, apart from me repeating their representations to me. I would very much like to know whether, under the situation I described, this bill extends to a courier driver's operation.

Hon ADELE FARINA: The member continues to make references to the house's decision with respect to the referral of this bill to a committee. While I note the member's views on this issue, it is starting to sound as though the member is reflecting on a decision of the house. I certainly hope that the member is not proposing to do that.

The DEPUTY CHAIRMAN (Hon Ray Halligan): I thank the parliamentary secretary for that observation, but that is one that I will take into consideration.

Hon ADELE FARINA: With respect to the scenario the member outlined concerning the application of this bill to courier operators, the answer that I gave to his previous question applies. However, this time he aimed his comments at a courier business. The legislation will apply to only those vehicles that are 4.5 tonnes or more and to those aspects of the business that involve that particular vehicle that the owner-driver is operating.

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I find it interesting that the member is suggesting that the courier industry is very concerned about the legislation and would like an opportunity to comment on the legislation.

At no time during the discussions with the industry peak body - the Transport Forum - did it raise any concerns from the courier industry about the legislation. At no time during the consultations on this bill or during the debate in the other place or through these processes has the courier industry raised any concerns with the minister about the application of the legislation.

Hon Simon O'Brien: They haven't been asked; you did it in secret.

Hon ADELE FARINA: We did not do it in secret.

Hon Simon O'Brien: The government, the Transport Forum and the TWU did it in secret.

Hon ADELE FARINA: We did not do it in secret. As the member is suggesting, if the industry is raising concerns with him, we clearly did not do it in secret very well. If the industry is able to raise those concerns with the member, then equally it is able to raise those concerns with government but it has not done so. If the member has some specific evidence that he would like to present on this point, I am happy to receive it and present it to the minister. Otherwise, I suggest that the chamber is best served by moving on with the full consideration of this bill.

Hon SIMON O'BRIEN: What an insult! I have already outlined - as I think it was outlined in another place - evidence that was tabled in another place and offered here. It was read into the record in whole or in part during the early stages of debate. I am referring to the letters from the Chamber of Commerce and Industry of Western Australia on behalf of many of its members, some of whom are couriers, reminding the minister that when the bill came to be created, they would be consulted - but they have not been. I have sat down with representatives of courier organisations at their request because they are alarmed to hear that this bill is progressing and they do not know anything about it, and they are worried what the future is. To suggest that all I have to do is refer it to the parliamentary secretary and that she will take it up with the minister is an absolute insult. It does not help progress the clause that we are considering, but I am blowed if I am going to remain silent when I hear that sort of nonsense being expressed. The fact is that there was no consultation outside a certain little charmed circle on this bill - finish!

Hon MURRAY CRIDDLE: I want to clarify the issue of a body corporate. Can the parliamentary secretary run through the body corporate side of things? It was mentioned earlier that an owner-driver can have a couple of trucks. What is the situation with a body corporate? Does a body corporate have a single member or two or three members?

Hon ADELE FARINA: As I understand it, most if not many of the owner-driver businesses are a body corporate; they are proprietary limited. That is done for taxation purposes. In most cases they are a husband and wife body corporate. With respect to the application of this legislation in those circumstances, provided either the husband or wife is driving a truck that weighs more than 4.5 tonnes, this legislation will apply.

Hon PAUL LLEWELLYN: This clause defines the meaning of an owner-driver. I reflect on the purpose of the bill, which is effectively to cover long-distance freight drivers and the freight industry and not couriers and people travelling short distances. The bill arose as a result of concerns primarily in the long-distance freight haulage sector. Can the parliamentary secretary confirm that was the original intention?

Hon ADELE FARINA: The bill relates to heavy vehicles; that is, vehicles of 4.5 tonnes or greater. The issues in the industry were initially identified in respect of long-haul distances but they equally apply to short-haul distances. It is not a matter of the distance of haulage; it is the heavy truck sector.

Clause put and passed.

Clause 5 put and passed.

Clause 6: Application of Act -

Hon SIMON O'BRIEN: Subclause (2) refers to owner-drivers operating out of New South Wales or Victoria. That is putting it slightly incompletely but concisely. The subclause states that the act will not apply to owner-driver contracts if the owner-drivers are party to a contract from those states. What size vehicles are covered by the New South Wales and Victorian acts?

Hon ADELE FARINA: The Victorian legislation applies to any vehicle. The New South Wales legislation is based on a different premise altogether and applies to different sectors of industry where a determination has been made. The subclause relates to owner-driver contracts and not to owner-drivers. The act will not apply to an owner-driver contract if the owner-driver who is party to the contract has the benefit of, or is otherwise covered by, the Victorian or New South Wales legislation.

Hon Adele Farina; Hon Simon O'Brien; Hon Murray Criddle; Deputy Chairman; Hon Paul Llewellyn; Hon Ray Halligan

Hon Simon O'Brien: Thanks for sharing information on what vehicles they are talking about, not that it really affects our consideration.

Clause put and passed.

Clause 7: Act prevails over owner-driver contracts -

Hon MURRAY CRIDDLE: I want to follow up on the issue of contracts that prevailed previously. I think the parliamentary secretary said they would last six months, and then there would be an opportunity to go to the tribunal. Can the parliamentary secretary take me through that?

Hon ADELE FARINA: I indicated that the provisions of such contracts, even if they were inconsistent with the legislation, would remain in force for six months after the proclamation of that section. After that time, those provisions of the contract that were inconsistent with the legislation would be read down. By that, I mean they would be read as having no force, so that the inconsistency with the act would have no effect on the contract. Those provisions of the contract that comply with the legislation would continue to remain in force, and those that were inconsistent would fall by the wayside. This is not a matter that would have to go to the tribunal for determination. Obviously, the parties would be free to enter into a new contract if they so wanted at that point in time.

Hon MURRAY CRIDDLE: Also, I was wondering whether there was any requirement for government contracts to have some consistency with the people who want to try to win those contracts. In other words, will we see similar rates through those contracts for the owner-drivers who might want to win them? In other words, the government will put out a schedule for its contracts. Otherwise, the competition will be quite extraordinary. In calling for tenders, how will the government handle the issue of getting people to win that contract, other than by competition?

Hon ADELE FARINA: Government agencies would be required to comply with the law as it is in force at that time. Clause 8 of the bill clearly binds the crown to the legislation. The government agencies would need to comply with the act in any tendering process.

Hon MURRAY CRIDDLE: That sounds fine, but at the end of the process someone must win the contract, and how can they win a contract when everybody is on the same basis, if the parliamentary secretary understands what I mean? There will have to be some sort of resolution about who will win the contract. If there is a set of rules under which everybody is operating the same, and people apply for the contracts, do they all fall under the same set of rules, and, therefore, how do they sort out who will win the contract?

Hon ADELE FARINA: The only advice I can provide to the member at this point, understanding that I do not have a huge amount of experience in the tender process, would be that there are clearly circumstances in which tenders come in on exactly the same terms, and there is a process for making a selection between the tenders that are basically uniform or similar, and I would expect those same principles to be applied in these circumstances.

Hon MURRAY CRIDDLE: The main criterion for a lot of these things is the price at the end of the contract. I guess that we will look at other criteria, such as reliability. I would be very interested in having some indication of the way in which the minister will handle that in the future. Having been a minister, and having had to answer to contracts, I know that that is when difficulties arise - trying to pick winners when all the prices are the same. I do not ask the parliamentary secretary to clarify it now, but I would like the minister to tell all and sundry how that will be sorted out, because there could be a difficulty.

Hon ADELE FARINA: I accept the member's point, but it would be unusual for the minister to be determining a contract. Usually, it would be within the ambit of the government agency that is letting the tender to make that determination, not the minister. I would expect that factors such as reliability, as the member has mentioned, would be taken into consideration when making decisions in those circumstances, along with similar factors.

Hon MURRAY CRIDDLE: The minister will be the one who signs it off, if it is a substantial contract, and so the minister will be responsible. I have a bit of experience in this, because during my time as minister I would sign off on about 1 000 contracts for Main Roads each year. There are probably not that many nowadays. It will be an issue, so I would like some indication of how it will be sorted out. Can I have some indication from the parliamentary secretary that she will follow up with the minister to get an indication of how the government will handle a contract that is based on this legislation?

Hon ADELE FARINA: I am happy to raise that matter with the minister and come back to the honourable member with an answer to his question, although I suspect that in those substantial contracts he is talking about that might find their way to ministerial determination, in most if not all instances the minister would be dealing with trucking companies rather than owner-drivers, because of the nature and scale of the business and the project.

Hon Adele Farina; Hon Simon O'Brien; Hon Murray Criddle; Deputy Chairman; Hon Paul Llewellyn; Hon Ray Halligan

Clause put and passed.

Clauses 8 to 10 put and passed.

Clause 11: Prohibited: prescribed conditions -

Hon SIMON O'BRIEN: I have been absolutely hugging myself in anticipation of this clause. I touched on it briefly during my second reading contribution and eventually when the parliamentary secretary responded, she listened and noted that I - I think "some members" was the expression used - had queried what we were actually agreeing to here. Clause 11 states -

A provision in an owner-driver contract has no effect if it is a provision that is prescribed by the regulations to be a prohibited provision.

I ask a reasonable question: what sort of provisions are we talking about that will in due course be prescribed to be prohibited provisions? During the second reading debate, the government noted that I had asked that and that the opposition needed to know the answer, and I think it was said that the matter would hopefully be examined at the committee stage. Is that what the government said, or did it just not want to tell us about it? The opposition does not know the answer yet, and although the opposition has been asked to trust the government and the bill has passed the second reading vote, we still do not know the answer. I ask the government to explain what sorts of provisions will be declared to be prohibited, so that the house is not blindly agreeing to everything.

Hon ADELE FARINA: I said in my response during the second reading debate that unconscionable conduct provisions would be prohibited. I am happy to restate that position for the member.

Hon SIMON O'BRIEN: If unconscionable conduct is prohibited, why does an entire part of the bill deal with unconscionable conduct - it states it cannot be done? Does this mean part 6 of the bill can be deleted? Does the parliamentary secretary want me to move to delete part 6? Could I summon up a better vote than 14-12 to defeat part 6? What else, though, would be prescribed by regulations? If another way is found to say that there might be further unconscionable conduct, what other provisions might be made? If there are no other provisions to be prescribed, why not just refer to it as unconscionable conduct?

Hon ADELE FARINA: Part 6 deals with a particular circumstance of identified unconscionable conduct and provides for the matter to be determined by the tribunal. In situations in which the tribunal makes a determination, the determination may be that the particular provision in the contract that gave rise to the unconscionable conduct should be prescribed as a prohibited provision under regulation. That is why clause 11 is necessary.

Clause put and passed.

Clause 12 put and passed.

Clause 13: Time for payment -

Hon MURRAY CRIDDLE: I want to relate clause 13 to schedule 1, division 1, which refers to a 14-day period in which to respond to a payment claim. However, clause 10 refers to provisions requiring payment after 30 days. Can the parliamentary secretary clarify the issues with regard to those three areas of the bill? They seem to me to be a little contradictory.

Hon ADELE FARINA: The provision covered by clause 10 relates to express provisions in a contract and requires that any express provision in a contract with respect to payment must be payment within a period of between one to 30 days. The schedule, on the other hand, applies to circumstances in which there are no express provisions with respect to payment; therefore, an implied provision for payment within 14 days will apply in circumstances in which there is no express provision.

Hon Murray Criddle: Does that include verbal contracts?

Hon ADELE FARINA: It may be a verbal contract or it may be a written contract in which there is no express provision with respect to payment.

Clause put and passed.

Clauses 14 to 17 put and passed.

Clause 18: Membership of Council -

Hon ADELE FARINA: I move -

Page 9, lines 19 to 20 - To delete the lines and insert instead -

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- (d) any other person or body from which the Minister considers it appropriate to seek nominations and will specifically seek nominations from persons able to represent the interests of regional Western Australia.

The government moves this amendment in recognition of comments made by members who expressed the concern that regional interests were not covered with regard to the membership composition of the Road Freight Transport Industry Council, and that there was a need to have regional representation on the council. The minister has considered comments made by members in this regard and supports those comments. Therefore, the government seeks to make this amendment to facilitate that outcome.

Hon PAUL LLEWELLYN: I, too, had concerns with that particular clause, because it reads in part -

The Minister shall seek nominations for appointments to the Council . . .

And, indeed -

any other person or body from which the Minister considers it appropriate to seek nominations.

The parliamentary secretary said that the amendment was made in acknowledgement of concerns about regional areas. Which other industry representatives or bodies will be considered to be relevant under this clause?

Hon ADELE FARINA: The legislation is specific in that it requires, under clause 18(3) that -

The Minister shall seek nominations for appointments to the Council from -

- (a) the chief executive officer of the Department . . .

“The Department” being the Department for Planning and Infrastructure -

- (b) the Transport Forum WA Inc.; and

- (c) the Transport Workers Union of Australia . . .

The government, through the addition of this amendment - if it is accepted by the Committee of the Whole - will also require the minister to seek nominations from any person or body the minister considers appropriate to represent the interests of regional WA. There is no requirement for the minister to accept any of the nominations made, and because those specific provisions do not cover the whole membership of the industry council - which is a council of eight members - it does not close off consideration or receipt of nominations by the minister from any other organisational body or individual, provided the person nominated can actually contribute to the deliberations and role of the council, which are specified in the bill.

Hon PAUL LLEWELLYN: Will the parliamentary secretary give us some specific examples of the kind of industry, individuals or bodies that would be considered to have a relevant interest in the bill?

Hon ADELE FARINA: Clause 18(1) states that the council is to consist of not more than eight persons appointed by the minister, having regard to the experience, skills and qualifications that the minister considers appropriate to enable council members to make a contribution to the work of the council. The functions of the council are outlined in clause 19. If the member reads those provisions, he should get some guide as to the organisations, bodies or individuals that may fit those criteria. It could also include the Chamber of Commerce and Industry of Western Australia, local government, owner-drivers, owner-driver organisations, industry bodies and a range of other organisations that are too numerous for me to identify.

Hon SIMON O'BRIEN: We will support this amendment because it does nothing, so it cannot possibly offend. It is a sop to regional interests and I think the committee is entitled to view it with some cynicism, because that is the spirit in which it was generated in the first place. The material parts of the subclause betray what the government is all about. It is couched in terms that the minister “may” do this or “might” if she feels like it do something else, if the minister thinks it is appropriate. It is all meaningless piffle. The minister will appoint some people and she can consult whoever she wants to consult. It is as simple as that, and quite meaningless. This clause betrays who is pulling the government’s cord. The Transport Forum WA does not represent all trucking interests in Western Australia. I have spoken about many trucking interests who are horrified at the contents of this bill. They tell me they used to be members of the Transport Forum but left because they did not like the direction it was taking, particularly when the Transport Workers Union became a member of the forum. The TWU also gets a guernsey as a body to be consulted, and as an afterthought the words “regional Western Australia” are thrown in, not that it means much. A whole lot of bodies are missing from this clause, but the amendment is no more offensive than the rubbish that is already there, so we will not oppose it.

Amendment put and passed.

Hon Adele Farina; Hon Simon O'Brien; Hon Murray Criddle; Deputy Chairman; Hon Paul Llewellyn; Hon Ray Halligan

Clause, as amended, put and passed.

Clause 19 put and passed.

Clause 20: Powers -

Hon SIMON O'BRIEN: What powers are we talking about in this clause? Are they powers to demand documents or other information? Are they powers to enter premises?

Hon ADELE FARINA: The functions are set out in clause 19 as follows –

- (a) to provide advice and recommendations to the Minister in relation to the development and review of the code of conduct; and
- (b) to prepare and review on a regular basis the guideline rates; and
- (c) to promote, and to encourage compliance with, the code of conduct and the guideline rates; and
- (d) to develop, publish and promote model owner-driver contracts; and
- (e) to provide advice and recommendations to the Minister in relation to any other matters relevant to -
 - (i) owner-driver contracts; or
 - (ii) the commercial practices generally engaged in by owner-drivers and hirers in relation to each other.

The powers are those needed to undertake those functions. This is a general provision that is often found in legislation. The functions of the council do not extend to enforcement and therefore do not extend to the power to enter premises as though the council were acting as an inspector. It simply is not one of the council's functions.

Clause put and passed.

Clauses 21 to 23 put and passed.

Clause 24: Remuneration and allowances -

Hon SIMON O'BRIEN: How much will the remuneration per annum typically be for a council member?

Hon ADELE FARINA: The government-determined rate of pay for members would be level 4 committee, which is \$150 a half day or \$220 a day. For the chair, it would be \$220 a half day or \$330 a day. I do not have a calculator so I cannot work that out on an annual basis.

Clause put and passed.

Clauses 25 and 26 put and passed.

Clause 27: Content of code of conduct -

Hon ADELE FARINA: I move -

Page 13, line 14 - To delete "may" and insert instead -
are to

The amendment has been moved because of a drafting error. The guideline rates "are to" specify those matters that are listed in clause 27(3)(a) and (b). The way it is currently drafted, it reads "may" specify. It is a requirement that the guideline rates specify those matters that are outlined in paragraphs (a) and (b).

Amendment put and passed.

Hon MURRAY CRIDDLE: Subparagraphs (i) and (ii) refer to the costs and rates that will be struck. Subparagraph (ii) reads -

The base hourly rate or casual hourly rate that would typically apply to that class of owner-driver if an owner-driver of that class were, as an employee, performing substantially the same work.

I will be interested to see how the transport industry comes up with a realistic figure, because the cost of a driver ranges from \$18 to \$40.

Hon Simon O'Brien: Where does it say "realistic" figure?

Hon Adele Farina; Hon Simon O'Brien; Hon Murray Criddle; Deputy Chairman; Hon Paul Llewellyn; Hon Ray Halligan

Hon MURRAY CRIDDLE: I said that it will be interesting to see how it comes up with a realistic figure. They are my words; they are not in the bill. What will that figure be, and how will that process go ahead?

Hon ADELE FARINA: The task will be undertaken by the council. The council will comprise industry representatives who will have a knowledge of the industry and the going rates. I expect that those learned people will be in a far better position than I am to provide advice. They will be guided by the provisions in paragraphs (a) and (b) in addition to the fixed and variable overhead costs listed in subclause (4). Subclause (4) does not provide an exclusive list. If it is determined that other fixed and variable overhead costs are not factored into subclause (4), they may also be considered. With respect to subclause (3)(b)(ii), the typical casual and hourly rates will apply to the owner-driver of that class of owner-driver as if he were an employee. The minimum rate as identified in the award, where an award is applicable, will also be a consideration for the council. The overriding criteria for the council will be to ensure that the guideline rates are struck on the basis of ensuring that there are safe practices in the industry and that those variables as they apply to that particular sector of the industry are factored into that assessment to ensure that the guideline rate is a sustainable rate for the industry.

Hon MURRAY CRIDDLE: Is it fair to say that we are looking at a minimum rate?

Hon ADELE FARINA: In effect, the guideline rate would be a minimum rate. Obviously owner-drivers and hirers could come to a commercial agreement to pay above the guideline rate. However, the guideline rate will effectively be the minimum rate and it will be the guiding rate; that is, it will be the level of rate that will enable an owner-driver to sustain a business.

Hon MURRAY CRIDDLE: Having said that that is the minimum rate, will a contractor be able to go below that rate?

Hon ADELE FARINA: Yes, there may be circumstances in which a contract will be struck between a hirer and an owner-driver that is below the guideline rate. For example, if a hirer provided free or discounted fuel to the owner-driver, that would impact on the guideline rate.

Hon RAY HALLIGAN: This is a Pandora's box. We will end up with a set of figures that are not limited to the costs outlined in subclause (4). The council will take all these things into consideration, but under subclause (2) it cannot amend or revoke those guideline rates without obtaining the approval of one person; namely, the chairman. It appears that the chairman will have total control over the effort that council members will put into determining the guideline rates, which, as we have just heard, can be quite flexible. I must admit I was thinking of additional costs being added to the description of those costs in subclause (4). However, we have been told that some costs might be deducted from the guideline rates if they are given gratis to the operator. Will the parliamentary secretary advise what is meant by subclause (2) and why it is included in clause 27? What is needed in that determination? Why will authority be given to the chairman of the council?

Hon ADELE FARINA: Some of the confusion seems to be arising as a result of members' viewing the guideline rates as a particular figure. The guideline rates may be a particular model with a range of variables that may or may not apply to every business within a sector. The guideline rates allow for some in-built flexibility. The council may also determine a range of different guideline rates to address the concerns that have been raised by members.

The reason for the provision in subclause (2) is to facilitate a diverse council to ensure that a wide range of views are expressed to and canvassed by the council. In those circumstances in which a diverse range of views are expressed, it is also important that the council have a powerful chairman to keep the process on track. Subclause (2) provides for that structure to operate.

Hon RAY HALLIGAN: I hear what the parliamentary secretary is saying. Certainly, if the chairman is provided with this authority, the chairman will also be provided with what one might term the leadership of the council. Even this chamber works under a simple majority more often than not, if we are working within standing orders. One person does not need to be totally in control of what happens in this place. I am not entirely comfortable with the explanation given. I cannot see any reason at this point that one person should have total control. I have other issues with this clause. What would happen if the chairman did not agree to certain matters? What would happen if the council took certain guideline rates to the chairman for approval and the chairman did not agree? What does the government expect to happen under those circumstances?

Hon ADELE FARINA: I understand the point the member is making. I draw the member's attention to clause 21 of the bill, under which the minister has the power to give directions, including written directions, to the council when conflict arises. That provides the minister with the ability to resolve a conflict, if it were to occur.

Hon RAY HALLIGAN: I have probably been in this place a little too long. I have become very cynical. The chairman will be appointed by the minister under schedule 2. The chairman will have total control over the situation. Under clause 27(2), the chairman must give approval.

Hon Adele Farina; Hon Simon O'Brien; Hon Murray Criddle; Deputy Chairman; Hon Paul Llewellyn; Hon Ray Halligan

Hon Adele Farina: With regard to those matters.

Hon RAY HALLIGAN: Yes. If the chairman does not give that approval, it will go back to the minister and the minister will decide. What is the purpose of the council? The government has gone to all the trouble of drafting this bill, but it is saying that the minister will have total control and will be able to decide. The minister could go to an outside source for this information. It is readily available. It has been around for hundreds of years and is updated quite frequently. Any transport organisation or accountancy firm would be able to provide the information. However, we are being told that this bill is required to provide for owner-drivers. I do not necessarily see it that way. However, I am sure that the government will have its way in the end.

I am an accountant and I understand how guideline rates are determined. Once those guideline rates are established - I accept that they are a guideline - and people tender, it means that they will be able to operate in accordance with the costs that are used to determine the guideline rates. If they are incapable of doing so, they could still lose money. Their actual costs could be over and above the guideline figures. The guideline rates are hypothetical. They might be real in certain circumstances, but not in every circumstance. However, I suggest, as did Hon Murray Criddle, that they are highly likely to be the figures that are used. If, in this hypothetical picture, that is the minimum amount of money that owner-drivers will have to receive for their businesses to be viable, they will have to meet those costs. If their costs are greater than the figures that are used for the guideline rates, they will lose money. I do not know how we will overcome that. The guideline rates suggested in the bill are somewhat simplistic and, in reality, will work in certain instances, but not in all instances. We will still have a situation somewhat similar to that which currently exists, whereby some people can make money in this industry and others cannot. I ask the parliamentary secretary, and I think I can anticipate the answer: have all these issues been taken into consideration? Is it firmly the belief of the government that going down this path is in the best interests of everyone concerned?

Hon ADELE FARINA: I understand the member's point. The bill clearly allows for guideline rates to be set for various sectors within the industry. Those guideline rates could then be broken down to subsectors within the industry, and that will minimise the concerns the member raised. The member is shaking his head; therefore, I acknowledge it will not necessarily eliminate all his concerns. The guideline rate is, in many ways, a formula. Individual owner-drivers will be able to key into that formula those factors that are particular to their business, and through that process they will come up with the guideline rate that is applicable to their circumstances.

The bill intends to reflect the Victorian model, in which a package is available that provides educational information to owner-drivers on best practice for running their business. That advice and guidance will also be provided to owner-drivers. The particular peculiarities the member is suggesting will be further minimised through that process.

The likelihood of the member's concerns arising would be more unusual than usual and would be addressed through the model by which the particular variables for that business can be factored in.

Hon RAY HALLIGAN: I thank the parliamentary secretary for that explanation. Recently there was a situation with school bus drivers. The same principle applies in this case. It is a matter of having the guideline and asking those individuals whether their costs, real or projected, are likely to be greater or less than the guideline figures. If they are greater, they should be told not to bother to go into the business or continue with the business; otherwise, they will have to up their rates.

Hon Adele Farina: Or adopt better business practice.

Hon RAY HALLIGAN: It is not only best practice; it is a matter of them being capable of reducing their operating costs. If they are using an old vehicle that is using too much oil and fuel and requires a lot more maintenance than a new vehicle, obviously their costs will be greater than another person's in that area. That is one of the difficulties. The government's explanation to them should be: "This is all we can afford to pay you unless you can operate within those costs, otherwise you will lose money. Therefore, it is best that you do not submit a tender." If that is part of the education process, I can accept what the government is trying to do. If it is not, I suggest that the government needs to look at that area.

Hon ADELE FARINA: I note the member's comments and I accept that there may be some circumstances in which owner-drivers are operating a business that is not financial and they need to look at undertaking particular measures to ensure that they have a sustainable and financial business. If they are not willing or able to take those measures, they will continue to operate a business that is not financial. In that case, the best advice to them is to make an assessment of whether they want to continue with that business or look at better business opportunities.

Hon PAUL LLEWELLYN: Clause 27(3) deals with guideline rates and it really is at the heart of this bill. The bill effectively tries to address the cutthroat environment in which trucking operators work and, as a

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consequence, to set fair and reasonable rates. I recognise that there are specified fixed and variable overhead costs. Subclause (4) defines "fixed and variable overhead costs", which include the reasonable operating costs of running a trucking business. What has been left out is the return to the driver; that is, effectively, the wage increase. Will this clause result in an increase in the cost of freight transport across the economy, because all the costs will be taken into account? If so, by how much will the cost of freight transport across this state increase? Has the government undertaken any assessment of the flow-on costs across the economy? Do we know what the regulatory arrangements will cost?

Hon ADELE FARINA: I understand that the Transport Forum WA and the minister have looked at this matter in detail. In the current boom economy, there is a shortage of labour and the rates are not an issue, but there continues to be unconscionable conduct. Therefore, we do not expect any significant increase and flow-on impact to industry, hirers and consumers.

Clearly, we will not always have a boom economy. This legislation provides the structure that would assist owner-drivers during a downturn in the economy. The member should remember that this whole process was started some years ago when this state was not experiencing a shortage of labour. The current economic and market conditions will not result in a significant increase in costs to the consumer and industry across the board.

Hon PAUL LLEWELLYN: The simple question is: has there been an assessment of the total economic impact? I am in favour of improving the contractor dispute arrangements for long-haul transport. I am interested in a simple answer. Has there been an assessment of the regulatory impact, particularly the financial and economic impact? I am not talking about under the current boom, because the boom will go away and we will still have this contracts bill. We need to know how much we will be paying for the safety improvements.

Hon ADELE FARINA: I do not have a cost figure as such, but a competition impact assessment has been undertaken. It shows that the bill will ensure greater competition by keeping more owner-drivers in the industry. Without the bill, many owner-drivers are likely to go into bankruptcy as a result of the small profit margins being squeezed further as a result of increasing costs. The bill will provide greater industry stability, with improved business practices throughout the industry. Effectively, in direct answer to the member's question, I do not have a dollar amount but the competition impact assessment indicates that the result of the bill will be an improvement in competition and an improvement in keeping more owner-drivers in the industry.

Hon SIMON O'BRIEN: The parliamentary secretary referred to a competition impact assessment. Who carried out that competition impact assessment?

Hon ADELE FARINA: The competition impact assessment was undertaken by the Department for Planning and Infrastructure in consultation with the Department of Treasury and Finance, which provided advice on the matter.

Hon SIMON O'BRIEN: May I ask that the assessment be tabled?

Hon ADELE FARINA: I am sorry, but I am not sure whether I am in a position to table that document. I am happy to seek advice from the minister about the tabling of the document. I appreciate that the member will not be happy with my response, but I am not sure on what basis the document was prepared. If it was prepared for the consideration of cabinet, I would probably need to obtain some clearance because I do not want to fall foul of the Corruption and Crime Commission.

Hon SIMON O'BRIEN: Why? Is the parliamentary secretary so far removed from her colleagues? I do not see why the document cannot be made available. If the parliamentary secretary could pursue that, I would appreciate it. When Hon Paul Llewellyn asked his question about whether there had been any assessment of the impact, I thought what a good question it was. It was the same question that I was putting to the chamber through the course of this debate to point out that we do not have an economic assessment. That is the simple answer. He should have asked me because I would have been a lot briefer about the answer. There has not been an assessment but there will be a negative impact. There is a cost involved in these measures. It is as simple as that. We do not know how great it will be.

Hon Paul Llewellyn: There will be benefits as well.

Hon SIMON O'BRIEN: Oh, there will be benefits - apparently. Let us come to those because clause 27 - I am glad I have a chance to have a say on it - is a very important one. This is the clause that prices owner-drivers out of existence. What we have heard is some nonsense that this will somehow make owner-drivers more competitive. It will make them all work on the same baseline rate. Whether it is called a model, a guideline rate or whatever, that is what it does. It is fixing a base price below which they shall not go. It is as simple as that. That price is going to be a lot more than it is now because by the letter of the legislation in this very clause it states that it has to cater for the lowest common denominator; that is, the most expensive costs and the most inefficient people. They all have to be kept in the industry; that is what it is all about. It does not matter how

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bloody useless someone is as an owner-driver or how bad a business he runs. We have heard that this is all about greater competition by keeping everyone viable - whether they should be in business or not. Of course the rates will rise. It is a baseline rate below which people shall not go. I am not surprised that the parliamentary secretary needs to suppress the assessment.

Hon Adele Farina: I didn't say that I needed to suppress it. I need to seek clarification.

Hon SIMON O'BRIEN: If the assessment states that this will produce greater economic competition between competing owner-drivers, I would very much like to see how it came to that conclusion. By definition, it will not. It raises all the minimum rates which everyone has to comply with and below which they cannot go. Where is the capacity to deliver efficiencies and thereby competition? All the prices will go up across the board and there will not be the flexibility that the parliamentary secretary mentioned. In some cases it will not mean that there is a TWU-inspired utopia whereby everybody's wages - sorry, contract rates - will be put up so that everyone is rolling in money and will all live happily ever after. It will drive a lot of former owner-operators out of business. That is what will happen. It will do it by virtue of clause 27. How it works is that when the guideline rates get to a certain point for everybody - it does not matter how good or bad they are - hirers will come to the point at which they will make the assessment -

Hon Paul Llewellyn: Put it all on rail.

Hon SIMON O'BRIEN: Why would they do that? Would it be more economical for them to do that?

Hon Paul Llewellyn: You never know.

Hon SIMON O'BRIEN: I will tell the member what some of them will conclude. They will conclude that because they are bigger organisations and because they have been removed from the owner-driver sector, the only way they will find economies is through the size of their own operations. In that way, they will find economies of scale with their support services, fuel purchasing power and all the other variables that are available to a big firm but are not available to a mum-and-dad operation. Those big firms that the sponsors of this bill say are screwing owner-drivers to the wall will decide that they do not want to hire contractors any more. As such, the pool of work available for owner-drivers - for contractors - will shrink. It will not dry up completely, but it will shrink a lot because the big firms that have been screwing some of the owner-drivers will now screw them even more by withdrawing their contracts. They will instead hire their own drivers to hire their own trucks because they can service their own trucks cheaper than owner-drivers can service their trucks. The big businesses can run their trucks with maintenance and all the rest of it more cheaply than owner-drivers can. They can probably source spare parts on terms more favourable than owner-drivers can. That is what will force a lot of owner-drivers - be they good operators or bad operators - out of business, particularly those beholden to one principal hirer, because they will have to lose only one contract before they are gone. It is as simple as that. If the TWU wants to tell us through its vicious and mindless press releases that somehow it is the saviour of small business when it comes to the trucking industry, it is wrong. Worse than that, I suspect that it knows it is wrong. It is playing those owner-drivers who find this legislation appealing for suckers. That is what the opposition finds so offensive about this. This brings me back to my earlier remarks that this whole bill is about money and power in the trucking industry; it has bugger-all to do with owner-drivers and their interests. Some members of the Australian Labor Party who owe their existence to the Transport Workers Union should think about what they are supporting in this place.

Hon Robyn McSweeney: Union dominance.

Hon SIMON O'BRIEN: That is what it is all about. The government should stop insulting our collective intelligence with this nonsense about helping out small business. The notes I have on clause 27 do not touch on the nonsense that I have been refuting in the other parts of the debate on this clause. I said during my second reading contribution that I would ask these questions, and now the time has come. I have heard some members talk about clause 27 being about fixing some reasonable rate, but I do not see it doing that. It says that the tribunal is to determine whether payments are being made at a safe and sustainable rate. The question I ask is one of which I gave notice: what is meant by a safe rate? In a moment I will ask what is meant by a sustainable rate. The government has yet to show any evidence. It reckons that it has some assessment, but I do not believe that we will see it. My question is: what is meant by a safe rate in clause 27?

Hon ADELE FARINA: I draw the member's attention to clause 27(1)(b), where it is stated quite clearly that it is a role for the industry council, through the development of the code of conduct, to describe how a safe and sustainable rate is to be determined. I certainly do not want to pre-empt the work of the industry council in this regard, but when the government is referring to a safe rate of payment, it is talking about safe work practices and ensuring that those work practices comply with the applicable laws and do not involve cutting corners. A sustainable rate is one that will ensure the continuing viability of the business in question.

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Hon SIMON O'BRIEN: That is interesting. There are two parts to this question. The first is: what is a safe rate? At the moment there are a range of requirements encouraging, and indeed mandating, safe working practices in the trucking industry. These relate to fatigue management and vehicle maintenance, for example. Operators might cut corners on those regimes by ignoring proper fatigue management practices or taking shortcuts on vehicle maintenance to gain a financial edge. Where does this proposed law state that they cannot do that? There are already laws that say that they cannot do that, and this proposed law does not add anything to those. How does getting a different rate of payment suddenly make the industry safe? Where does this bill state that any proceeds that accrue to the owner-driver must be spent on safety? The law already prescribes the standards that must be met, and I do not think this bill does that.

Hon ADELE FARINA: The honourable member is right in saying that there are current laws that deal with safe work practices in the industry. However, it is clear that not all the industry complies with those requirements. Some of the excuses presented by industry are simply that those safe work practices come at a cost that the business cannot sustain at the current market prices it is getting. Requiring a safe and sustainable rate of pay will remove the excuse that safe work practices come at a cost that the business cannot sustain.

Hon SIMON O'BRIEN: I can identify with part of that reasoning. However, the fact of the matter is that if people are taking shortcuts on prescribed safety standards, that is what the government should be concentrating on enforcing. People are saying that they cannot afford to do that, and the government is saying that they have to have some more money. They will get more money through this system of safe and sustainable rates, but who will make them spend it on safe practices?

Hon Adele Farina: You are assuming that they wouldn't. Perhaps you are judging the industry somewhat harshly?

Hon SIMON O'BRIEN: If they are not doing it now, why would they necessarily do it in the future? The government is not checking up on them; it is giving them more money. Will owner-operators do that, or will they just take the money and say, "Thank you very much"? That is the point, because nowhere does this legislation require any more than is already prescribed in other laws that certain safety standards have to be kept up. The notion of a sustainable rate shows that the government does not have a clue about how industry operates. It is partly excused by the government's smug complacency about intruding on areas of economic activity. Normally, there are two parties to a contract who get together and thrash out their own commercial terms. This government seems to think that two parties to a commercial contract cannot possibly do that, and that they need a prescriptive regime that introduces a third party to oversee the parties involved in a transaction coming to some sort of agreement. We are not going to bridge that gap in understanding between the government and the real world. The sustainable rate that the government talks about is the rate for an individual business. That is the consideration. What about a sustainable rate for the industry? What about a sustainable rate for the Western Australian economy? Will we see an explosion of costs based on people needing more and more personal discretionary income and call that "safe and sustainable rates", without any regard for what it will cost the Western Australian economy? Ultimately, through the circumstance I recently described, that will drive many owner-operators out of business rather than sustain them.

The government has said it has not done an economic impact statement, but it has done some sort of assessment - a competition impact assessment - that says that this proposal will somehow miraculously provide greater competition. At face value that conclusion is eminently debatable and rejectable, but we are not allowed to see the assessment. We are not allowed to see the little information that the government claims it has, which is all in-house assessment anyway, and other assessments are not available. The government does not understand that we need to know the economic impact on the sector and on the economy as a whole. The government is not looking at that. It is looking at what wages these prospective TWU members have been told they will get. They will not be independent operators much longer. They will go back to being employees, if they can get the jobs, and back to being union members. They will be paid the money and it will go straight to the ALP, which is sponsoring the bill. What a warped economy the parliamentary secretary seems to think we have! I have made the point. The opposition opposes this clause, but we will not oppose it vigorously.

Clause, as amended, put and passed.

Clause 28: Negotiating agents for owner-drivers -

Hon SIMON O'BRIEN: Who are the negotiating agents for owner-drivers? If the parliamentary secretary has any ideas, please let us know. Who is the first one that comes to her mind?

Hon ADELE FARINA: Whomever they choose.

Hon Simon O'Brien: Whom do you think they might choose?

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Hon ADELE FARINA: They may choose their industry association or they may choose their accountant. They may choose a range of people or a market specialist.

Hon SIMON O'BRIEN: Wow, it is going to be boom time all round! All these cashed-up owner-drivers will be taking on industry associations. What is an industry association? Is that like a transport forum?

Hon Adele Farina: Possibly.

Hon SIMON O'BRIEN: Possibly? Is it possibly a courier driver association? What were some of the others the parliamentary secretary mentioned?

Hon Adele Farina: An accountant.

Hon SIMON O'BRIEN: Yes, all the accountants will be out there. The owner-drivers might even do it themselves. There was one possible agent that was not mentioned. It might just be the union. The TWU has been involved in secretly organising this bill and in all the background dealings. Tell me, parliamentary secretary: would it be just possible that the Transport Workers Union - a very worthy association, I am sure - might see a role for itself under clause 28? Please tell us: would it be able to or would it be disqualified?

Hon ADELE FARINA: It would be very interesting to live in the world of Hon Simon O'Brien, with all the conspiracy theories he proposes. I think it would be quite an interesting experience. However, let me answer the question directly. The answer to the question is yes, the TWU could be one of those organisations. However, let me draw the member's attention also to subclause (5), which states -

A person must not coerce, or attempt to coerce, an owner-driver or group of owner-drivers -

- (a) to appoint, or not to appoint, a particular person or group of persons as a negotiating agent; or
- (b) to terminate the appointment of a negotiating agent.

That protects the owner-drivers from any coercion to appoint as a negotiating agent the TWU or any other person or body that they do not want to appoint.

Hon SIMON O'BRIEN: I am upset that clause 28(5) has been pointed out to us. I was not suggesting that anyone would try to coerce anybody. Does the parliamentary secretary think that the accountants or someone else will coerce people? What would make the parliamentary secretary think that? I never said anything about that. Perhaps the parliamentary secretary knows the TWU better than I do.

Hon Adele Farina: No, you were inferring it.

Hon SIMON O'BRIEN: Was I?

Hon Adele Farina: Yes.

Hon SIMON O'BRIEN: It is interesting. The point that I conclude on is: why is the Australian Labor Party so coy about this? Why is it not up-front about it? The TWU is. The TWU is out there demanding that this legislation go through because the TWU sees it as being in its interests. It is threatening us; it is threatening the Liberal Party. It has been for some time. It is out there, without shame, declaring war on us. I think that is the theme that we heard from the TWU.

Hon Nigel Hallett: It wouldn't coerce.

Hon SIMON O'BRIEN: No, there was no coercion, because we will not be coerced. I just think it is funny that the parliamentary secretary can be so twee as to -

Hon Paul Llewellyn: The Transport Forum is also pretty keen on this.

Hon SIMON O'BRIEN: Does the member know about the Transport Forum? The member can talk to me a bit later and I will tell him about it. It is interesting, because this is when we get to the subject of how influence comes into the process that we have here and how that influence is exercised. I think it is quite interesting to note that the proponents of this bill pretend that this has nothing to do with the TWU, when in fact it is a takeover of this part of the industry by the TWU - a reassertion, a taking back of those people who used to be truckie members of the TWU but who want to actually be independent owner-operators and do not want to be beholden to organisations. Those people are now having laws foisted on them that will probably make it inevitable that they will have to seek that sort of group negotiating, and, dare I say it, collusive contact. When we look at the factions of the Labor Party, it is interesting to see who is principally involved in all this. It would make interesting reading to go back to some maiden speeches, too. However, the government should not pretend that this clause - clause 28 in part 5 - is not about empowering the TWU to reassert itself in the transport sector, because that is exactly what this bill is all about and it is exactly what this clause is all about. Accountants my

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foot! Those ALP members who dance to the tune of the TWU delegates know exactly whose bidding they are doing. They should not accuse me of paranoia; we are the ones standing up for those who want to be independent. The opposition opposes clause 28.

Hon MURRAY CRIDDLE: In view of the fact that two other states have this type of legislation, who does the negotiating in those states for the large percentage of owner-operators?

Hon ADELE FARINA: I understand from the information provided to me by the advisers that principally the Transport Workers Union is the negotiating agent in New South Wales. The Victorian legislation has not been enacted long enough to establish that with any degree of certainty. A particular set of guideline rates and practices are applied to forest contractors, and their principal negotiating agent is a forest contractors association. I suggest that the TWU, together with other groups, also negotiate in that state. I do not have exact or concrete figures. Mainly, the Chamber of Commerce and Industry, or its equivalent, acts as a negotiating agent for the hirers.

Clause put and passed.

Clause 29: Negotiating agents for hirers -

Hon PAUL LLEWELLYN: The parliamentary secretary hinted ahead of time that there are negotiating agents for hirers. I think she intimated that it is usually the Chamber of Commerce and Industry. Are there instances of the way in which this bill will play itself out? What other kinds of agents operate on behalf of hirers? For example, if a hirer was a large company, why would it use the Chamber of Commerce and Industry? I imagine that large companies would hire their own accountants, and could afford to do so. This exposes the David and Goliath nature of the current owner-driver transport industry arrangements. I want to unpack the way in which this might happen.

Hon ADELE FARINA: As I understand it from the information that has been provided to me, large organisations, as well as smaller businesses, tend to use the services of the Chamber of Commerce and Industry. The CCI offers a range of services to its members. It is usual for its members to take up those services. One of the services that the CCI offers is to act as a negotiating agent in these sorts of circumstances. Of course a company may have an in-house negotiating agent if it is sufficiently large enough, or it may use those other negotiating agents that have been identified. Based on the extent of the information that we have, it is usual for hirers to use the CCI in these circumstances.

Progress reported and leave granted to sit again, pursuant to standing orders.