

OWNER-DRIVERS (CONTRACTS AND DISPUTES) AMENDMENT BILL 2022

Second Reading

Resumed from 30 August.

HON NEIL THOMSON (Mining and Pastoral) [5.07 pm]: I rise on behalf of the opposition as lead speaker on the Owner-Drivers (Contracts and Disputes) Amendment Bill 2022. Before I begin my contribution to the second reading debate, I would like to say that the opposition will support this bill. In saying that, there will be some questions that will need some interrogation. I think it is incumbent upon us in opposition to make sure that those questions are asked and that a little detail be given. I would like more of a case to be outlined.

There has obviously been some evolution in the development of the Owner-Drivers (Contracts and Disputes) Act 2007. There has been fairly active management of that and I think it is timely to get an update on how effective it has been, noting that there are some amendments to that act that are now being considered. I think they are fairly minimal in terms of their impact. I do not think they are particularly onerous or will impact too much on the operation of the industry. Certainly, from my discussions with the Western Roads Federation and the consultation that has been undertaken with the Transport Workers' Union, there is an element of bipartisan support for the changes, and that is probably the main reason we do not feel we should be standing in the way of this reform. We are certainly not going to oppose it; we are here to support it. We hope that in the next hour or so we can get to a point of a bit more clarification around the impacts of some of these changes and the scope of the problems that we have.

In summary, the amendments, which have been outlined in the second reading speech, will include minimum notice periods for termination. For contracts of greater than three months, there will be a 90-day minimum termination notice period or payment in lieu of such notice. For contracts of less than three months, there will be a seven-day minimum termination notice period. There is a description of “unfair” and “unjust” contract divisions. During the Committee of the Whole House stage, which I put the parliamentary secretary on notice for, we will consider some of those “unfair” terms, how that will operate and how it will provide that such conduct could be a matter that the Road Freight Transport Industry Tribunal considers when making determinations on unconscionable conduct. I certainly would be interested in having some discussion around that during the Committee of the Whole stage. The second reading speech continues —

Misleading and deceptive conduct: The notion of misleading and deceptive conduct is now well established ... The act will now align with those areas, as such behaviour will be specifically prohibited.

There is probably a slightly more controversial issue, but I am assured by the body representing the hirers that it is not seen as a major issue. It is good to see the industry trying to collaborate on the matter of the right of entry into a workplace to investigate and obtain records if need be. There is already a code of conduct that outlines the records that need to be maintained. I am interested in cases that the tribunal might have considered, whether there have been any problems in obtaining information and whether that has been a very common occurrence. The extent to which this is a priority was at the heart of my thoughts and consideration when preparing for this debate. Whether it is or is not passing any kind of judgement. If it is an issue, as I said, the opposition is supportive. We understand that this industry is very important and that also because of the structure of the industry, it needs a level of protection. There is a level of bipartisanship among hirers and subcontractors, or owner-drivers, in making sure the industry works well and there is a degree of satisfaction. Maybe the more cavalier practices that might have occurred in the past are not occurring because it is in everybody's interest to ensure that the owner-driver sector, and the transport sector generally, particularly the haulage sector—we are talking about heavy vehicles over 4.5 tonnes—are operating in a way that is cohesive and fair. On that point, a comment was made in the second reading speech about an extension of the act in the future, flagging the idea that there potentially might be a reduction of that limit. I assume that is a reduction; it does not actually say that, but it states that the limitation of 4.5 tonnes may be examined in the future, but certainly for the heavy haulage and the subcontracting sector, it is important that it operates well.

The other aspect of course is discrimination, which will be identified as a form of unconscionable conduct under the act. There is some clarification that noncompliance with guidelines will be a relevant factor in the Road Freight Transport Industry Tribunal determining whether there have been unconscionable dealings. Even though I was assured in the briefing that this was already the practice of the tribunal, I guess the legislation is catching up to some extent with the practice and effectively making it so. There will be some administrative changes as well, and I understand the peak body that represents the hirers, which used to be referred to as the Transport Forum, is now operated by the Western Roads Federation. There is some catch-up in the legislation there as well.

Before I go on to more general discussion around the industry and some of the needs of the industry, I want to point out the situation on the ground now, which was probably not explained in any real detail. I would be happy for the government to elaborate on this, but I understand the extent to which the industry has been managed relatively well so far under the current act and with the disputes mechanism in place. Certainly, the Department of Transport

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

has information on it and the *Western Australian owner-drivers: Information booklet* that outlines a number of factors that I will identify and discuss in a little more detail. Also, the transport.wa.gov.au website is fairly comprehensive for owner–drivers. It contains an overview of the act, whom it applies to et cetera and definitions of an owner–driver.

This act has been in place since 2007 and was part of a broader set of industry reforms that occurred in the 1990s when we were seeing some quite unsafe practices occurring across the industry. We saw some fairly high profile cases, particularly in the eastern states, with road crashes that involved drivers not managing fatigue appropriately and the pressure that owner–drivers felt because of the challenges they were facing regarding their viable businesses. This was a major issue. Those reforms were welcomed and we have seen an improvement. This is a difficult industry. Western Australia has something in the order of 7 000 registered heavy vehicles. I stand corrected on that number—it was a number advised to me. A lot of vehicles are not part of the owner–driver fleet, but we also know of complex arrangements that exist with the major trucking companies' vehicles.

We can sometimes get into situations in which several tiers of subcontracting occur because of particular needs, as is the case in Western Australia at the moment when there is pressure on labour and logistics. The industry is under pressure. Someone might be cashed up after working in a job, so they purchase a vehicle. They get into the industry and try to deliver goods, effectively working as a subcontractor, but they may need to go down the system one, two or three tiers before they get work. The margins in transport are fine. We know that that issue was a major contributor to some of the safety and maintenance challenges that we have seen in the industry, making sure that vehicles are properly maintained and people adhere to the standards relating to fatigue management and do the right thing in the industry. During the 2000s, there were concerns around the high-profile incidents involving vehicles and also a general desire to see a greater safety record and fairness in the industry. We saw the introduction of not only fatigue management requirements in the industry, but also safe sustainable rates for our vehicles. Those safe rates were useful for me during my past consultant work before I came into Parliament because they provided guidance on some of the costs and growth margins that operators normally operate within. There is this fairly broad understanding in the industry. It comes down to the question of adherence and the degree to which those rates and other conditions are properly managed in the contracts that people sign and operate within.

National standards have been applied across Australia. Western Australia still sits outside the Heavy Vehicle National Law. Western Australia has certain requirements that have been negotiated. I understand why that is the case, particularly given the huge distances we travel. Some of the fatigue management matters were tailored for the Western Australian system. I think it is right that we have not necessarily slavishly followed the national standards but have, in the main, followed the spirit of those standards. We operate in a way that has ensured our safety record remains reasonable, and no doubt it is improving as we see the industry operating and continuing to strive for better practice.

I suppose it comes back to the question of whether this bill actually changes anything. I have mulled over and considered that question during preparation for my second reading contribution to this debate. Sometimes we can make legislative changes that do not necessarily have a big impact. Black-letter laws do not necessarily change anything in the industry. The strongest changes occur when we see a bit of engagement with the department and the regulators, the Transport Workers' Union of Australia and the peak bodies for the hirers. That is an ongoing process. As I said, good information is available. I have familiarised myself with the information that is available on the Department of Transport's website. Earlier, I mentioned the *Western Australian owner-drivers information booklet*. If we look at that booklet without looking at the changes that will be made to the law, we would expect that the industry would operate reasonably well. It is incumbent on the government to explain what changes will be made and put on notice those changes for the parliamentary secretary. When we move to this new regime or when the law is promulgated, to what extent will we have to alter or amend the *Western Australian owner-drivers information booklet*? There are certainly a lot of similarities in this document and the legislation. There was certainly an intent to provide a level of protection and a level of consistency. My point is that there appears to be an incremental change. I think a reasonable level of good practice is certainly outlined in the owner–drivers information booklet, including explanations of contracts and other agreements that cannot exclude, modify or restrict operation of the act or the code of conduct. It outlines the role of the Road Freight Transport Industry Tribunal and the importance of good faith negotiations, which I think is important. It would appear that that is already occurring.

I have been told that there is a lot of pressure in the industry, and some smaller operators might introduce contracts fairly quickly to try to get a result. I suppose the challenge going forward with some of the other provisions in the amended legislation is the extent to which we may over-solve the problem if those arrangements that are already in place, albeit under a level of commercial pressure, achieve a result that is fair and what degree of satisfaction there is in the industry. Given that we have this legislation before us today, we have to assume that there is some dissatisfaction in the industry. I would be interested to hear a little more about that, maybe during Committee of the Whole.

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

As I said, there are a considerable number of provisions in the booklet that align to the existing act. For example, in relation to records, there are requirements for a hirer to ensure that information is recorded in each owner–driver contract of which the hirer is a party. There is a very stepped-out process of what is required to be retained. Also in the booklet is the need for access to records. Another section outlines “unconscionable conduct” in detail when dealing with disputes, for example. In drawing people’s attention to this booklet and the current practices underway, we already have an active process on foot. The question is to what extent and how well is that process operating. The other question is to what extent will this bill potentially raise any issues that might not be necessary.

I particularly raise the issue of access to premises. As I said earlier, there does not appear to be any pushback from the hirers. It may just be the case that hirers do not believe there will be much cause for an officer from the Transport Workers’ Union, the representative body, to have to rock up to a premises and effectively demand records. I am not passing judgement in saying that. I am just asking whether this reasonably onerous provision would have been of help in the past, between 2007 and now. I know that there are some restrictions on the scope of those investigations. By the way, I was given some reassurance about that in the briefings that were provided by the Department of Transport. I put on the record that I appreciate that the Department of Transport, through the minister’s office, provided a briefing to me and other opposition members. That was a question that we did ask. That question is only fair when we are creating a law that will effectively allow someone to enter another person’s premises and force a search of records. That is quite an invasive power—that is not the right word, but members know what I am talking about. It is a heavy power. The question is to what extent has that ever been required. We have had the handbook since 2007. The tribunal has also been operating since 2007. Again, I am not an expert on how often the tribunal has to arbitrate on particular matters and whether it is a rare event, such as one in a hundred. That probably is the reason that we are supporting this bill. The industry seems to be comfortable with this bill. It does not seem to be particularly upset. The hirers are not providing information that they want to stand in the trenches on this bill. The overall objectives of fairness and safety are very important. The overall objective of transparency on these provisions is also very important. We are supporting the legislation.

I guess the other point that ties together hirers and owner–drivers is that they have a very close relationship. They are totally dependent on each other. Owner–drivers play a key role in our transport industry. They fill the gap when the large transport companies are not able to be as agile in fulfilling that logistics task, which is ever growing in Western Australia and expanding into a range of very important fields. We want the industry to operate safely. We also want it to operate around the chain of responsibility. One of the discussions during the genesis of this legislation was the importance of the chain of responsibility all the way along the transport sector. If something happens on the road that affects the health and safety of a subcontractor, it is not just the subcontractor that is responsible. It is important also for hirers that there is a level of consistency across the industry. I certainly understand that reputable companies do not want to see the undesirable practices that occurred previously. I have mentioned fatigue management. That is a vital part of managing this industry.

We understand the role of the Transport Workers’ Union. From my understanding, at this stage that is the only registered body that will be involved on behalf of owner–drivers. We also recognise the Australian Road Transport Industry Organisation, which is effectively the union of employers. It also plays a role. That is facilitated through its peak body in each state. As I mentioned earlier, in this state that used to be called the transport forum and is now the Western Roads Federation. That collective of hirers plays an important role. The collective work of the Australian Road Transport Industry Organisation and the Transport Workers’ Union led to the negotiation with government in 2007 and the development of the Owner–Drivers (Contracts and Disputes) Act that is now in operation.

I know that other members want to speak on this bill very shortly, so I will keep my points brief. In closing, the opposition acknowledges the need for intervention in what is a commercial activity between two business entities. That is deemed necessary now and was certainly deemed necessary in 2007 because of the tight margins and the compounding issues in this industry. There is also a desire to have a level playing field, a formal system of arbitration, and guidance, which is the key positive here, through good information. The role of the Department of Transport in providing that information is very much congratulated and supported. I trust that the Department of Transport will be properly resourced to continue to do that work, along with the tribunal as it does its job.

As I mentioned earlier, there are some questions about the need for these changes. The onus is on the government to outline that. I stress that from what I can tell, the industry is not unhappy and does not see this bill as overly onerous, despite the issue of being able to get records by entering premises, for example, which will now be formalised through this bill. I will not take my comments any further than that. I just wanted to outline those points. I have some questions to ask during Committee of the Whole. I will leave my speech at this point and commend the bill to the house.

HON DARREN WEST (Agricultural — Parliamentary Secretary) [5.40 pm]: I also wish to make a short contribution to the debate on the Owner–Drivers (Contracts and Disputes) Amendment Bill. I think it is great that opposition members have shown their support for it. Of course we should be making roads better and safer for

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

everyone who uses them. It is often said that truckies carry the country and I think that is a very true statement. Every bit of paper before members, the phones in their hands and everything we eat has all been on a truck. Although trucks are very important for distribution and the movement of goods, not everyone is enthusiastic about trucks when they see them on the road. We often have a disparity between motorists' disapproval of trucks and the need for everything to be moved on roads. This is a good opportunity to acknowledge all the people in those trucks, whatever their circumstances may be—members of the mighty Transport Workers' Union of Australia, owner-drivers or people working for other companies. We all owe them a great deal. It has been a very difficult couple of years for a lot of sectors, no less the transport industry. The extra measures that were required, especially from interstate drivers during the last three years, to help keep Western Australia safe and our economy strong, have been noted and appreciated. To the best of my knowledge I have the distinction of being the only holder of a Western Australian road train licence in the Parliament. I spent many years driving trucks.

Hon Peter Foster: I have an HR licence.

Hon DARREN WEST: Heavy rigid is a very important category, member. I am going to give the member a call one day because HR drivers are very much in demand. In fact, the member could make almost as much money driving trucks with an HR licence as he does as a member of Parliament at the moment, such is the value placed on people who can distribute and deliver goods around the state and the country. I have experience of owning and driving trucks. We do not do any contract work. Our trucks do all the work on the farm, carting our own produce to market, but it is not always an easy job. A lot of very frustrated people on the road do not make it any easier to do that job. Big trucks are very heavy—over 60 tonnes in a B-double combination and a bit heavier than that for a pocket road train or a full road train. The triple road train drivers who head up north are in command of a machine that weighs up to 100 tonnes. It is not a job for the faint-hearted and it is not a job that is made easier by other road users. People sometimes expect a very small car and a truck to have the same stopping distances and they certainly do not. Someone behind the wheel of a truck needs to drive very differently and leave themselves a lot more room. It is frustrating when, from time to time, people do not give trucks that space and respect. I take this opportunity to encourage every Western Australian driver to show a bit more respect and courtesy to our truckies because they are doing a vital job every day.

Hon Lorna Harper: Hear, hear!

Hon DARREN WEST: Yes. It is important that, whatever someone's circumstances, they have the best working conditions, including that of other road users. As a state, we are investing heavily into the road network. No government before us has ever invested as much money into the road network and the idea is to make —

Hon Neil Thomson: Make sure the federal government has not pulled the money it allocated.

Hon DARREN WEST: Absolutely, member. I think it is incumbent on all of us, whichever our political persuasion, to encourage more investment in the road network in Western Australia. I think the member will get furious agreement on that. Obviously, the federal budget is facing some challenges and no doubt some good news is being delivered as we speak on how the next 12 months is going to look. We are very proud of our record of delivering road projects here in Western Australia to improve road safety and to decrease travel time. The NorthLink WA project has decreased the time it takes for all vehicles, including big trucks, which take longer to slow down and speed up, to get to where they are going safely and deliver important goods.

This bill will amend the 2007 act. Trucks have come a fair way since 2007. There is certainly a lot more product being moved around the state than in 2007, so it is time that we amend the act, especially when it comes to contracts and disputes. Owner-drivers are often at the end of the chain in disputes. When there is a dispute or a conflict, they find that, because they often have one truck or are a one-family operation without the bargaining power of major contractors and major transport providers, it can be a difficult road. Resolving disputes is not always good news for a small operation. I guess that is true across all industries, but it certainly is in the trucking industry where the stakes are pretty high.

It costs a lot of money to buy the machines these days. There are a lot of registration fees, insurance fees, accreditation fees, and costs for tyres and maintenance. It is quite an expensive hobby. Our truck needed a new engine for the last harvest. It was about \$40 000 worth to rebuild the motor, which needs to be done probably every four to five years for operators who are on the road all the time. The cost of maintenance is high and the returns are relatively small. If you are not paid, it can take you many years to catch up on the lost revenue. As a government, we appreciate that. We have made similar changes for other industries. Owner-drivers are especially vital to us. They are nimble, able to move quickly and carry out important roles, especially at the moment. We just cannot get enough trucks to move grain or general freight. It is becoming difficult. The freight task is set to increase by as much as 60 per cent over the next 20 years, so it is only going to become more and more in demand.

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

Our economic success as a state is remarkable. We have the best set of books in the country and are the only state reducing debt. Our economy is booming and strong on the back of strong resources and agricultural sectors. Those industries are the most dependent on logistics and transport. Our mines are remote and our agricultural farms are relatively remote. Everything needs to be moved and it needs to be moved in a timely manner. Over the last 12 months, since last harvest, we have been unable to get our grains to the ships that take them to markets around the world in time. We have missed out on some great marketing opportunities because we just could not get the product from up-country down to the loading facilities in the ports.

Hon Neil Thomson: Is that a logistics or a trucking issue?

Hon DARREN WEST: It is a logistics issue, but I think anyone who lives in the wheatbelt would have noticed there are a lot more trucks on the road. The reason there are a lot more trucks on the road, especially those pulling two grain trailers, is to move the massive harvest. It was a 24 million tonne harvest. We expect around 16 million tonnes every year. We have taken what we can produce off our agricultural land to a new paradigm over the last few years. We are now looking down the barrel of another 20-plus million tonne harvest. Some dreadful decisions were made by previous governments around rail and logistics. The Liberal Party will work out one day if rail is closed down, it will mean more transport on the road. That also means it is a more intensive job to move a large harvest. We acknowledge that. We knew it before and we know it now. We are making moves in that area. I am getting slightly off topic but I will wrap up with this point. We have situations in which it takes 11 hours to load a train. Our government is investing heavily in supply chains to reduce that time to three hours. Putting more grain on the rail network will free up more trucks to do other important jobs that rail cannot service. I know it is a very major point of difference between us, the Liberal Party and the National Party, but if we can use rail, it is much more environmentally friendly. It involves a lot fewer people and is much more efficient—and efficiency is king.

Although we are always going to need owner–drivers and truck drivers to do this work, we can relieve them of some of their burden by investing in other forms of logistics.

Being an owner–driver can be quite lonely. Truck drivers often spend a long time away from their families and homes, especially those drivers who head out on long hauls up north and across the paddock, as it is called, over to the eastern states. Even those drivers who do shorter distances often find themselves away from home every other night because the legs that they run dictate that. They cannot go home whenever they want because their movements are determined by fatigue management and other inhibitors such as the time it takes to load and unload. Owner–drivers often have quite lonely existences. That is a challenge for them. We acknowledge the great role they play and some of the difficult circumstances under which they conduct their business. Sometimes work can be in short supply. It has not been the case for the last 12 months or so, but at different times there is different demand. In some situations, owner–drivers may be working for very little or hardly any margin at all, just to get by, especially at quiet times of the year. Contractual disputes can leave those businesses very vulnerable. We are trying to protect the position of owner–drivers with this legislation. We are looking after the little guy—that is a great Labor philosophy—and looking after the people who look after us. I am pleased that the opposition is in general agreement with that. I think that it is a pretty commonsense piece of legislation. No-one would disagree that it is a good thing to give more financial certainty to the people who choose the business of owner–driving and the important role of moving freight. We are here on behalf of the people, and I think the people would generally agree with us.

Governments always like a good review. We have had a bit of a look at the past legislation to see how we can make this legislation better. There has been a lot of consultation with industry on how we can make things better. We have consulted with industry associations. I have worked closely with David Fyfe, who has become a good friend of mine. David is the president of the Livestock and Rural Transport Association of Western Australia. He and CEO Jan Cooper are great advocates for that industry. David also happens to have a son who does all right at footy. David Fyfe has himself built up a large trucking business. He started out shearing and went into the transport industry. He has his own distinctive colours on all his trucks. Members will see many Fyfe Transport trucks driving around. David has a great passion for the industry. He has been lobbying us recently on not only wash-down facilities and things that the industry wants, but also legislation like this to protect the industry. We are happy to deliver those wash-down facilities—I acknowledge that the Minister for Agriculture and Food made an announcement last week—but he also wants us to tighten up the laws to put his members and peers in a securer financial position. There is also the potential to introduce further amendments to the owner–driver laws to broaden the scope of this act. I think the industry will welcome that, as well.

I return to the review. I note that work started on this in 2014, so we have not done it in a rush or too quickly.

Hon Neil Thomson: Very bipartisan.

Hon DARREN WEST: It has been bipartisan; I make that point, member. Like a lot of things, I know it does not make for good theatre when we all agree, but it is in a good bipartisan spirit. I thank the member for making that

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

point. We certainly have no problem with that. It is cross-government. I think it is in all our interests to ensure that this group is catered for.

We are looking at minimum notice periods for termination of contracts. There will be a 90-day minimum termination notice period for contracts of over three months. That is reasonable. I do not think that anyone who employs contractors would have a big problem with that. If that contract is terminated, the employer will need to pay the contractor regardless. There will be a seven-day termination period for shorter contracts. I guess that might lead to shorter contracts, but there is still a seven-day termination period for those contracts. The legislation clarifies relationships. It prescribes the matters that the Road Freight Transport Industry Tribunal will be able to consider when determining whether a term in a contract is unjust or unfair when making determinations of unconscionable conduct. There is a watchdog, and this legislation reflects the intent of what the industry thinks are fair and reasonable terms.

The legislation contains provisions that will prohibit misleading or deceptive conduct, which is a concept now well established under a number of other laws and in general. That is good. This act will now align with other laws, and misleading or deceptive conduct will be prohibited. There has been a certain element of relying on people to do the right thing, but this legislation now makes very clear what is and is not the right thing. I do not think that anyone will be able to rely on ignorance as a form of defence. There are provisions that cover off on misleading or deceptive conduct.

I refer to workplace right of entry. I think this is really important. The Industrial Relations Act 1979 contains workplace rights of entry so that authorised representatives of owner-drivers can go in and investigate suspected breaches of the act.

I refer to discrimination. Discrimination is outlawed in many areas of our life, and there are to be no exceptions to that under this legislation. Discrimination is a form of unconscionable conduct. It is in life and it will be under this legislation.

There are provisions that cover noncompliance with guideline rates. I mentioned earlier about work in times of uncertainty. At times when people are not sure whether there is going to be work, people will not be able to capitalise or take advantage of that. That is not going to happen when there is such a great demand for trucks and transport operators, but these things change. Economists around the world are telling us that the world is heading into a recession. If that is the case, that is when downward pressures will affect rates; in turn, as I have discussed earlier, that can affect businesses. Because these are often small family-run businesses, this can affect the whole family. Every family wants some security of income. Most truckies love the job they do; it is a life that they choose. They like their trucks. We all like to compare our trucks. Ours is the king of the road, we think, a big Kenworth T908, but other people have their own trucks. I do not think it is just a farmer thing; I think that anyone who drives a truck has that pride in their vehicle. We make our trucks look nice, service them, maintain them, make them safe and show some real pride in them, because, in many cases, they are our career.

This legislation will make changes to the Road Freight Transport Industry Tribunal's power and jurisdiction. Those changes are listed throughout the bill, and I am sure we will discuss them further as we go on. I think these are sensible changes to the tribunal's power and jurisdiction that reflect a modern workplace or business agreement.

This legislation has been through significant consultation with industry. The Road Freight Transport Industry Council has done a great job on this. The Transport Workers' Union of Australia is a very fine union. Western Roads Federation and industry representatives have also worked on the amendments over the period since 2014.

I think we all agree that owner-drivers deserve our respect and our protection. They deserve our respect on the road, in law, and here in this Parliament. I think there is a general agreement that they have our respect.

That is all I want to add to the debate on this bill. Again, I offer thanks to everyone who jumps up in a truck, everyone who has a bit of diesel in their veins! We do not always do it just because we love it; it is a very important role. Everything needs to be moved. I come back to my original point: the seats we are sitting on, the food that we eat tonight, the paper we are reading, the phone we are holding have all been on a truck at some point. We need to be a bit mindful of that and thank all our truckies. Whether they are driving smaller heavy rigid licences around Perth delivering goods to shops or sitting up in big road trains like me, they are all equally important and deserve the protection of this bill.

HON DR STEVE THOMAS (South West — Leader of the Opposition) [5.58 pm]: We are about to break for a short time, so I simply put on the record that I have some significant concerns about the Owner-Drivers (Contracts and Disputes) Amendment Bill 2022 that is before the house today. As someone who has driven trucks in two states, mostly driving cattle around, not on road trains but in body trucks—now we would call them heavy rigids, Hon Peter Foster—I have some experience in this area as well. I have some concerns about granting additional powers to any union, but particularly the Transport Workers' Union of Australia, in the general running of business in the state of Western Australia. I look forward to the opportunity after the break to put those concerns in a more fulsome and distinct manner.

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

Sitting suspended from 6.00 to 7.00 pm

Hon Dr STEVE THOMAS: I had barely started what will be a not-too-lengthy contribution to the Transport Workers' Union empowerment bill—sorry, the Owner-Drivers (Contracts and Disputes) Amendment Bill 2022!

Hon Dan Caddy: Wow, didn't take long.

Hon Dr STEVE THOMAS: No, I had a minute before the dinner break, honourable member, so I waited a minute until I got into it. In the minute I had before the break, I indicated that I would raise some of my concerns about this bill. The bill is broken into a small number of sections. Some of it is quite reasonable, or at least appears reasonable, with proposed parts headed "Misleading and deceptive conduct" and "Discrimination". In effect, the largest part of the bill is division 3, "Authorised representative's right of entry to conduct investigation".

As I said before we broke for dinner, I have driven cattle trucks in two states and have some experience in the process of what is required to be a driver. I have also driven grain trucks and a few other bits and pieces over the many years I have been around. I have to say that the owner-driver industry has always been a very difficult and demanding one. It has always been the case that people have attempted to get into that industry. When I was growing up in central Queensland, the school was effectively divided into two groups—those who wanted to go on to further education and those who did not. Those who did not were effectively divided into abattoir workers and truck drivers, unless they were lucky enough to inherit their own farm, and that was a very small group. I had friends—one who was my age passed away of ill health this year, which was far too young—who were mad keen on trucks, whether Kenworths or any of the old trucks. I started in Bedfords. Those who have driven Bedfords would know they are an interesting experience in themselves. That is the old crash box for people who are not sure.

Hon Dan Caddy interjected.

Hon Dr STEVE THOMAS: Hon Dan Caddy has driven Bedfords as well. There we go. We double-declutched going down —

Hon Dan Caddy: It was old when I got to it.

Hon Dr STEVE THOMAS: So was mine; do not worry. Mine was older than I was. We double-declutched going down. It was not quite the 1950s type of configuration, but they were very difficult trucks to drive, especially with a moving load of cattle on the back. It was not the easiest thing in the world to do. It is a tough business to run in that oftentimes the margins are tight and drivers are providing services, particularly in regional areas, to people who are also struggling. Right now both cattle and sheep producers are doing pretty well, but I distinctly remember the times—there was more than one—when it was cheaper to shoot sheep than it was to try to send them to the marketplace. I remember cattle being valueless. I remember Friesian bobby calves being shot because that was cheaper than trying to get them to the marketplace. It is an incredibly tight marketplace and it means having to be remarkably flexible, generally speaking.

In that environment, I am not convinced that the Transport Workers' Union would be an owner-driver's greatest advocate. In fact, I would be very interested to know how many owner-drivers are members of the TWU, because I suspect, being small businesspeople generally, they would not necessarily be inclined to lean to union membership in particular. However, before the house is a bill, the greatest part of which is focused on investigations into contracts in which the aggrieved person will look for an advocate. I attended the briefing provided by the government to the opposition—I am very grateful for that—because I wanted to know a few things. I wanted to know in particular about the prescribed representative body. Under the bill, if a person wants to become an authorised representative, proposed section 34B(1) provides —

The secretary of an organisation that is a transport association may apply to the Registrar for a person nominated in the application to be issued with an authority for the purposes of this Division.

Basically, an authorised representative will become so on the nomination of the secretary of an organisation that is a transport association. A transport association means —

- (a) a representative body prescribed by the regulations for the purpose of this definition; or
- (b) the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch;

It is interesting in the first instance that legislation would identify that a representative can be a representative group or, quite specifically named, a union—a union that I am not convinced, to be honest, represents the group of people involved here. But let us see what numbers the government can come up with for that. It is also interesting that when I asked in the briefing who is currently listed as a transport association, I was told that the transport association was singularly and entirely the Transport Workers' Union of Australia. That suggests that unless that changes, this will obviously be an empowerment bill for the Transport Workers' Union of Australia. That is very hard to argue with given that it is at this point the only body that is able to claim that it is a prescribed representative body.

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

I understand that there has been some discussion that other groups might be added to that list. I suspect that if they are, they might find that they are adding to that list of organisations that actually represent owner–drivers. But, again, let us see how we go. However, I am pretty certain that in the discussions there have been, there would have been some suggestion that the Road Freight Transport Industry Council—I think that is its name—might be added to that list. Let us wait and see, because at least it might be a representative body that represents owner–drivers.

I was very pleased to hear the Parliamentary Secretary to the Minister for Regional Development, Hon Darren West, talk about the Livestock and Rural Transport Association of Western Australia. He actually mentioned David Fyfe, its president, and the CEO, Jan Cooper. I do not know how much consultation there has been, but there is no suggestion that it, for example, might be listed or considered to be listed as a prescribed representative body. If I were still driving cattle trucks, as I was in my younger days, theoretically, that would be the organisation that would represent me, but there is no real focus on that particular group; we are focused on these two other groups. One is a body that obviously has some government investment—that is, the Road Freight Transport Industry Council. It was largely set up by government and, in my view, that needs to be looked at. The group is one of the unions that ostensibly controls the government. Those two groups are not necessarily representative of people who are owner–drivers and who are struggling to make a living.

My first concern, parliamentary secretary, is that this legislation, let us face it, will undoubtedly empower the Transport Workers' Union of Australia, giving it a stronger position than it had before. The question before the house is: is it just the TWU or will it empower other groups, including those that might, in my view, more accurately represent owner–drivers? I think that is a really worthy question for this house to investigate.

I have to say that although the Transport Workers' Union of Australia may tell people that the TWU equates to road safety, I do not necessarily believe that. I think the TWU is active in the road safety sphere but so are a lot of other groups. The TWU would have people believe that road safety is its only reason for existence, but I do not think that is the truth either. I think the TWU has been very good at selling this message that it is responsible for road safety when, in fact, the TWU is very good at looking after the membership of the TWU. I do not object to that. That is what it is there for. It is like saying the Australian Medical Association should not be looking after doctors. It is absolutely fair enough. The TWU is there to look after its union membership, and that is exactly fine. It is doing the job that it should be doing, and I do not have problem with that. I just do not think that the TWU should be empowered to be the police and investigator in contract disputes between owner–drivers. I think this legislation will empower the TWU to a point that is beyond its remit, so it is worth considering exactly what it will be able to do.

The other issue that I have, apart from my concern that only one union, that we know of, will be empowered by this legislation, with potentially some other groups, is that I am not sure how practical the legislation will be for many of the contracts in regional Western Australia. If we are dealing with long-term transport logistics contracts, those components of the bill for unconscionable conduct et cetera seem to be reasonable. If we are dealing with a long-term contract, if an owner–driver has a yearlong contract to provide a particular service and they are geared up for that, having bought a \$350 000 truck to deliver that service, it is absolutely the case that if that contract is cut off with no warning, they will have an issue. Those circumstances will probably be picked up under the legislation.

The problem I think the government has with this—maybe it is not a problem for the government but a problem for owner–drivers—is that those groups of longer term contracts tend to be with much bigger businesses and they are much more stable. Often, they tend to be contracts taken with larger logistics companies. Even in Western Australia, there are significantly sized trucking companies that provide many of those services and they are not, for the most part, owner–drivers that would be caught under this legislation. Who will be caught under this legislation? It is the young couple who have gone out and bought a truck. They are often people in the short-term contract market trying to make a profit.

For those who are not aware, let us talk about how animal transport generally works. The purchaser of an animal or a group of animals would generally be the contractor who initiates the contract. In some circumstances, they know that 50 steers will be going to a marketplace on a particular day, so it is a fairly set contract. The price in the contract is generally set at a kilometre per head, depending on the purchase price and what is offered on the day. The animals arrive at the marketplace and contracts are put in place on a nod and a handshake at a set of saleyards but is that a contract under the legislation before us tonight? At what point does a contract become a contract? Now that I know Hon Dan Caddy can drive a Bedford, if I go to a saleyard and see him there with his old Bedford truck, which can carry a dozen steers, I could say, "I have bought a dozen steers. Can you take them back to my place and put them in the paddock?" At what point does that become a contract? We may change our minds; in the livestock system, flexibility is an issue.

The current bill says that if we have a contract and want to make a significant change to it, we have a seven-day period in which to do that. It is not practical for that to apply to all the services that are agreed to but are not necessarily delivered in a contract system. That would not apply to an agreement for Hon Dan Caddy to pick up my 12 steers;

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

it will only apply to contracts that go for six or 12 months—long-term regular weekly contracts. Those short-term contracts change all the time. Ultimately, it can look like a regular contract, particularly if livestock are moved, and it can change dramatically. Suddenly, if what someone intended to do is not what they are able to do, we often cannot give seven days' notice to the owner–driver. At what point does a contract become a contract for the purposes of the bill? How do we build in the flexibility to say that my cattle pick-up truck, which I originally agreed to, even if it was a trip a week for three weeks, cannot do the middle week as the stock cannot be mustered? I cannot give seven days' notice because they have to be mustered the day before. If I cannot get them in the day before for some reason, how will that work? Those matters are worth considering.

There are practicalities involving rural truck services, particularly for owner–drivers. I might give my contract to one person. If they are not in a position to do the work, they may subcontract. In that circumstance, despite the fact that I am purchasing the service from owner–operator A and they are subcontracting to owner–operator B, are there two contracts involved? Who is responsible for the contract at that point? The next day, the situation might be reversed and suddenly owner–operator A has a shortfall and owner–operator B asks them to fill in. The ultimate question here is: who is responsible for those contracts? I think it is a remarkably confusing exercise. I will be interested to see how this piece of legislation takes into account the variations that may occur.

The other thing that concerns me about this bill is very much around the powers that an authorised representative will be given, which starts at clause 16 of the bill. They all have right of entry. Right of entry is not unusual. I know that unions have right of entry in most workplaces now. The question mark will be the identification of an owner–driver and the identification of their authorised representative. Admittedly, the Transport Workers' Union of Australia will have to show some sort of written authority to do that but it will then have access, effectively, to any record, including documents, photographs, film or audio, video or other recordings of any work materials, machinery or appliances that are relevant to the suspected breach. How will the government demonstrate that this power that it will have will be restricted to an argument over a contract? I would have thought that if this were an argument about whether the rate of pay for a contract was legitimate, that would be relatively simple, but it will have access to any document that it effectively deems relevant to its investigation. I do not think that the Transport Workers' Union should investigate whether there has been a breach of contract. I know, ultimately, it will have to take it to the Industrial Relations Commission because it acts as a tribunal, but we actually have a union now that is the police officer, and I am not convinced that that is the best outcome.

I am sure someone will stand up and talk about how unions have the right to access workplaces and receive documents about complaints for their union members. Do not worry, there are plenty of days when I have concerns about that. There is some precedent for that and, therefore, there is some opportunity for a genuine representative to seek information, but I remain concerned that the Transport Workers' Union of Australia is not the genuine representative of the owner–drivers. The parliamentary secretary may have evidence to say that X percentage of owner–drivers are members of the Transport Workers' Union of Australia but it will be interesting to see. It has not been my experience; I think it very much represents drivers. I get that, but we will see whether they represent owner–drivers and owners, and people who are trying to get ahead by running their own businesses effectively and contracting out.

I suspect that there is some opportunism here. There will always be owner–drivers who contract out, particularly to the major corporations. There is absolutely some history that major corporations have pushed owner–drivers, particularly in the old days—less so now but I am sure it still exists—to practices that would be considered unsafe: very long hauls, not taking sufficient breaks, and narrow time frames between departure and destination. In the old days, that was a common practice; hopefully, it is less so now. We were always of the view that the people who do those long haul trips, who are subject to those pressures, are generally doing so for large corporations, so, in my view, disputes with smaller groups and with smaller businesses are less common. That being the case, I think there remain concerns that this bill genuinely looks to protect owner–drivers versus empowering the TWU.

I would like to see some commitments out of this. First off, at the very least, the government should commit to adding representative bodies apart from the TWU to the position of a recognised transport association. I am still concerned that the Transport Workers' Union is the only authorised representative that is listed and that it will automatically get a tick before anybody else is even considered. I am also concerned that the authorised representative's right of entry appears to be relatively unrestricted. I am sure that is the government's intent. I am just not convinced that is necessarily a good idea.

I hope that we will be able to get some reassurance that this bill is genuinely aimed at conflict resolution. That level of reassurance would be represented by the government demonstrating an understanding of how owner–drivers operate, particularly in regional areas. Set aside the focus on national and multinational companies shipping stuff from east to west. In my view, I want to see that the government understands that small transport companies around the regions require something different. They are not representative. They are not the classic union group. They are trying to get ahead, but they need flexibility in the system. I am not convinced that the bill before the house today will provide that flexibility. It seems to me that it will apply additional inflexibility to the system. That will

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

have negative impacts, particularly if it is not remarkably well managed. I am afraid that I do not have confidence that the government is focused on those outcomes versus its more ideological ones. I remain to be convinced that this bill is the best iteration of what might be presented for owner–drivers legislation.

Hon Samantha Rowe: Are you supporting the bill?

Hon Dr STEVE THOMAS: Yes, the opposition is supporting the bill.

HON MARTIN PRITCHARD (North Metropolitan) [7.27 pm]: I want to make a couple of comments on the Owner-Drivers (Contracts and Disputes) Amendment Bill 2022. I was not going to speak, but the previous speaker raised a couple of issues. Before I came into this place, I was a union official for 27 years.

Hon Dr Steve Thomas: For the TWU?

Hon MARTIN PRITCHARD: No, the SDA. During that time, I often came up against this issue from people who have conservative views in this area. With regard to entering a premises and getting documentation, Hon Dr Steve Thomas mentioned that it looks as though the TWU will be acting like the police. The Leader of the Opposition might consider the TWU in that way. However, the TWU will not be the judge and jury. If the TWA applies to get documentation, the tribunal will determine whether it has the right to do that. It will not be an unfettered right. Is this legislation needed? Yes, it is needed. There are definitely inequalities in this industry, particularly with regard to owner–drivers.

During my time as a union official, I looked after many of the larger food warehouses. During that time, they moved from direct employment to contract drivers. It was not my membership, so I did not get involved, but the issues caused by the unequal bargaining powers that I saw as a bystander made for some very unsafe practices. Therefore, something needs to be done. I commend the McGowan government for doing something about that and trying to introduce some safety into this area. I understand the Leader of the Opposition’s reluctance. The power will not be unfettered; there will be some restrictions. The TWU is an excellent organisation. It will do a marvellous job in this area and provide a much safer industry.

HON MATTHEW SWINBOURN (East Metropolitan — Parliamentary Secretary) [7.28 pm]: I endorse the comments of Hon Martin Pritchard. I am glad he took the opportunity to refute the slurs made by Hon Dr Steve Thomas against the TWU. I think they are completely unjustified.

Hon Dr Steve Thomas interjected.

Hon MATTHEW SWINBOURN: I have a lot of regard for Hon Dr Steve Thomas, but when he falls into that old habit of conservatives of trying to delegitimise organisations that represent working people, it does him no service. The Transport Workers’ Union is a proud, hardworking union that seeks to represent the interests of the working driving people of this state. I do not think there is any issue with the TWU being represented in this bill as it is. It is a legitimate representative of drivers.

Hon Dr Steve Thomas: Owner–drivers?

Hon MATTHEW SWINBOURN: And owner–drivers. If the honourable member looked at the union’s rules, he would see that they permit the union to recruit owner–drivers as members, which is quite unusual for union rules. Those rules have been endorsed by the Western Australian Industrial Relations Commission. I am not sure what component of its membership is constituted by owner–drivers, but what I do know is that the union—the organisation—seeks to represent their interests as best it can. I know Tim Dawson, the secretary of the union, quite well. He is a passionate advocate for all drivers. He is a passionate advocate for safety. If the member wants to talk about safety, of all the industries that are the most unsafe, transport is at the top. It is transport and agriculture at the top—the two industries that the member just talked about. One reason for that is that there are a lot of sharp practices in those industries, which means that people take risks to try to make money. If this bill does anything to ameliorate those risks, it will make things better for society.

The member spoke a lot about his experiences with the transport of livestock. The trucking industry is huge; it is one of the biggest industries in this state. It does not just extend to agricultural or regional areas. Even within the metropolitan area, on any given day people will interact with trucks of all shapes and sizes. I want to be assured that the drivers of those trucks, whether they are owner–drivers or employees, are not pushing the limits to try to make ends meet because somebody put them on a contract that makes it very hard for them to make money. There is significant evidence that that kind of practice happens and that we need regulation in this space because the market has failed these groups of people for many years. I am absolutely supportive of what this bill is trying to do. As I said, the TWU is a strong union with very strong membership. I think it has unashamedly pushed forward with these reforms, and it should be commended for that.

Let us put the union to one side and think about the owner–drivers that the bill is trying to deal with. These people have sunk costs in very expensive equipment, which makes them very vulnerable. If someone wants to buy a truck

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

of any decent size, they will look at paying hundreds of thousands of dollars. Then there is the cost of diesel—these trucks are almost exclusively diesel. The last time I checked the price of diesel, it was about \$2.30 or \$2.40 a litre. It is massively expensive. They also have to pay insurance and registration fees. All these things stack up for them. Then they have to make a margin to make it worthwhile. How do they make a margin? There can be a power imbalance in the contracts. Owner-drivers sink all those costs and have all those overheads, yet powerful companies can dictate the terms of the contract, particularly when they capture drivers through long-term contracts and then, all of a sudden, look at how to change them.

I have not mentioned this in the house before, but I used to drive a truck as well; it seems to have been a relatively common activity for members of Parliament around here! I spent six years driving milk trucks. I had an old B class licence, which is now a heavy rigid licence. I still have the HR licence. I just checked and I can drive a non-articulated vehicle up to nine tonnes, or whatever it is.

I worked for milk vendors who had contracts with one dairy. We worked out of O'Connor; there was a depot down there. Most of the drivers would have been classed as owner-drivers. They were very vulnerable to the vagaries of their contracts with the dairy that they worked with. In my case, it was Masters Dairy, or National Foods, back then. I think Bega owns it now. These drivers were very vulnerable. As somebody who worked for one of them, I was in a very tenuous position. I can tell you what, they were squeezed by the company, and guess who they squeezed? They squeezed me. I was earning \$13.50 an hour driving a truck, packing milk and doing that sort of stuff.

Hon Dr Steve Thomas: How long ago was that?

Hon MATTHEW SWINBOURN: I finished that in 2001. It was from 1995 to 2001. It was not great money back then, I can tell the member, for the amount of effort that I had to put in. I used to move about eight tonnes of milk a day by hand. It was not a great fun job. In any event, that demonstrates the vulnerability of someone who relies entirely on one hirer for their income and survivability. Those drivers would enter into contracts with National Foods, and, of course, those contracts would not come near their ends. There was always pressure because of the margins that they were looking to make. It was at the time of the deregulation of the dairy industry as well, which increased the powers of the dairies vis-à-vis the farmers. Farm gate prices started to drop around that time because the milk board had disappeared; I do not think it was called the milk board but I cannot remember what it was called. The supermarkets were the main clients and put pressure on the dairies. The dairies put pressure on the drivers who were delivering the milk, the farmers, so on and so forth. It is a tale as old as time itself. It comes back to the power imbalance. When the market fails, what do we do? We need to intervene. That is what happens in these situations, and to deny otherwise would be to put blinkers on or cover your eyes and not to see.

They were always price takers and never price makers. Whenever someone is in that position, they are always vulnerable. I think it is quite appropriate for the state to step in in those circumstances and regulate the space. I am really pleased that the opposition is supporting this legislation. Perhaps some members of the opposition are supporting it more wholeheartedly than other members. It is worthwhile that they are supporting it and I think it is appropriate that they ask the questions that they are going to ask. I will keep coming back to this. I will always stand with my friends at the Transport Workers' Union. It is not a union that I have ever worked for. I worked for the Construction, Forestry, Mining and Energy Union, amongst other unions. The TWU does a fantastic job, and works very hard for its members in an industry that is very difficult. I was not going to have many comments to make. I endorse the comments of Hon Martin Pritchard. Union bashing is a hobby of some. In my case, I am going to talk them up and encourage them to be as good as they are. I am happy to stand in this Parliament and say that. I commend the bill to the house.

HON SAMANTHA ROWE (East Metropolitan — Parliamentary Secretary) [7.37 pm] — in reply: I start by thanking all the members who have stood and made a contribution tonight to the bill. I really appreciate everyone's support, in particular, the lead speaker from the opposition, Hon Neil Thomson. I thank him for his support of this bill and for the comments that he made. I might address some of his comments first, then work my way to Hon Dr Steve Thomas.

First of all, in reply to Hon Neil Thomson, again, I thank him for his second reading debate contribution and acknowledgement of the importance of this legislation in supporting the safety of the road transport industry and all road users. I am really pleased that the member has indicated the opposition's support for this bill. Some of the issues that he raised during his second reading contribution were around the benefits of the bill. The key benefits that will result from the amendments proposed by the bill include increased industry compliance, clarification of the scope of the mandatory provisions of the act, enhanced road safety for all road users and improved administration of the act. Some of the other issues that he raised in his contribution were about right of entry. The amended right of entry provisions proposed in clauses 13 to 18 of the bill provide for a holistic right of entry scheme that is consistent with the equivalent right of entry provisions prescribed under the WA Industrial Relations Act 1979.

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

The proposed provisions set out defined processes with supporting protections for authorising, suspending and revoking the right of entry authority and will facilitate the procurement of evidence to inform the tribunal's dispute resolution processes as needed when information is not otherwise made available. Right of entry powers are to be exercised only to assist with the investigation of suspected breaches of the act, code of conduct or individual owner-driver contracts. Eligibility to hold a right of entry authority is limited to a current holder of a valid authority issued under either the Industrial Relations Act 1979 or the Fair Work Act 2009. These provisions were developed in consultation with the Road Freight Industry Council, the tribunal and the Small Business Development Corporation. The provisions aim to establish a regime equivalent to the right of entry powers under the WA Industrial Relations Act and afford owner-drivers the same protections as other workers in Western Australia.

My colleague Hon Darren West also rose tonight to support the bill. I would like to thank him for recognising that our truck drivers and the trucking industry do a lot for our community and the important role that they play. I would also like to thank Hon Martin Pritchard and Hon Matthew Swinbourn for their contributions tonight. I think it is really important to put the other side of the important work that our unions play and show that they are not the bad guys in this scenario.

Again, I thank Hon Dr Steve Thomas for his contribution. I know he has some concerns around the bill. No doubt we can go into them in further detail when we go into Committee of the Whole. Some of his concerns were around right of entry provisions and whether the Transport Workers' Union of Australia is the best advocate for owner-drivers, amongst other things. Note that the act does not prevent other unions from using the right of entry provisions. The TWU is the only union that is registered and eligible at this time. Other unions and registered organisations could have the same rights —

Hon Dr Steve Thomas: You may not have meant other unions there, but other organisations?

Hon SAMANTHA ROWE: It is other unions and other registered organisations.

Hon Dr Steve Thomas: Okay. It suggested it was only unions, but I do not think that was what the member was suggesting.

Hon SAMANTHA ROWE: No. Other unions or other registered organisations can have the same rights with respect to breaches of code of conduct, contract terms or unconscionable conduct. The changes that we are making and bringing into the act are going to be in line with the WA industrial relations system. Of course, one of the big things is that owner-drivers currently have less bargaining power because of the nature of the market and industry. This is really important legislation to make sure that these workers are protected, just like other workers in other industries. I thank members of the opposition and members on our side for their contributions and their support of the bill. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Samantha Rowe (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon NEIL THOMSON: I thank the parliamentary secretary for her response to some of the issues that were raised in the second reading debate. In the clause 1 debate, I would like to get a bit of a feel for the scope and scale of some of the dispute processes in the current environment. My understanding is that probably anywhere between 10 per cent and 30 per cent of owner-drivers are members of the union, depending on the industrial relations situation on the ground. It was good that the parliamentary secretary clarified the issue in the legislation that other registered organisations can become representatives. I assume that process is organised through the Road Freight Transport Industry Tribunal and that the owner-drivers would have to apply. I will get to that in a minute.

I will start with the current situation. Approximately how many disputes are there—the parliamentary secretary does not have to give me an exact number—every year? To get an understanding of how these additional provisions might impact on the process, how many of those disputes would have any issues about the quality of information provided?

Hon Samantha Rowe: Could you repeat that last part?

Hon NEIL THOMSON: The first question is: how many disputes does the tribunal consider? If the parliamentary secretary can answer this question, I would also like to know how many disputes that are currently before the tribunal are likely to be problematic because of the provision of adequate information for consideration by the tribunal?

Hon SAMANTHA ROWE: I thank the honourable member for the question. I can give him the figures for the number of referrals to the tribunal each year from 2008, if he wishes. There were five in 2008; 28 in 2009, 39 in 2010;

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

28 in 2011; 14 in 2012; 13 in 2013; 35 in 2014; nine in 2015; 24 in 2016; six in 2017; two in 2018; four in 2019; 21 in 2020; 31 in 2021; and zero for this year. In answer to the second part of the member's question, we do not have information on how problematic each of those are.

Hon NEIL THOMSON: That is interesting and fascinating, to some extent, in terms of the relationship between the number of disputes and the state of the economy. I certainly will look at that out of interest because this is primarily an economic issue. We know that it is a sellers' market in the sense that a truck owner who is an owner-driver would probably get quite good contracts at the moment because of the challenges of supply chains and logistics. I suggest that might be one reason for the low number of disputes at the moment. That is a hypothesis that I am putting in the lead-up to my next question. Without necessarily going through the whole list of numbers that the parliamentary secretary provided, roughly what percentage of those disputes would result in an adverse finding on a hirer? I assume most of those are resolved in the tribunal in a more conciliatory way and that there is some sort of resolution. I would be interested to know about the adverse findings that might come out.

Hon SAMANTHA ROWE: I am advised that in the first instance, there is a conciliation process. If things cannot be resolved during the conciliation process, the matter is referred to the tribunal for a hearing. I think the member asked whether we had any percentages of disputes that would result in an adverse finding for the hirer. I am sorry but we do not have that data here.

Hon NEIL THOMSON: We are probably surmising a little, then, going forward. Would it be fair to say that most of those complaints or matters raised are resolved through conciliation?

Hon SAMANTHA ROWE: I am advised that the majority are resolved through that conciliation process.

Hon NEIL THOMSON: I think that maybe goes to the heart of some of the concerns that were raised by my honourable colleague Hon Dr Steve Thomas, notwithstanding some of the reasonable limitations and requirements for persons to actually enter premises. As I think I said in my second reading contribution, it is a fairly evasive provision, notwithstanding the parliamentary secretary's explanation that those right-of-entry provisions are consistent with equivalent provisions in the Industrial Relations Act and other industrial law. It seems to me that it would be quite rare that there would be any likelihood of a person turning up to a premises and having some sort of authority to enter and effectively seize documents. Would that be true?

Hon SAMANTHA ROWE: I think the honourable member asked how frequently some of these powers would be used. Obviously, they currently do not have these powers as yet. But, as I might have mentioned in my second reading reply, these right-of-entry powers will be exercised only to assist the investigation of a suspected breach of the act or the code of conduct or individual owner-driver contracts when and where information is not willingly provided.

Hon NEIL THOMSON: I appreciate that. My understanding from what the parliamentary secretary is saying is that it would be a relatively rare situation, and it would be in line with what Hon Dr Steve Thomas has said. If it became an aggressively policed situation, there will be provisions that will enable some sort of complaint. We will get to the tribunal in the more detailed provisions of the bill. I imagine that there would be something to examine at that point because I think the industry has benefited from a relatively high level of cooperation since the act was put in place.

I will move on to an aspect that was raised by my colleague about contracts and that I think is worth raising in the clause 1 debate. I note in the owner-driver booklet that a contract could be a verbal contract. That seems to be an allowable form of contract. If it is a verbal contract, will that continue into the future given that we will have these potential situations in relation to records? Would a verbal contract preclude the requirement for the keeping of certain records by the hirer to outline what the verbal contract actually outlined? This does pose some issues, and I thought I would raise this in the clause 1 discussion because it would seem that it is an unusual allowance that a contract could be a verbal contract.

Hon SAMANTHA ROWE: I am advised that verbal contracts are already in the legislation, and that will not be changing. Section 5(1) states —

For the purposes of this Act, an *owner-driver contract* is a contract (whether written or oral or partly written and partly oral) entered into in the course of business by an owner-driver with another person for the transport of goods in a heavy vehicle by the owner-driver.

Hon NEIL THOMSON: Thank you. The second part of my question is: notwithstanding that a verbal contract is a contract, is it still an obligation, as is outlined quite clearly in the owner-driver booklet, that records must be kept? Therefore, if a verbal contract is struck, would it then be the prerogative of the hirer to keep the information as outlined in the written form? Is that correct?

Hon SAMANTHA ROWE: Yes, member. That is correct.

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

Hon NEIL THOMSON: Thank you. I have another general matter, which could be in the detail of the bill, but I thought that for safety I would raise it in the clause 1 debate. Regarding the issue around the other representatives, does that not preclude non-union representative organisations? Is it correct to say that any representative organisation that could be established or that might already exist seek application with the tribunal to become an authorised representative?

Hon Samantha Rowe: Yes, that is correct.

Hon NEIL THOMSON: There is a generally low rate of union participation; indeed, one estimate I have heard is that only 10 per cent of owner–drivers are members of the union. Apparently this varies a bit depending on the state of play. Obviously, during a dispute, people might seek recourse through the union, which might swell the ranks of the Transport Workers’ Union of Australia. As a public servant, I worked with the TWU, indirectly at least, on issues in the taxi industry. I found the TWU to be reasonable. I do not know whether that is still the case, but it certainly acted in good faith in those activities. What constitutes a representative organisation? Would it have to be an incorporated entity of some sort? How would it prove its representative status?

Hon SAMANTHA ROWE: I am advised that the bill states —

prescribed representative body means a body that —

- (a) represents the interests of owner–drivers or hirers; and
- (b) is prescribed by the regulations for the purposes of this definition;

For example, the Western Roads Federation will be prescribed in regulations.

Hon NEIL THOMSON: Who will be responsible for prescribing that body?

Hon SAMANTHA ROWE: I am advised that it will be the Governor on recommendation of the Executive Council.

Hon NEIL THOMSON: The Executive Council. Effectively, that means that a minister will present a proposal. I am trying to work out the process.

Hon Samantha Rowe: The Minister for Transport would be the one.

Hon NEIL THOMSON: Okay. I was going to share my trucking story. I cannot claim to be a driver of cattle trucks or road trains like Hon Darren West and others. I will take credit for driving one of the oldest trucks when I was shepherding sheep in New Zealand. I drove an ex-World War II GMC 2.5 tonne tip truck to build farm tracks. I put that on the table as there has been a bit of bragging about trucking credentials tonight. As I said, with a bit of levity, I thought it would be helpful given the conversations we have had.

If, in another life, Neil Thomson and a few mates were driving trucks and wanted to create a representative body, we would have to write to the minister and say, “We’ve got this body. We are fairly well represented. Obviously more than one person is involved in the industry. We are representing ourselves.” Would that be considered by the minister and would it be up to the minister’s discretion, effectively, to put something through to the Exco?

Hon SAMANTHA ROWE: I am advised that yes, if they wanted to approach the minister they could do that, but the regulations would be amended to prescribe the organisation for the purpose of the definition of transport association.

Hon NEIL THOMSON: This is maybe a rhetorical question. Does that mean a lawyer working on behalf of some sort of class action or group of owner–drivers could not effectively be prescribed? Would that be correct?

Hon SAMANTHA ROWE: It has to be a body, not an individual.

Hon NEIL THOMSON: Thank you. I appreciate that and I will not labour that issue anymore. That might go to some of the concerns by my honourable colleague Hon Dr Steve Thomas. It is probably limited in the sense that there is some cooperation and also desire in the industry for both the hiring side and the drivers’ side to ensure there is collaboration when small businesses have to effectively operate within a monopoly of sorts through the union. The parliamentary secretary probably clarified that if there was some satisfaction with the union representation, a group of transport providers, or owners–drivers, could potentially get together, organise themselves and seek application. That probably seems reasonable. Although we are supporting the bill, maybe there could have been some gratuitous advice from me and scope for, for example, legal representatives with equally esteemed qualifications who might be involved in the supporting of conflicts around, for example, these contracts, yet, they would not be able to access those documents. Maybe they would have other ways to subpoena information—I do not know. Maybe they could do that through some civil means. I would assume that in that scenario, whereby a person was represented by someone other than a union, they would still have access to the tribunal. Is that correct?

Hon SAMANTHA ROWE: Yes, that is correct.

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

Hon NEIL THOMSON: I appreciate that. To again highlight the concerns of my colleague, to have a monopoly might seem unfair to some, but in saying that, we could counsel any persons out there who might not be keen to be members of the union—for whatever reason they choose not to be—to set up and apply to become a representative body. It seems an unnecessary restriction on members of the legal fraternity, perhaps, who might have very good reason and, I assume, quite often represent owner–drivers in a tribunal. I am happy to move on from clause 1.

The DEPUTY CHAIR: I assume, member, you are not asking a question at this point.

Hon NEIL THOMSON: No.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 3 amended —

Hon NEIL THOMSON: Clause 4 relates to “minimum notice period”. I refer to the matter of shorter contracts. We heard a representative on the government benches concede that this proposed provision could result in some shorter contracts being prepared. That piqued my interest a little. In his second reading debate contribution, Hon Darren West raised the issue about potentially shorter contracts. The parliamentary secretary might have missed that but I was all ears when I heard that because I had contemplated that issue. Obviously, members have heard me mention unintended consequences many times in this place. Sometimes protections can sort of lead to distortions if people feel that the restrictions might restrict them in ways. I have a question around the potential for distortion. Why was a 90-day minimum notice period for termination put in place?

Hon SAMANTHA ROWE: I am advised that the 90 days is currently included in the model contract, which is on the Department of Transport’s website. Industry consultation also supported a 90-day minimum.

Hon NEIL THOMSON: That was my understanding, too, so that is good. As I said in my contribution to the second reading debate, a lot of what is in the bill effectively seems to be making black-letter law out of what is already in the model contracts and the handbook, which outlines at least some of the high levels of it. Would it be fair to say that this is effectively already the industry practice?

Hon SAMANTHA ROWE: Yes, that is correct.

Hon NEIL THOMSON: That may mitigate the comment by Hon Darren West, because it is obviously a concern. We will be worried about the contracts shorter than 90 days—we have the seven-day contracts—if everyone suddenly gets on these short rollover contracts because people think that they will somehow be able to avoid the longer period. Does the parliamentary secretary think there is any scope for there to be a shift in the length of contracts as a result of this provision being put in place?

Hon Samantha Rowe: Shortening of the 90 days?

Hon NEIL THOMSON: Yes, under the provisions that will come into effect, if the term is less than 90 days, paragraph (b) of the definition of minimum notice period in clause 4 states —

if the aggregate term of the original contract and any consecutive series of successive contracts between the same parties that contain substantially similar terms and conditions is less than 90 days — 7 days;

Seven days is the termination period. It is a bit of a drop. It does not scale back; it just goes straight back to seven days. I think that is what Hon Darren West was getting at. If people want to avoid the 90-day termination time frame, they will just, effectively, have people on rolling contracts of 89 days. Will that be possible?

Hon SAMANTHA ROWE: I am advised that the 90 days will apply for rolling contracts.

Hon NEIL THOMSON: I am satisfied with the parliamentary secretary’s response there. Thank you for that. I just have one last question on clause 4. For the sake of the deputy chair, clause 10 will be my next clause, if that is of any assistance.

We have this definition of “prescribed representative body”, which we discussed in the clause 1 debate, but we also have a definition of “transport association”, which means —

a representative body prescribed by the regulations ...

They look identical—lines 8 and 13 in clause 4 on page 3. Is there any difference between a transport association and a prescribed representative body?

Hon SAMANTHA ROWE: I am advised that a prescribed representative body is a body that represents the interests of owner–drivers or hirers that is prescribed by the regulations for the purposes of this definition. Section 18 of the Owner–Drivers (Contracts and Disputes) Act 2007 will provide that the minister shall seek nominations for appointments to the Road Freight Transport Industry Council from prescribed representative bodies, as well as other persons or bodies prescribed in section 18(3). Following passage of the bill, it is intended that the Owner–Drivers

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

(Contracts and Disputes) (Code of Conduct) Regulations 2010 will be amended to prescribe the Western Roads Federation as a representative body.

In relation to transport associations, the representative body prescribed by the regulations for the purpose of this definition is the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch.

Proposed section 34B relates to who can apply to be an authorised representative for the purposes of right of entry to conduct and investigate a suspected breach of the act.

Hon NEIL THOMSON: "Transport association" is described as —

a representative body prescribed by the regulations for the purpose of this definition;

Is that open ended or will that just be the Western Roads Federation? Does it encompass other bodies?

Hon SAMANTHA ROWE: I am advised that yes, it can encompass other bodies.

Clause put and passed.

Clauses 5 to 9 put and passed.

Clause 10: Section 31A inserted —

Hon NEIL THOMSON: This clause sets out the definition of "unfair terms". They are quite prescriptive but they are also quite subjective. That is a reasonable way of describing them. For example, proposed section 31A(1)(a) states —

whether the term causes a significant imbalance in the parties' rights and obligations arising under the contract;

That is a pretty subjective assessment. I refer to the model contracts, which is the proper way of describing them. My feeling is that the model contracts are the way to go. Basically, people want guidance and the more models we have, the more education we have and the more protection we have. How will that be assessed? Will these contracts ultimately be assessed by the tribunal?

Hon SAMANTHA ROWE: I am advised that they will be assessed by the tribunal.

Hon NEIL THOMSON: I refer to the model contracts and the educative process for hirers and owner-drivers. What elaboration are we likely to see when we change to other documents? For example, I found the *Western Australian owner-drivers information booklet*. Obviously, it refers to the model contract. There is a link to the model contract. Are there likely to be any changes to other supporting documentation going forward to assist the industry to not fall foul of the legislation?

Hon SAMANTHA ROWE: I am advised that the supporting documents, as the member referred to them, will be updated. That includes, for example, the model contract, the code of conduct and the information booklet, which are all on the website. The website also has an interactive tool—a cost calculator that people can use—and that will also be updated.

Hon NEIL THOMSON: Maybe the minister could indulge me a bit and we could defer this discussion to when we deal with the transitional provisions, or, for the sake of practicality, we could have this discussion now if that is okay. I understand that upon the enactment of this bill, it will come into effect straightaway. The question is the timing of the supporting documentation to make sure that we are fully prepared, given that we will have in black-letter law proposed section 31A, "Unfair terms", which refers to a bunch of specific things such as significant detriment, and payment guideline rates. I assume those guideline rates are already in place and will not require change. I would have thought that a lot of that might have been resolved through the provision of better information by the Department of Transport, and better education. It might be a question of who should take the onus of providing that information. If everyone understands what is fair and reasonable, we should not need to require the hirer, who is probably also a very busy person in the industry, to explain to a new entrant what is required. However, we can imagine that if a person has bought a truck and has just come into the industry, the hirer might have an obligation to be reasonable and provide, as stated in new section 31A(1)(f) —

the extent to which the term, and its legal and practical effect, was accurately explained to a party;

There might be a requirement in that case.

The first question is: as we transition to the new regime, will the supporting documentation be ready for when this becomes law?

Hon SAMANTHA ROWE: I am advised that there will be a period of time between when the legislation is passed and when it will commence, but then everything will be updated, including the regulations.

Hon NEIL THOMSON: Is that period understood or defined? Does the parliamentary secretary know how long it will take?

Hon SAMANTHA ROWE: We believe that it will be during the first half of next year.

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

Hon NEIL THOMSON: Proposed section 31A(1)(h), under clause 10, is about one of the unfair terms. It states —
whether or not it was reasonably practicable for a party to reject, or negotiate for a change to, the term before it was agreed to;

Is that something that is currently considered by the tribunal?

Hon SAMANTHA ROWE: I am advised that it could be considered, but it is not specified in the legislation.

Hon NEIL THOMSON: Under what circumstances is that likely to occur? Normally, if someone was in a negotiation, they could quite happily reject it and go on and work for another company.

Hon SAMANTHA ROWE: I am advised that it will primarily deal with the power imbalance. For example, a hirer might rush an owner–driver to sign up immediately, and the alternative might be that they do not get engaged at all.

Hon NEIL THOMSON: I am trying to help the parliamentary secretary here. Will this apply to the renegotiation of an existing contract or will it apply to new contracts as well?

Hon SAMANTHA ROWE: I am advised that it could be either.

Hon NEIL THOMSON: I am a layperson; I am not a member of the tribunal. It just seems a bit unreasonable. If the tribunal uses this test, I hope it will be done with a reasonable level of consideration in terms of it being reasonably practical for the party to reject it. I would have thought that in most cases, particularly with a new contract, it would be enormously practical for a party to reject a contract insofar as they might choose not to work with that company. Anyhow, I raise that point. The other one I would like to point out is proposed paragraph (k), which states —

whether, at the time the term was agreed, a party knew, or could have found out by asking, that the term would cause the other party hardship;

I had to read it twice because it is a little hard to understand. I am trying to work out whether this is a negative or a positive, if the parliamentary secretary understands what I mean. This is an unfair term. My first question is: is it only to do with the term?

Hon SAMANTHA ROWE: I am advised that it is in relation to the past, so it is about when the contract was originally agreed to.

Hon NEIL THOMSON: Fair enough. Of course, any dispute would be in the past. The bill states —

...a party knew, or could have found out by asking ...

Am I correct in assuming that means that the onus would be on the party to ask?

Hon SAMANTHA ROWE: I am advised that the party could be either the hirer or the owner–driver. The duty will be on both parties.

Hon NEIL THOMSON: The parliamentary secretary sort of read my mind. That is a question I was going to ask: which party is which? The question I have is whether the onus will be on either party, the hirer or the owner–driver, to ask. I might be confusing the parliamentary secretary here. I am trying my best. I do not quite understand how this works myself. If I am confusing the parliamentary secretary, it is because I am confused by proposed paragraph (k), under which it seems an unfair term could be —

whether, at the time the term was agreed, a party knew, or could have found out by asking, that the term would cause the other party hardship;

It seems to me that because it could be either party, the hirer or the owner–driver, both will have to make sure they ask the other whether there is going to be hardship. Is that correct?

Hon SAMANTHA ROWE: I am advised that it could be either party. It will really depend on what is in the contract. If the dispute has gone to the tribunal, it will look at the contract to see where the hardship is. It could be either the hirer or the owner–driver, depending on what that hardship is.

Hon NEIL THOMSON: To be fair, I will draw the parliamentary secretary back to proposed section 31A. I appreciate the good faith with which she is trying to answer the questions. Proposed section 31A(1) is really using an unfair term that the tribunal “may” have regard to a determination. It obviously will ultimately come down to a deliberation of the tribunal. Maybe we are trying to be a bit too prescriptive, but I did not draft it and members opposite are in the government. The government has done the drafting and is giving guidance to the tribunal on this. My question is about subjectivity and whether putting this into the act will in any way alter the behaviour of the tribunal. That is a question I have about all these provisions. Is it likely that there will be any change to the behaviour of the tribunal or its consideration of these matters given the subjectivity of these provisions? I trust the tribunal to make a value judgement about what is fair, but we know that hardship can be caused by a whole range of reasons, including those that are no fault of the hirer. It might be the fault of the owner–driver because they may not be very organised with their financial management, for example, in a particular situation. That is no judgement on owner–drivers, by the way. I am happy

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

to move on from these provisions once the parliamentary secretary has answered this question: to what extent does the parliamentary secretary think that by being specific in proposed section 31A(1)(a) to (o), including terms like “harsh” and “oppressive” that have value judgements, the tribunal’s behaviour is likely to change?

Hon SAMANTHA ROWE: I am advised that the commissioners at the Western Australian Industrial Relations Commission sit as the tribunal, so it is not just one individual. These provisions make it clear that these matters can be considered by the tribunal. By being explicit, it means there will be some consistency for the tribunal.

Clause put and passed.

Clause 11: Parts 6A and 6B inserted —

Hon NEIL THOMSON: Proposed section 31B is titled “Misleading or deceptive conduct by hirer”. Could the parliamentary secretary provide some examples of what that might be? It does not have to be all encompassing, but I would be interested to know the sorts of examples that might be considered misleading or deceptive conduct by an owner–driver in the acquisition or possible acquisition by the hirer of services from the owner–driver under an owner–driver contract.

Hon SAMANTHA ROWE: I am advised that some examples could be hiding or not providing information at all, or lying.

Hon NEIL THOMSON: Would the two examples the parliamentary secretary gave apply to proposed section 31C, “Misleading or deceptive conduct by owner–driver”?

Hon SAMANTHA ROWE: Yes, that is correct, honourable member.

Hon NEIL THOMSON: I assume that both those examples could be applied to the ability of an owner–driver to deliver within the terms of a contract when the owner–driver might know that they are not able to deliver the outcome outlined in the contract.

Hon SAMANTHA ROWE: I am advised that yes, that could be an example.

Hon NEIL THOMSON: Discrimination comes under clause 11. I am checking on my list. One provision on page 10 has piqued my interest. I refer to proposed section 31D under “Part 6B — Discrimination”. Proposed section 31D(3)(d) involves refusing to engage a person as an owner–driver. Read in isolation, that does not seem to me to be discrimination. It seems that someone is refusing to engage a person. There could be myriad reasons why someone might not be engaged as an owner–driver. Proposed section 31D(3) states —

For the purposes of this section, subjecting an owner–driver to detriment includes doing one or more of the following —

...

(d) refusing to engage a person as an owner–driver;

Under what circumstances might that be considered discrimination? Could a hirer refuse to engage an owner–driver for a range of legitimate reasons?

Hon SAMANTHA ROWE: I am advised that the provisions in proposed section 31D(3) go to what is meant by “causing a detriment” and are to be read in conjunction with proposed subsections (1) and (2). We are looking at proposed section 31D. Proposed section 31D(3) has to be read in conjunction with proposed sections 31D(1)(a), (b), (c) and (d) and 31D(2)(a) and (b)(i) and (ii), in which the term “detriment” is given effect.

Hon NEIL THOMSON: I thank the parliamentary secretary; that was my understanding as I was going back over proposed section 31D(1) and (2), and trying to read and understand them. I am still concerned; I suppose this one does bother me a bit. To put it in layman’s terms, there is some detriment associated with refusal. I would have thought that, by its very nature, refusing a contract would create a detriment. There would not be many cases in which it would not. I would have thought there would be plenty of legitimate reasons why there might be refusal. Maybe I should turn it the other way: in what situation might a refusal of a contract not be considered a detriment? It may be better to give us a bit of a list of situations in which a hirer might refuse a contract. Given that they might have been in negotiations with an owner–driver for several days on quite a big contract, and then, because of the argy-bargy in the negotiations, there is a refusal, it might not be discrimination because it is a marketplace. Can the parliamentary secretary tell me a situation in which that would not be a detriment and therefore would not be discrimination?

Hon SAMANTHA ROWE: I am advised that it would be deemed discrimination if an owner–driver has, firstly, claimed, or proposes to claim, a benefit, or has exercised, or proposes to exercise, a power or right that the owner–driver or their associate is entitled to claim or exercise under this act or the code of conduct; or, secondly, has brought, or proposes to bring, or has otherwise participated in a proceeding under this act; or, thirdly, has informed, or proposes to inform, any person of an alleged contravention of this act, the code of conduct or an order of the Road Freight Transport

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

Industry Tribunal under this act; or, fourthly, has participated, or proposes to participate, in joint negotiations relating to owner–driver contracts or the engagement of an owner–driver; or, fifthly, under proposed section 31D(2) —

- (a) has raised, or proposes to raise, issues of health and safety in relation to the performance of services under an owner–driver contract; or
- (b) has sought, or proposes to seek, to —
 - ... negotiate a proposed owner–driver contract; or
 - ... renegotiate an existing owner–driver contract.

Hon NEIL THOMSON: I can intuitively support many of those things. Proposed section 31D(3) refers to the owner–driver’s detriment and the issue of health and safety et cetera. I must be missing something here because I find this a bit worrying. A new contract would start a negotiation. Proposed section 31D (3) states —

For the purposes of this section, subjecting an owner–driver to detriment includes doing one or more of the following —

- (a) terminating the owner–driver’s owner–driver contract;

There is a provision in the bill that outlines giving notice of termination, which seems to be a bit at odds with what the bill is saying if there is detriment in the termination. I would have thought that detriment would not occur if notice was given in accordance with that provision. Therefore, would terminating the owner–driver’s owner–driver contract under proposed section 31D(3)(a) be considered a detriment and therefore be discrimination, if the termination was done in accordance with the provision of giving notice of the termination?

Hon SAMANTHA ROWE: No. That does not apply to this.

Hon NEIL THOMSON: There seems to be some tautology going on here. We are kind of overdoing it in this legislation because we already have a rule about the detriment provisions, but this provision reads in a very open-ended way because it would not be detrimental if an owner–driver was given notice in accordance with the provisions as outlined. I am still concerned about the refusal to engage a person as an owner–driver. That seems to be an incredibly challenging issue. The opposition has been talking about suggesting an amendment, which I might have a look at. Without prejudice, I will say that I will make a suggestion that the refusal to engage a person as an owner–driver seems very ambiguous. If someone refuses to engage somebody, will that be a breach, per se, of this discrimination provision?

Hon SAMANTHA ROWE: I am advised that it means nothing unless it fits into either proposed section 31D(1)(a), (b), (c) and (d), or proposed section 31D(2)(a), (b)(i) and (ii).

Hon NEIL THOMSON: I will take the parliamentary secretary at her word. One of the challenges we face in the short time we have to highlight these issues is in getting our heads around them.

Hon Kyle McGinn: She’s not going to lie!

Hon NEIL THOMSON: The honourable member can sit there and make comments. I have a job to do in relation to this.

Hon Kyle McGinn interjected.

The DEPUTY CHAIR (Hon Peter Foster): Order! I give the call to Hon Neil Thomson.

Hon NEIL THOMSON: I am trying my best here.

In relation to proposed section 31D(1)(a), (b), (c) and (d), we can take the approach of trust, and hope that we are all good here, but obviously we do not want unfair discrimination. Creating the concept of discrimination is something that we all want to avoid. I am trying to ascertain, based on proposed section 31D(1) and (2), how that might practically apply. The parliamentary secretary might be able to assist me here. Given that there are some limitations with regard to proposed section 31D(3)—limited by the need to refer to (1) and (2)—under what circumstances in which a hirer refuses a contract would that hirer not be discriminating against that person? I seek some practical examples to assist me here.

Hon SAMANTHA ROWE: I am advised that a practical example could be of a hirer who refuses to engage an owner–driver because, under a previous owner–driver contract, that owner–driver had taken a matter to the tribunal to dispute that contract with that same hirer, so that hirer refuses to engage them in a new contract.

Hon Dr STEVE THOMAS: I might be able to cut through a little. I understand that we are dealing with proposed section 31D(1). It really goes back, as the parliamentary secretary said, to “must not subject or threaten to subject” in circumstances in which they effectively use the act, which is reasonable, and under proposed section 31D(2), if they raise an issue about safety and the right to negotiate. That is not the complicated bit. Jumping to proposed subsection (3) and what is a detriment, it might help if the parliamentary secretary can describe the circumstances

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

in which the link is made between proposed subsection (3) and proposed subsections (1) and (2); that is, how will it be demonstrated, for example, that an action under proposed subsection (3) is the result of the things occurring in proposed subsections (1) and (2)? How does the fact that the person is not engaged as an owner–driver relate to those first things? It is that connection that we are missing as part of the debate.

Hon SAMANTHA ROWE: I am advised that it will be at the discretion of the tribunal. It will need to consider the evidence put before it about discrimination, specifically if an owner–driver was not engaged—that is proposed section 31D(3)(d). The tribunal will have to be satisfied that the reason that the owner–driver was not engaged relates to the provisions that are highlighted in proposed subsections (1) and (2).

Hon NEIL THOMSON: In the discussion, we have been able to look at each of these within the context of that provision. Some of them are quite evident when one reads through them, but it has been worthy of clarification. It has been difficult because we have to go back and look at each provision. In summary, effectively, the discrimination is that anyone who is involved in a dispute or any allegation in relation to breaches of the code of conduct or the act cannot be refused a contract on that basis. That is probably the easiest way to explain it. In saying that, I am trying to get my head around what each of these provisions mean, because it is a little complicated. Proposed section 31D(1)(b) states —

has brought, or proposes to bring, or has otherwise participated in, a proceeding under this Act; or

I think that is quite reasonable and fair, but one scenario might give me some concern. Hypothetically, is it possible that an owner–driver might be in a situation in which they are in the process of signing a contract and say that they will propose to bring some sort of action in proceedings under this act in relation to that contract? I would have thought that that is not a very discriminatory situation. I would have thought that is more like a threat from the owner–driver. My concern is that under this provision of discrimination—I am hoping this would never happen, of course—it might be possible in a negotiation for a person to say, “You know what? I’ll bring proceedings under this act and if you refuse me, I’ve got you for discrimination”. Is that a gotcha moment, or is that not possible?

Hon SAMANTHA ROWE: I am advised that that would not be possible, because there would not be a contract.

Clause put and passed.

Clauses 12 to 15 put and passed.

Clause 16: Part 8 Division 3 inserted —

Hon NEIL THOMSON: Acting President, I might offer to skip clause 16 because it has been covered in detail under clause 1, in relation to registered organisations. I have to go through my notes again to make sure. Before we move on I have one question about proposed section 34C(1), which states —

An authorised representative must, within 28 days after ceasing to hold an authority or permit referred to in section 34B(3)(b), inform the Registrar that they no longer hold the authority or permit.

I have a question on this clause. Under clause 1 we covered off quite a lot of detail and I thank the parliamentary secretary for providing me the very detailed answers about authorised representatives. We had discussions about associations as well. This proposed section is to do with 28 days after seeking authority. Who is responsible for the permit? If that authorisation is not removed when it should be, what sanction is there? Subsection (2) states —

A contravention of subsection (1) is not an offence but that subsection is a civil penalty provision for the purposes of the IR Act ...

What is the sanction if that is not managed in accordance with that provision?

Hon SAMANTHA ROWE: I am advised that the registrar is the responsible person.

Hon NEIL THOMSON: I refer to “contravention” in proposed section 34C(2). Does that mean the registrar would be the one subject to that provision?

Hon SAMANTHA ROWE: No, I am advised that it would be the authorised representative in proposed section 34C(2).

Hon NEIL THOMSON: I refer to proposed section 34D, “Revocation or suspension of authority”. Proposed section 34D(3) might provide Hon Dr Steve Thomas a bit of comfort in terms of the balance of power. We had a discussion in the second reading debate about the toing and froing and the good faith or otherwise of union representatives. I think this provision will provide a level of comfort insofar as proposed section 34D(3)(a) states, in part —

has acted in a proper manner in the exercise of any power ...

This will effectively apply to a situation in which the representative has acted improperly and maybe not in accordance with the full arch of provisions. It is effectively some sort of sanction on the representative not acting properly in their duties in relation to records et cetera? Yes?

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

Hon SAMANTHA ROWE: I am advised that yes, that is correct.

Hon NEIL THOMSON: In that situation, would it be the normal practice for the hirer to lodge a complaint with the tribunal?

Hon SAMANTHA ROWE: I am advised that it could be anybody.

Hon NEIL THOMSON: Would the authorised representative be an individual or an organisation?

Hon SAMANTHA ROWE: It would be an individual.

Hon NEIL THOMSON: I take it here that the behaviour of a representative, an individual, is then subject to a complaint by anybody, and then the tribunal would revoke that authorisation. By what means would that authorisation be revoked?

Hon SAMANTHA ROWE: I am advised that the tribunal would make an order to have the authority revoked.

Hon NEIL THOMSON: Would the organisation of which the authorised representative was a member—namely, in this case, the Transport Workers' Union of Australia—be notified? I imagine the normal process would be that the tribunal would write to the TWU to say, "Person X has behaved in a certain manner, which is in breach, and, therefore, they are no longer able to operate as an authorised representative." Would that be the process?

Hon SAMANTHA ROWE: I am advised that the registrar would be empowered to contact the secretary of the registered organisation in writing.

Clause put and passed.

Clause 17: Section 35 replaced —

Hon NEIL THOMSON: This clause inserts proposed section 35, "Authorised representative's right of entry", which states —

An authorised representative may enter any workplace where an owner-driver works, during working hours at the workplace, for the purpose of investigating any suspected breach ...

The limitations include the act, the code of conduct or an owner–driver contract. At the heart of this is the extent of this power, and whether it is proportionate. On face value, it would seem to be proportionate, in the sense that it has to apply to the act. I guess the interpretation of that, in terms of its extent and practicality, is the circumstance in which a representative might go to a workplace and say that they have information relating to matters that are outlined in the Western Australian owner–driver's handbook, and the records that are to be kept by hirers are very explicit. I assume this handbook will be updated to meet the requirements of this bill. Will it just be a case of seeking records or will there be something else in the investigations that might be undertaken by the authorised representative? Will it be an open-ended investigation or will it be narrowed down to an officer just wanting the records, someone not giving up the records and the fact that they must satisfy the list of records in an updated handbook, which will refer to the new act? Will it be easy enough to determine?

We are trying to avoid going through this process. People will know that the weight of the law might apply. Hirers might have an incentive to provide that information, because no hirer will want an authorised representative searching through files randomly seeking information. How long is a piece of string when a search is undertaken? Will it just be to do with records? How long is a piece of string? Are we going to see offices overturned because the investigation will be open-ended?

Hon SAMANTHA ROWE: I am advised that it is probably a good idea to remember that this is not a search power. It is a right of entry to inspect records that are required to be held by the hirer. The Owner-Drivers (Contracts and Disputes) (Code of Conduct) Regulations 2010 state in schedule 1, division 7, item 12, that the hirer must record and keep for at least six years the following information for each owner–driver contract to which the hirer is a party: the name of the owner–driver; a description of the services provided under the contract; the name of the person who operated the vehicle with which the services were provided; the date or dates on which the services were provided; the amount of the payment due for the services and how the amount was calculated; and an explanation of any deductions that were made from the amount due.

Hon NEIL THOMSON: That probably provides some reassurance for the discussion that we had earlier about the right of entry provisions. That could be complied with quite easily by a person who is abiding by the code of conduct, because that is what the code of conduct requires. That is important. There is nothing else to clarify on this matter. That completes my comments on the bill.

Clause put and passed.

Clauses 18 to 32 put and passed.

Title put and passed.

Hon Neil Thomson; Hon Darren West; Hon Dr Steve Thomas; Hon Martin Pritchard; Hon Matthew Swinbourn;
Hon Samantha Rowe

Report

Bill reported, without amendment, and the report adopted.

Third Reading

HON SAMANTHA ROWE (East Metropolitan — Parliamentary Secretary) [9.30 pm]: I move —

That the bill be now read a third time.

The ACTING PRESIDENT (Hon Jackie Jarvis): Members, I have received from the Deputy Chair of Committees a certificate in writing that this is a true copy of the bill as agreed to in the Committee of the Whole House and reported. The question is that the bill be now read a third time. All those of that opinion say aye.

Members: Aye.

The ACTING PRESIDENT: To the contrary, no.

Hon Neil Thomson: Acting Speaker.

The ACTING PRESIDENT: I think the ayes have it. Apologies, member; I was quite quick in rushing that through.

Hon Neil Thomson: I was going to make a contribution.

Hon Sue Ellery: Do you want to make a contribution? You can seek leave.

HON NEIL THOMSON (Mining and Pastoral) [9.30 pm] — by leave: I think it is worth me making a brief contribution to the third reading debate on the Owner-Drivers (Contracts and Disputes) Amendment Bill 2022. I thank the parliamentary secretary for her cooperation and collaboration on this bill. As I said at the beginning of this process, the opposition supports the bill, and I absolutely make clear that we think this is a good measure. It was certainly interesting to hear during the second reading debate about all the wannabe truck drivers that we have in the house.

Hon Matthew Swinbourn: And actual truck drivers.

Hon NEIL THOMSON: And a few actual truck drivers. That is excellent.

For the record, I want to commend the industry. I think the industry does a tremendous job under very difficult circumstances. The owner-driver sector is very important because it fills a very big gap in the industry by providing flexibility for the logistics network; it fills the gaps that large companies might not otherwise fill.

An important part of my contribution to the third reading debate is that I will outline what was clarified in the discussion; I reiterate my thanks to the parliamentary secretary for persevering through some of the questions. The right of entry is very limited. We had a discussion about the number of matters that are taken to the tribunal. That varies a lot from year and year, as was reported in the Committee of the Whole. We saw that there is quite big variability, and I suggest that that might be affected by some of the economic circumstances that might exist. We are probably in good times at the moment for the industry. I know that there are some huge challenges with the availability of labour and having staff to drive those trucks. The owner-driver sector usually involves only one truck, but owner-drivers can sometimes have two or more vehicles in their fleet. As discussed earlier, a range of organisations provide services within the owner-driver sector. The right of entry is very limited and hopefully will not be required. By providing more explicit requirements in relation to records and the fact that entry will be allowed will mean that there will be further incentives for owners to provide those records. My understanding, from the debate in Committee of the Whole, is that once those records are provided, there will be no scope for a right of entry. Hopefully, that is how the system will work. I think it is important that there is collaboration between industry and that is certainly from a reflection of the discussions I have had with industry and a representative body for the hirers. In that respect, the opposition clarifies its support. There are a number of other provisions. There was a fair bit of discussion around what represents unfair terms. Again I thank the parliamentary secretary for clarifying that it is simply to provide more clarity and consistency for the tribunal in what matters it may have regard to, notwithstanding the subjectivity of those terms. We trust the tribunal. As the parliamentary secretary rightly pointed out, the Industrial Relations Commission is more than a person. Others are involved. I would not expect that much would change in its practice other than providing greater clarity going forward. That should not in any way unfairly weigh the scales of justice, so to speak, in this quasi-judicial body in relation to the balance between drivers and hirers. I want the record to say that we support those clarifications. I think they are important and I trust that going forward we will see clarification on the updating of the supporting documentation. That documentation will be done quickly and we will be able to see these new provisions finalised in a relatively short time, from recollection sometime in the middle of next year when this new legislation will come into full effect. I thank the parliamentary secretary for her support in this process.

Question put and passed.

Bill read a third time and passed.