OWNER-DRIVERS (CONTRACTS AND DISPUTES) BILL 2006

Committee

Resumed from 27 March. The Chairman of Committees (Hon George Cash) in the chair; Hon Adele Farina (Parliamentary Secretary) in charge of the bill.

Clause 29: Negotiating agents for hirers -

Progress was reported after the clause had been partly considered.

Hon SIMON O'BRIEN: We are discussing the Owner-Drivers (Contracts and Disputes) Bill 2006 in committee and we have discovered a few things already. For one, I think I have worked out why the term "disputes" is in the title of the bill!

When we come to clause 29 a curious question arises. Clause 29 is part of part 5, "Negotiations for owner-driver contracts". When the bill was last before the committee we considered clause 28, "Negotiating agents for owner-drivers". Clause 29 concerns negotiating agents for hirers, which is the flip side of the coin. These are the two clauses that constitute part 5.

In hindsight I would have raised the following point when we were dealing with clause 28. If the parliamentary secretary is agreeable, we could recommit clause 28 - but she may not be. I refer to the same provision that occurs in both clauses. Clause 29(5) states -

> (5) A person must not coerce, or attempt to coerce, a hirer -
>
> (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.

We also discussed a related subject at our last sitting. However, there is one matter that we did not touch on that I would now like to raise with the parliamentary secretary. How is subclause (5) enforced? Is any offence created or is there a penalty or some other form of action against someone who infringes the subclause?

Hon ADELE FARINA: I thank the chamber for its indulgence in allowing me to consult my advisers. A person who contravenes the future act can be taken before the Road Freight Transport Industry Tribunal for contravention of the act. The tribunal has the authority and the power to impose a performance order or any other order.

Hon Simon O'Brien: Can you explain what that is?

Hon ADELE FARINA: It would be an order to either do or not do something. A failure to comply with an order under clause 51(2) will constitute a contempt and will be punishable by the Industrial Appeal Court under section 92 of the Industrial Relations Act. In this case, the Industrial Appeal Court is the Supreme Court.

Hon SIMON O'BRIEN: I thank the parliamentary secretary for that answer. I will convert what the parliamentary secretary said into my understanding of what has just been said. There is no offence with a prescribed penalty in this legislation. However, someone can be taken to the Industrial Relations Commission, sitting as the Road Freight Transport Industry Tribunal, and it may issue an order telling the person who has offended against that subclause to not coerce, continue to coerce, attempt to coerce or continue to attempt to coerce someone to do some of those things. If the person who is exercising the coercion keeps doing it, he will have failed to have complied with an order given by a tribunal. Therefore, action could be taken against that person under clause 51(2) for having committed a contempt of the Industrial Appeal Court.

Hon Adele Farina: Which is the Supreme Court.

Hon SIMON O'BRIEN: Right. That is clarified for the record. It appears that some steps in the process must be established if that is what happens. The matter would go before the Industrial Relations Commission sitting as the tribunal. Heaven only knows how much disruption would result and how much time would go by before that happened and the tribunal resolved the matter. Subsequently, if a person persisted in coercion, or exercised or sought to exercise further coercion, he would then be dealt with for breaching an order of the tribunal. How is it demonstrated, and in front of which body is it demonstrated, that a person has persisted in breaching the order? Is that determined at a second set of proceedings? Where would that matter be heard? Would it be heard in front of the tribunal again, or would it go straight to the Supreme Court sitting as the Industrial Appeal Court, for ruling on the question of whether the order had been breached?

Hon ADELE FARINA: It is clear under clause 51(2) that when a tribunal has made an order and a person has failed to comply with that order, it is taken to be a contempt and the matter will go to the Industrial Appeal Court.

Hon Simon O'Brien: How is a ruling made that someone has failed to comply with the order?

Hon ADELE FARINA: That would be made by the Supreme Court, or the Industrial Appeal Court.

Hon Simon O'Brien: Someone would then have to take proceedings to the Supreme Court, having previously taken proceedings to the tribunal and having gotten an order.

Hon ADELE FARINA: Let me correct and clarify that. Our understanding is that the tribunal would take the matter to the Supreme Court as a contempt of the tribunal's order.

Hon SIMON O'BRIEN: I thank the parliamentary secretary for clarifying that. Even so, it is not a very effective mechanism regarding the time that could, and in all practical terms would, elapse between someone commencing a pattern of activity of coercion and the matter ultimately getting to the Supreme Court. I address my remarks in particular to the crossbenches when considering the chain of events. Someone would have to set up an action or series of actions amounting to coercion or attempted coercion, and that would be either resisted or not. However, in due course, maybe - just maybe - a complaint could be made to the tribunal, which is, of course, the Industrial Relations Commission. Meanwhile, one suspects that the pattern of coercion would continue without hindrance, penalty or restraint because there is no power in the legislation to hinder, restrain or to stop it until a matter is dealt with, firstly, by the Industrial Relations Commission sitting as the tribunal and then, if the tribunal is convinced that coercion has been going on, it can issue an order to stop the coercion. It is unclear to me what a clever, well-resourced legal team might argue before the tribunal. The tribunal might not be able to issue an order because the coercion was not continuing, though, of course, it could restart as soon as the matter left the tribunal. Let us say that a matter was dealt with with as much dispatch as possible. By the time it was heard before the tribunal and dealt with and the tribunal had issued an order, presumably most of the damage would have already been done. What will happen to the perpetrator of the coercive action against clauses 28(5) or 29(5)? Nothing. Absolutely nothing. The coercion could impact on people's business and private lives by causing them substantial loss, disruption, aggravation, intimidation and fear. If a victim could withstand the coercion and other intimidation long enough and resiliently enough to take the matter to the tribunal and see it through that process - if it gets to its furthest extent - the tribunal might issue an order against the offender to not do it again, and that is it. The next time the same offender exercises coercion against another party, presumably the whole process would start again. This is a weakness. It shows the mindset of those who authored this legislation. They are not dinkum about preventing this type of behaviour. Despite clause 28, which we have already dealt with, and clause 29, it seems clear that the cards are all held by one side of the equation at the expense of another. The opposition will oppose clause 29, as it opposed clause 28, and I challenge other members of the house to do the same.

Hon ADELE FARINA: I will clarify some of the matters raised by the honourable member. Proceeding through the tribunal will be a much faster way of getting a remedy than going through the courts. With establishment of the tribunal, it is expected that the process of getting a determination on a breach of the act will be much faster than would otherwise be the case without the tribunal, in which case the application would have to be made through the District Court, and we are all well aware of the long waiting times in the District Court. In fact, I am advised that one would be able to get a hearing in the tribunal almost overnight on a matter of a breach of the act. We are not looking at people waiting for long periods for determinations to be made. In addition, if a threat is made through that coercion, action could be taken under the Criminal Code, under which it is an offence to threaten someone. There may be other aspects in which the Criminal Code would come into play; I do not have a copy in front of me at the moment to refresh my memory. There would certainly be opportunities in some circumstances to look to the Criminal Code for remedy. I have in front of me section 92 of the Industrial Relations Act, which I will read out for the honourable member, because it may help allay some of his concerns. It reads -

> (1) The Court has the same power to punish contempts of its power and authority as has the Supreme Court in respect of contempts of Court, and without prejudicing the generality of the power, where the Court considers that a contempt may be appropriately punished by a fine, it may inflict a fine.
>
> (2) A person who counsels, procures, aids, abets, instigates, or incites a contempt of the Court is deemed to have committed a contempt and shall be punishable accordingly.
>
> (3) A person who by act or omission contravenes an order made by the Court in exercise of authority conferred by this Act commits a contempt of the Court.
>
> (4) The President, in the exercise of the jurisdiction conferred on him by this Act and when presiding on the Full Bench or sitting or acting alone, has and may exercise like powers as are conferred on the Court by this section.

The Supreme Court would be able to exercise quite extensive powers where there is a contempt of an order made by the tribunal. Through the establishment of the tribunal, we are facilitating the quicker resolution and

determination of matters where there is a contravention of the act. Some of the concerns raised by the honourable member about delays would certainly be the case if the only means for remedy were an application through the District Court. However, I expect that some matters may be able to come before the tribunal overnight when necessary and appropriate.

Hon MURRAY CRIDDLE: In respect of clause 29, I refer to part 7, which deals with inspectors. Are the inspectors allowed to intervene in a case where there is a dispute; and, if so, does that not pull into the equation section 83E of the Industrial Relations Act? Can it be dealt with by that section? If so, it would be an expeditious way of dealing with the issue.

Hon ADELE FARINA: Very briefly, the honourable member is correct. Inspectors could certainly deal with the matter, and it would bring in section 83E of the Industrial Relations Act under those provisions. It is also possible for a party that is being coerced to seek an injunction before the Supreme Court.

Hon SIMON O'BRIEN: I will make some observations, and then we must deal with this matter one way or the other and move on. I make the observation again that this bill, ostensibly about transport matters, is essentially about industrial relations matters. That adds any further weight that might have been necessary to my earlier claims that the conduct of normal negotiations between contractors and hirers is now being imposed upon by an unnecessary third party, and that we are moving, through this bill, to a complete displacement of the empowerment of independent owner-operators by moving this to an industrial relations environment in which certain union powerbrokers will be pre-eminent.

In responding to the comments of the parliamentary secretary, I accept the information she provided that if the tribunal makes an order and that order is breached, the tribunal may seek to have that breach remedied by referring the matter, effectively, to the Supreme Court. What concerns me, however, is that we started out from a case of two parties - the transport contractor on the one hand and someone needing to hire road freight services on the other - coming together to establish a contract to get some goods delivered from A to B. That sort of thing should happen all the time, and does happen all the time. It is not necessary for some third party to determine the parameters of the negotiations. In attempting to apply the system this bill proposes, we end up with the sort of dilemma that is being highlighted now. We would involve industrial relations commissions, tribunals, inspectors, industrial appeal courts and all the rest in what should be a civil matter between two parties who want to do business with each other.

The point has been made that there will be a capacity for coercion or attempted coercion. If a person makes a complaint to the tribunal and persists with it, while suffering the impositions that go with it, and if the tribunal upholds the complaint - if the matter can be dealt with overnight, that would be a very good service indeed, but we will see about that - the penalty for the person doing the coercing is absolutely nothing; not even a slap on the wrist with the proverbial wet bus ticket or SmartRider card as they have these days. It just shows what a load of window-dressing part 5 of the bill is, in providing that people are not allowed to coerce or attempt to coerce any owner-driver or hirer. It is a complete fabrication, but at the same time it admits that this bill well and truly sets up a field of play in which coercion and other unsavoury and unnecessary practices will be encouraged. That is another reason I give for our opposition to this provision and to the bill as a whole.

Clause put and a division taken with the following result -

Ayes (15)

Hon Matt Benson-Lidholm	Hon Kate Doust	Hon Paul Llewellyn	Hon Ken Travers
Hon Vincent Catania	Hon Sue Ellery	Hon Sheila Mills	Hon Giz Watson
Hon Kim Chance	Hon Adele Farina	Hon Ljiljanna Ravlich	Hon Ed Dermer *(Teller)*
Hon Murray Criddle	Hon Jon Ford	Hon Sally Talbot	

Noes (12)

Hon George Cash	Hon Nigel Hallett	Hon Robyn McSweeney	Hon Margaret Rowe
Hon Peter Collier	Hon Ray Halligan	Hon Norman Moore	Hon Barbara Scott
Hon Donna Faragher	Hon Barry House	Hon Simon O'Brien	Hon Ken Baston *(Teller)*

Pairs

Hon Shelley Archer	Hon Bruce Donaldson
Hon Graham Giffard	Hon Anthony Fels
Hon Louise Pratt	Hon Helen Morton

Clause thus passed.

Clauses 30 and 31 put and passed.

Clause 32: Functions of inspectors -

Hon SIMON O'BRIEN: For the record, I inquire of the government whether the powers available to industrial inspectors by virtue of clause 32 include powers to obtain information, such as the requirement for answers to be given or for the production of documents and the like.

Hon ADELE FARINA: The inspectors are able to ask questions of individuals, but they do not have the power to compel an individual to answer. With respect to documents, inspectors can request only those documents that are specifically identified in the act or the code of conduct.

Hon SIMON O'BRIEN: The opposition will oppose this clause, but we will not seek to divide. I rise to advise the chamber for the record that the opposition opposes this clause, and to make the observation that once again, in a matter of commercial interaction between two parties, we now have a compulsory application of industrial relations inspectors who can go into people's premises to seek access to their documents and to ask them questions. That should not be happening, and it is about to happen under the Carpenter government. The opposition is opposed to that.

Clause put and passed.

Clause 33 put and passed.

Clause 34: Access to records -

Hon SIMON O'BRIEN: I want to get this straight. Subclause (1) states -

> In this section -
>
> **"relevant person"** means -
>
> (a) the owner-driver concerned; or
>
> (b) a person authorised in writing by the owner-driver to act on behalf of the owner-driver for the purposes of this section.

Does paragraph (b) mean that we are probably talking about a Transport Workers Union representative?

Hon ADELE FARINA: In brief, the answer to that question is if owner-drivers have appointed the TWU as their agent, obviously it will include the TWU. I am not sure whether the member is suggesting that we should not give owner-drivers the right to authorise whomever they want to act on their behalf, or that we should discriminate and exclude the TWU from being one of the parties that owner-drivers can authorise to act on their behalf.

Hon SIMON O'BRIEN: I am not suggesting for one moment that owner-drivers should not be able to get the TWU to provide a person under this clause to act on their behalf. After all, that is the whole point of this bill! The whole point of this bill is to enable that to happen. Therefore, that is a bit of a silly question that has been shot back at me. This is the TWU enabling bill! This is the bill that the government has brought into the Parliament, at the behest of certain powerbrokers, to enable them to retake in the transport industry the control that they perceived they had lost. So no, I do not think it is unlikely that the TWU will be exercising this power. I just wanted to see whether the parliamentary secretary could bring herself to admit it. It is obvious who a "relevant person" is. This bill will give that relevant person - who may, if the minister wants to continue to be twee about it, be a TWU representative - certain powers that that person should not be given. An arrangement that has been entered into between a contractor and a hirer should not be an industrial relations matter; that is, not unless the agenda is to prevent independent operators from being independent operators and to return them, by way of the mechanisms that I described earlier, to the status of employees who, in this highly unionised industry, are likely to be covered by the TWU. In a normal commercial relationship between two parties, we do not need the government to put in a third party that will dictate to those other two parties how they should conduct their affairs. It is clear that this right of entry, inspection and access to records will be made available to the TWU. I do not think that right should be made available to the TWU. I think it will be misused. We have seen precedent for this in the term of the Gallop, and now the Carpenter, Labor government, because this sort of

power has been given to unions in other sectors, and the unions have run amok and have abused those powers, yet the government has done two-thirds of diddly-squat about it! That is why this issue is worth raising. That is why this clause is worth highlighting. That is why we will be opposing this clause.

Hon ADELE FARINA: It is important that I put on the record that the reason this provision has been included in the legislation is that owner-drivers are being denied access to their own records.

Hon Simon O'Brien: How can they be denied access to their own records?

Hon ADELE FARINA: I do not necessarily disagree with Hon Simon O'Brien, because, as Hon Simon O'Brien has said, if there is a normal commercial relationship between the two parties, we should not need this provision. However, if there is an imbalance of power between the two parties, one party may deny the other party in the relationship access to its own records. The honourable member also ignores the fact that if the hirers are members of the CCI, they have access to the services of the CCC. Those services are extensive. They include legal advice. In reality, this provision is just seeking to address the imbalance that exists in the system.

Hon SIMON O'BRIEN: I can see that the parliamentary secretary is keen to keep this debate going. I do not know what the government has against the Chamber of Commerce and Industry. The CCI keeps coming up as the go-to organisation of choice that the government wants to treat as a class enemy. I am not a member, or necessarily a fan, of the CCI; it is just part of the landscape. However, when a member of the CCI seeks from that body some professional assistance in working through a contracting matter, or in dealing with non-payment or the non-provision of services, the CCI does not send its operatives to enter premises whenever they like and to demand access to documents. The CCI does not demand that its members blockade the place and generally hold a gun to people's heads, as the TWU did to the Labor Government in 2004 when it said that if the government did not bring in this legislation, it would blockade it on the eve of an election. The CCI, at least as far as I am aware, does not behave in that way. The TWU, to which so many members opposite owe their seats, and their factional allegiance, does behave in that way.

Hon Kim Chance: You really have a problem with this, haven't you!

Hon SIMON O'BRIEN: Yes, I have. I have a problem with the Leader of the House when he tries to put these sorts of factional interests ahead of the interests of the economy of Western Australia, and when he tries to impose this legislation on would-be independent owner-operators who want to run on their own but under this legislation will not be allowed to do so any more. That is what I have an objection to.

Hon Kim Chance: Were you frightened by a truck when you were young?

Hon SIMON O'BRIEN: No. I am not frightened by trucks. What is the Leader of the House frightened of?

The CHAIRMAN (Hon George Cash): Order! Let us move along on clause 34, members.

Hon SIMON O'BRIEN: I am not frightened by the Leader of the House's union mates, either - the ones who send out written messages about how they are declaring war on the Liberal Party, and me in particular, and who talk about heads being kicked in and all the rest of it. I am not intimidated by that.

Hon Kim Chance: Good!

Hon SIMON O'BRIEN: Is the Leader of the House happy about that?

Hon Kim Chance: I am so happy!

The CHAIRMAN: Order! Let us move on to clause 34.

Hon SIMON O'BRIEN: Clause 34 deals with providing access to records. That can be defended on some occasions. However, that is not the intent of this clause, and neither is it the intent of clause 35. The intent of clauses 34 and 35 is to give additional power to a few of the government's union mates who are pulling the government's strings on this issue. If the Leader of the House wants to be awfully big, brave and grown-up about it, perhaps he would just admit that.

The CHAIRMAN: Order, member! I have asked the Leader of the House not to interject, so do not bring him back into the debate, please.

Hon SIMON O'BRIEN: Anyway, we will be opposing the clause.

Hon PAUL LLEWELLYN: I would like some clarification on subclause (5), which states -

> A contravention of subsection (2) is not an offence but that subsection is a civil penalty provision for the purposes of the IR Act section 83E.

Can the parliamentary secretary tell me what are the associated penalties?

Hon ADELE FARINA: Section 83E of the Industrial Relations Act 1979 provides that if a person contravenes a civil penalty provision, a penalty may be imposed not exceeding, in the case of an employer, organisation or association, $5 000 and in any other case $1 000.

Clause put and passed.

Clause 35: Right of entry by representative to investigate breaches -

Hon SIMON O'BRIEN: I pause on this clause simply for the purpose of stating for the record that the opposition is similarly opposed to these provisions. We believe that they have the capacity to be abused and, indeed, will be abused.

Clause put and passed.

Clauses 36 and 37 put and passed.

Clause 38: Industrial Relations Commission sitting as the Road Freight Transport Industry Tribunal -

Hon SIMON O'BRIEN: I do not want to spend long on this clause, although if I am interjected on, I can probably string it out a bit.

The CHAIRMAN: I will try to avoid that then!

Hon SIMON O'BRIEN: All right. I first highlighted this clause in my notes because it struck me that this is the part of the bill that I find most remarkable in that the bill is meant to come under the transport or planning and infrastructure portfolio, yet this clause clearly makes it an industrial relations matter. Why is the government putting this bill forward as a transport matter when it is clearly an industrial relations issue?

Hon ADELE FARINA: The legislation covers employers and independent contractors. This is not the first time that the Industrial Relations Commission has been used to provide advice to, or govern relations between, employers and independent contractors, which are effectively issues related to the workplace. Certainly, occupational health and safety is a factor in point in that the Industrial Relations Commission sits as the Occupational Safety and Health Tribunal. I do not understand the member's concerns about that.

Clause put and passed.

Clause 39 put and passed.

Clause 40: Persons who may refer disputes and matters to the Tribunal -

Hon SIMON O'BRIEN: Clause 40 has a curious structure. It might just be the setting out. The clause does not have any subclauses; it simply has three paragraphs, which is slightly unusual. I am not sure how to describe it. However, I will draw attention to some matters. The clause states -

> A dispute or matter may be referred to the Tribunal -
>
> (a) in the case of a dispute arising under or in relation to an owner-driver contract, by -
>
> (i) a person who is a party to the owner-driver contract; or

At least we can be thankful for some small mercies -

> (ii) a transport association in which a party to the owner-driver contract is eligible to be enrolled as a member; or
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> (iii) an inspector; or
>
> (iv) the Minister;
>
> and
>
> (b) in the case of a dispute arising under or in relation to this Act or the code of conduct, or involving an allegation that a person has contravened this Act or the code of conduct, by -
>
> (i) an owner-driver or hirer with a sufficient interest in the dispute; or
>
> (ii) a transport association; or
>
> (iii) except in a case involving an allegation that a person has contravened Part 6 - an inspector; or
>
> (iv) the Minister;
>
> and
>
> (c) in the case of a matter arising in relation to the conduct of joint negotiations for an owner-driver contract by -

(i) an owner-driver or hirer with a sufficient interest in the matter; or

(ii) a transport association; or

(iii) the Minister.

That is the extent of the parties that can refer a dispute or matter to the tribunal. It says so in black and white. We also must take note of the definition of "transport association". The term is defined in clause 37 and states -

"transport association" means -

(a) the Transport Forum WA Inc.; . . .

What an unfortunate name - "WA Inc". I had not noticed that, but I digress -

(b) the Transport Workers Union of Australia, Industrial Union of Workers Western Australian Branch.

I acknowledge that those two organisations alone are transport associations, and no-one else. A "transport association" means either of those organisations. It does not just include them; it is limited to them. Why is that so? What would happen if a transport association, with its simple meaning, were not one of those two organisations that fall under the formal definition? Why would another transport association, which might have a huge interest in some of the matters that are in dispute or might come before the tribunal, not have the same standing and, indeed, not have any capacity to refer matters to the tribunal?

Hon ADELE FARINA: The legislation does not preclude owner-drivers and hirers from making an application or bringing a dispute before the tribunal - in fact, it specifically allows for that - and nor does it prohibit hirers or owner-drivers from engaging a lawyer as their agent for bringing an action, but the action would be brought in the name of that particular hirer or owner-driver. Naming the Transport Workers Union and the Transport Forum WA will help deal with the situation of multiple owner-drivers who may bring an action. Rather than list all of them or only one of them, it will enable them to have the action brought in the name of the association.

Hon Simon O'Brien: Why give a definition for "transport association" that is restricted to these two organisations? Why not just say "transport association" full stop?

Hon ADELE FARINA: It is because they are the two established peak bodies that currently represent owners.

Hon SIMON O'BRIEN: Is there not a long-distance haulers association? Are there no other associations? Could not other transport associations come into existence? I do not know. I know of some that would fit the description of "transport association", and they are not the Transport Forum and certainly not the Transport Workers Union. Why is it restricted to these two associations? That is the situation; they are restricted to these two associations.

Hon ADELE FARINA: The government has identified those two bodies because they are long-established, formal bodies that have represented owner-drivers for a considerable time. Other associations are formed from time to time, some of which are informal in nature.

Hon Simon O'Brien: Why should they be cut out?

Hon ADELE FARINA: Only a formal body can take legal action.

Hon Simon O'Brien: Formal bodies might be cut out.

Hon ADELE FARINA: They come and go from time to time. If we were to put that sort of provision in the legislation, we would be constantly amending the legislation whenever one body was established and another ceased to exist. It would create a situation that would be too onerous to deal with. There are two long-established bodies that represent owner-drivers.

Hon SIMON O'BRIEN: When was the Transport Forum WA established? By what name was it known before then? If the Transport Forum WA decides to change its name next week, does that mean that it will no longer be included in this definition?

Hon Adele Farina: I think we are dealing in the realm of hypotheticals, as there could be a thousand and one permutations. Clearly, if the Transport Forum were to change its name within its constitution, being aware of the provisions of the legislation, it could retain its former name, provided there was a change of name for the purposes of the application of this act. That is one option. Another option would be to amend the legislation. Clearly with this legislation in place and with the Transport Forum being specifically identified, the likelihood of it seeking to change its name in those circumstances is hypothetical.

Hon SIMON O'BRIEN: Let me tell the parliamentary secretary something that is not hypothetical. The provisions in black and white on the pages of this bill are not hypothetical; they will become law. I want to

know why every group or association, every legal entity that represents people in the transport industry that may well have been established for a long time or a relatively short time, is precluded from taking matters to the government's precious little tribunal unless it happens to be the TWU or the Transport Forum. The parliamentary secretary cannot tell me that. There is no good reason. This is simply a closed shop. I would like to ask members about that. I know that Hon Murray Criddle would be very interested to know why organisations whose members will be subject to these provisions in the bill will not be able to take matters to the tribunal, such as the livestock association. I do not know the exact name offhand.

Hon Kim Chance: The Australian Livestock Transporters Association.

Hon SIMON O'BRIEN: I thank the Leader of the House for that; the Australian Livestock Transporters Association.

Hon Kim Chance: It is a member of the Transport Forum.

Hon SIMON O'BRIEN: What happens if it ceases to be a member? The Leader of the House is telling me that it is a member, and I accept that.

Hon Kim Chance: I believe it is.

Hon SIMON O'BRIEN: The Leader of the House believes the Australian Livestock Transporters Association is a member of the Transport Forum. For the purpose of the exercise let us say it is. What if it leaves the Transport Forum? What if it is not a member of the Transport Forum, either because it has not ever been or chooses to sever that affiliation? Why should that association not be able to raise matters with the tribunal when those other two bodies can? It does not seem right. I do not know offhand if the Livestock Transporters Association is a member of the Transport Forum; if it is, that is fine. It may not be a member. There could be other similar bodies that may or may not be members of the Transport Forum and they may well, like the Livestock Transporters Association, use long-haul vehicles that are considerably more than 4.5 tonnes GVM. The definition that restricts what a transport association is is only there to preclude organisations other than the Transport Forum, with which I have a good working relationship I might add, and the Transport Workers Union, with which I am yet to establish a close working relationship. If an organisation is not one of those two, it cannot be involved. Why does an organisation like the Livestock Transporters Association or a similar body have to be affiliated with the Transport Forum or the TWU to get representation? The government has no answer to that apart from the fact that it just does not want it; it wants to restrict it. I make the point and I do not want to go on about it unless the government does. It seems to me to be very, very unfair.

Hon PAUL LLEWELLYN: I have listened to the arguments and I wonder whether the parliamentary secretary can tell me whether there is any good reason we could not expand the definition to include any other organisation that represents the transport industry.

Hon ADELE FARINA: With respect to the issue of representation raised by Hon Simon O'Brien and Hon Paul Llewellyn, section 27 of the Industrial Relations Act permits the intervention on such terms as the Industrial Relations Commission thinks fit of any person who, in the opinion of the commission, has a sufficient interest in a matter. We are not completely excluding other people who may have an interest in a matter from intervening in a case when a dispute is ongoing.

As I have stated previously, the government has specifically named the two bodies because they are the two main bodies dealing with and representing owner-drivers, and this bill is targeted to deal with the owner-driver industry.

Clause put and passed.

Clause 41: Intervention in proceeding -

Hon MURRAY CRIDDLE: This clause deals with the minister intervening on behalf of the state by the leave of the tribunal. I understand that is for issues such as a confrontation or something like that. I wonder why there has to be leave of the tribunal for that to happen. From my point of view, if the tribunal was effective, it should be able to deal with an issue. If we got to such a situation, I wonder why the minister could not fix the problem without having to intervene with the leave of the tribunal.

Hon ADELE FARINA: The minister would not be precluded from trying to resolve a dispute. This provision deals specifically with when a matter is before the tribunal. If a matter was not before the tribunal, the minister could talk to the parties and try to get them to come to an agreement on the matter in dispute. This provision deals specifically with matters before the tribunal and it is a courtesy that the leave of the tribunal is sought. It reflects the independence of the tribunal and the separation of powers.

Hon MURRAY CRIDDLE: As such, is it not the case that the minister must seek leave before he can intervene given that there is a dispute? I do not understand the necessity for having the tribunal's consent because the

minister can go to the parties normally if the tribunal is not involved. What is the need for the tribunal if the minister can do it without consent, but he then has to get consent if there is a real problem?

Hon ADELE FARINA: I will try to explain this again and make myself a little clearer. This provision deals with the situation when a matter is in the tribunal. The minister cannot just roll into the tribunal and say that he is taking over the resolution of the matter. By seeking leave, the minister may be able to make a submission to the tribunal. It does not require the minister to have leave of the tribunal to have discussions towards resolving matters outside the tribunal hearing.

Clause put and passed.

Clauses 42 to 47 put and passed.

Clause 48: Order to prevent entering into of owner-driver contracts -

Hon SIMON O'BRIEN: Can the parliamentary secretary tell the committee what this clause is for and the sort of situation in which it would be employed?

Hon ADELE FARINA: A clear example when this provision would be used is in the case of misleading advertising which, I understand, is a fairly significant and serious problem in the industry.

I will read an extract from the Victorian "Owner Drivers and Forestry Contractors Code of Practice", which deals with the issue of misleading advertising and provides an example. It states -

> John sees an advertisement in the local paper that says drivers will "earn in excess of $1500 per week". John starts work, but then finds out from the other drivers that their average gross income for the last year has been less than $900, and that no-one has ever managed to earn more than $1200 a week. John could notify a dispute to the Small Business Commissioner over this breach of the code.

This provision deals with those types of situations. Misleading advertising is a common situation.

Clause put and passed.

Clauses 49 to 51 put and passed.

Clause 52: Trade Practices Act and Competition Code -

Hon SIMON O'BRIEN: I want members to understand what they are approving when they consider this clause. It is well within the power of the Parliament to enact this clause, which provides that for the purposes of this proposed law, or for certain aspects and things authorised by this proposed law, the commonwealth Trade Practices Act 1974 and the Competition Code do not apply. The clause lists those particular purposes, some of which are very specific, such as the making of a code of conduct, and others of which are references to a class of activity, such as things done in the course of negotiations and so on. The effect of this clause is that the Trade Practices Act and Competition Code do not apply or are suspended for the purposes of this proposed law becoming an act. If clause 52 did not exist, there could be a problem because the types of things that are listed as being authorised are not allowed under the Trade Practices Act 1974. I want members to understand that the government is proposing to suspend the provisions of the Trade Practices Act and the Competition Code to enact this legislation. If this clause did not exist and if we did not agree to it, many of the provisions of this bill that we have been considering this short while would in fact be unlawful. They would conflict with the relevant commonwealth legislation and they could be struck down, or it could be demonstrated that they are beyond the power of this legislature to sustain. There may be occasions when it is legitimate to suspend the application of the Trade Practices Act for certain legislative purposes. The power to do that is contained in that act because there are reasons that some practices must be exempted from otherwise being caught by the Trade Practices Act. No doubt the government would argue that it is perfectly justified in doing that in this case. However, the Trade Practices Act and Competition Code could otherwise forbid many things that this government is trying to pass through this legislature in this bill. Therefore, we will oppose it. I do not know whether the government wishes to respond to why it is scared of the Trade Practices Act, but that is a matter for the government.

Hon ADELE FARINA: The government is not running scared of the Trade Practices Act. The Trade Practices Act does not deal directly with owner-drivers and the provisions that are covered in this legislation. Clause 52 is similar to a section in similar legislation in Victoria. It is necessary to avoid the possible conflicts that might arise. We have discussed this matter in detail previously and I do not know whether I can add much more to what has already been said. A number of acts include provisions to exempt certain things from the provisions of the Trade Practices Act, including the Electricity Corporations Act 2005, the Electricity Industry Act 2004, the Energy Coordination Act 1994 and the Grain Marketing Act 2002. This is neither an unusual practice nor an indication that the government is running scared of anything.

Hon RAY HALLIGAN: I ask the parliamentary secretary to provide an explanation about clause 52(2) regarding the definition of a single business as any and all businesses, whether they be individuals, partnerships or corporations. The clause states -

> (2) For the purposes of this section -
>
> (a) a **"single business"** is a business, project or undertaking that is carried on by one hirer; and
>
> (b) if 2 or more hirers carry on a business, project or undertaking as a joint venture or common enterprise, the hirers are taken to be one hirer; and
>
> (c) if 2 or more corporations that are related to each other for the purposes of the *Corporations Act 2001* of the Commonwealth each carry on a single business -
>
> (i) the corporations are to be treated as one hirer; and
>
> (ii) the single businesses are to be treated as one single business.

Obviously there is a reason for that. It seems that other parts of the bill refer to a single business. The government is throwing out a net to catch all businesses, whether they be a project or undertaking by one hirer or a number of them as individuals, or in fact two or more corporations. They will all be considered as single businesses. It seems to me that other parts of the bill must make reference to single businesses and now the government must define it and is calling a business a single business when it is not.

Hon ADELE FARINA: Clause 52(2) restricts that set of definitions for the purposes of this clause only.

Clause put and passed.

Clauses 53 and 54 put and passed.

Clause 55: Protection from liability -

Hon SIMON O'BRIEN: What is the purpose of this clause, why is it required, and what would be the problem if it were not included?

Hon ADELE FARINA: This provision is similar to provisions that are fairly standard in all legislation. Fundamentally, it seeks to protect from any tortious legal action people who are in good faith doing acts in accordance with the performance of their obligations and requirements under this piece of legislation.

Clause put and passed.

Clauses 56 to 59 put and passed.

Schedules 1 to 3 put and passed.

Title put and passed.

Bill reported, with amendments.