

TRANSPORT (ROAD PASSENGER SERVICES) BILL 2018

Consideration in Detail

Resumed from 18 September.

Clause 5: On-demand passenger transport service —

Debate was adjourned after clause 4 had been agreed to.

Mrs L.M. HARVEY: Clause 5(1) provides a definition of an on-demand passenger transport service. Can the minister explain where ridesharing fits into this definition? Is it covered under this clause 5(1) descriptor?

Ms R. SAFFIOTI: Yes, it is.

Mrs L.M. HARVEY: So with ridesharing services, a number of different passengers share the service. How will the collection of the levy work around the individuals in the vehicle?

Ms R. SAFFIOTI: The key point here is that the levy is per booking. The bookings are registered by the booking service, and the collecting authority—the Department of Transport—has the relationship with the booking service. So the booking service, depending on the size, will pay the levy according to the revenue collected over a certain period. So it is per booking, and the relationship is between the booking service and the Department of Transport, regardless of how many passengers are in the vehicle. So it is not per passenger per driver, it is per booking.

Mr W.R. MARMION: My question is about clause 5(1)(ii). The definition says an on-demand passenger transport service is a service —

in which the passenger or hirer determines or substantially determines the locations for the beginning and end of the journey and the time of travel;

Can the minister explain why “substantially” was put in?

Ms R. SAFFIOTI: Because in some circumstances the hirer might be required to walk a distance or might not be able to be picked up at a particular point. It provides flexibility. The hirer might want to be picked up or dropped off at a particular point, but vehicles may not be allowed there or there are road blockages or something happening on that occasion. So “substantially” accommodates those circumstances.

Mr W.R. MARMION: Even with “substantially” in the clause, could someone get around this clause and get out of the service being deemed an on-demand passenger transport if they went a considerable distance? Has the minister considered the ways that someone could, I guess, get out of it being considered an on-demand passenger transport system by saying they have not substantially determined the location? For example, if it is a very broad rideshare and they are going to another suburb or if they work out some gaming way to get out of it being considered an on-demand passenger transport service.

Ms R. SAFFIOTI: I always assume people will attempt anything; that is my view of life. But I think this clause is strong enough to prevent any fraud in those instances.

Mrs L.M. HARVEY: The third paragraph of page 25 of the explanatory memorandum states —

If a business or organisation contracts with or engages another person to provide passenger transport for their clients or members, that business or organisation is unlikely to be treated as the person providing the passenger transport service under this Bill.

Could the minister give me an example of how that scenario might play out?

Ms R. SAFFIOTI: My top of mind answer to that is the example the Leader of the Opposition provided yesterday, whereby retirement villages might contract an operator to provide a service. That is a good description of the person who is hiring not being the booking service; the person providing the travel is the booking service. So it again differentiates between the hiring authority and the operator of the service. That is the distinction, and I suspect that would happen in many instances.

Mrs L.M. HARVEY: If a hotel, for example, orders a taxi or an on-demand transport service for a customer, the relationship is ultimately between the customer and the booking service. So is it that sort of scenario, or is it more the scenario with retirement villages? Because I thought retirement villages would be covered by the community transport service provisions.

Ms R. SAFFIOTI: The member just provided another example. I think we went through this in a bit of detail last night. In some circumstances the hirer might be anybody, and the booking service would be the provider. The booking service is the key player in this legislation and the key part of the chain of accountability. The booking service becomes an integral part of the whole industry. In respect of the communication between the department,

it will primarily be between the department and the booking service. The booking service has much of the accountability, and it will also be required to collect and pass on the levy.

Mrs L.M. HARVEY: Page 10 of the legislation reads —

The following are not on-demand passenger transport services —

...

- (c) a service or other thing that the regulations provide is not an on-demand passenger transport service.

Can the minister explain why that is in the legislation? I picked these clauses up because our friends in the Legislative Council generally do not like non-specific provisions in legislation.

Ms R. SAFFIOTI: I take the member's point about the other place, but this provides the ability to make regulations to again ensure that we do not unintentionally pick up services. The examples given to me were in relation—I think it was a service; it still may be—to the service that allows people to hire a driver to drive their own vehicle from point A to B. They will not be picked up by this legislation.

Mrs L.M. HARVEY: Is the minister talking about the Skippers Club-type service, whereby the driver rides their bike over, puts the bike in the boot and then drives the vehicle owner home? Would they not be considered an on-demand transport provider for these purposes?

Ms R. SAFFIOTI: Yes. No, they would not, but only the driver would need to be authorised.

Mr V.A. CATANIA: Clause 5(3)(a) refers to courtesy transport services. Airports often have a courtesy service that takes people from one side of the airport to the other, or people can pay, I think, \$10 or \$15 to go from Perth Airport to the city. Would that not be classed as an on-demand passenger transport service? So will the courtesy bus that people pay money for to get from Perth Airport to the city incur the 10 per cent levy?

Ms R. SAFFIOTI: The shuttle bus between the terminals would not be covered and, if it is a regular passenger service—a shuttle that leaves from particular points on particular days—it would not be covered.

Mr V.A. CATANIA: I think the bus provided by Perth Airport is called Connect. Is the minister saying that the bus from Perth Airport to the city, for which people pay their \$10, will be subject to the 10 per cent levy?

Ms R. SAFFIOTI: No, it would not be covered by the levy on two fronts. Firstly, if there are more than 12 seats it is a bus; and secondly, its journey is not being substantially determined by the hirer. It is a regular passenger service so, as a result, it would not be caught under the levy.

Mr V.A. Catania: So it is not subject to the 10 per cent levy?

Ms R. SAFFIOTI: No.

Mr W.R. MARMION: I was going to ask a question on courtesy transport services as well. I asked it yesterday but I want to explore it a bit more. The definition is covered under clause 9 but I will go back to courtesy vehicle services. When people drop off their car for a service, they have a choice of catching a taxi or taking the courtesy bus. The bus will generally take a certain route but they will find out who is on the bus and there will be fewer than 12 people. They will get fairly close to where they want to go. Can the minister give an assurance to the chamber that such a transport service, if the bus was carrying fewer than 12 people, would not be covered by this levy? In other words, under the provisions in clause 9(3), the CEO has the ability to publish in the *Government Gazette* that a specific service is classified as a courtesy transport service. Can the minister say in this chamber whether all car service providers' courtesy transport services will always be considered a courtesy service?

Ms R. SAFFIOTI: Yes; we touched on this in a bit of detail last night. That service is auxiliary to the main function of the business, so it would not be covered.

Mrs L.M. HARVEY: Clause 5(4) states —

In this Act, a business of providing an on-demand passenger transport service —

- (a) includes a business of a kind that the regulations provide is a business of providing an on-demand passenger transport service; and
- (b) does not include a business of a kind that the regulations provide is not a business of providing an on-demand passenger transport service.

The explanatory memorandum basically regurgitates the same language. Could the minister explain what this clause is for?

Ms R. SAFFIOTI: It is to ensure that if there is any uncertainty regarding whether a business provides an on-demand passenger service, we have the ability for regulations to clarify that.

Mrs L.M. HARVEY: For an on-demand passenger transport service, will regulations prescribe which services are on-demand transport services or does the minister perceive that these regulations would be used to exclude particular services as exemptions? I just wonder how this is going to work.

Ms R. SAFFIOTI: Currently, there is no intention to make any regulations apart from the Skippers Club example that we just provided. However, this gives the ability to continually make regulations, should they be required.

Clause put and passed.

Clause 6: Regular passenger transport service —

Mrs L.M. HARVEY: This is another definition of a “regular passenger transport service”. Is this definition in the bill to provide some defining nature for a service that is exempt from the on-demand transport levy?

Ms R. SAFFIOTI: Yes, that is right. Basically, it will provide protection for regular passenger transport services to be exempt from the levy.

Mrs L.M. HARVEY: What are some examples of regular passenger transport services that would be exempt?

Ms R. SAFFIOTI: Examples are Transperth buses, the entire regular passenger transport system and regional bus services. I think we also gave the example of a shuttle service from the airport as a regular, timetabled service in which the hirer does not determine the trip’s location.

Mr V.A. CATANIA: Clause 6(3) states that a “tourism passenger transport service” is not a regular passenger transport service. For clarification, I can buy a ticket to go and see the Pinnacles, jump on the bus and go from Perth up to the Pinnacles. Let us say that 20 people are on that bus. They visit the Pinnacles and come back down. Is that bus excluded from the 10 per cent levy? Conversely, if I am in Margaret River and I buy a ticket to do a winery tour, is that bus subject to the 10 per cent levy? I use the example of a winery tour because it is considered a tourism passenger transport service. Are they all excluded from the 10 per cent levy?

Ms R. SAFFIOTI: They are excluded on a number of fronts. Regional operators do not pay the levy and tourism services do not pay the levy. Again, if a timetable publicly advertises that a bus is departing and arriving at a point in time, it is a regular passenger transport service and the hirer does not determine the trip’s origin and substantial destination. So there are a number of fronts why those services would not be covered by the levy.

Mr V.A. CATANIA: I have one more example—the double-decker bus around Perth. People visit places around the city to have a look. Is that double-decker bus subject to the 10 per cent levy or are the individuals who purchase a ticket subject to the 10 per cent levy; or is it excluded?

Ms R. SAFFIOTI: Yes, it is excluded from the levy.

Mrs L.M. HARVEY: This might be more relevant to the tourism passenger transport services, but my assumption is that when this legislation comes in, there will be different categories of licence. For example, there is the shuttle bus that is associated with fishing charter operators that collects people from tourism accommodation to take them to Hillarys marina to hop on a boat and go fishing for the day. Would they fit into a tourism passenger transport service for the sake of an authorisation to run that service?

Ms R. SAFFIOTI: I think the driver of the vehicle would need to be an authorised driver, but the service would not be picked up as part of the collection of the levy.

Mrs L.M. HARVEY: I assume that the vehicle would have to be registered for the purposes of this new legislation if it is transporting passengers, would it not?

Ms R. SAFFIOTI: The driver would need to be the authorised. The vehicle, because it is not an on-demand vehicle, would not need to be authorised under this legislation. It would just operate under the existing road traffic legislation.

Mrs L.M. HARVEY: Would that be a similar arrangement for the Rottnest shuttle service that picks up passengers to take them to the ferry to go to Rottnest? There are collection services, which generally charge a fee in addition to the fee to go to Rotto. Would they be considered on-demand? They tend to be smaller buses.

Ms R. SAFFIOTI: Again, on a number of fronts, including the tourism front, that is a courtesy vehicle, although the member said people potentially pay for it. It would be auxiliary to the main purpose and it would not be on-demand, so it would not be picked up in this levy.

Mr V.A. CATANIA: I do not know whether we have gone through whether a ferry is a tourism service or just a passenger service. Will ferries from South Perth to Perth or from Perth to South Perth or Fremantle be covered by that 10 per cent levy?

Ms R. SAFFIOTI: No, the new John McGrath ferry will not be covered by that! It is only motor vehicles. Also, that is a regular passenger service anyway. There are a number of fronts on which that would not be included.

Mr W.R. MARMION: I heard on the radio the other day that a lady is buying the tram buses that go to Kings Park. I assume that they have two carriages, so they would have more than 12 seats. Let us assume that a tram bus has only one carriage and seats fewer than 12. I understand, from what I heard on the radio, that this lady is planning on running it through Subiaco as a regular service. It is a potential service. One could argue that it could be a courtesy transport service or a community transport service. Subiaco is a very touristy spot, so it could be considered a tourism passenger transport service, which means it would be exempt, even though it would be providing a regular service. Would the operator just be smart and ensure that both carriages are on so that there are more than 12 seats, to make sure that there is no conjecture about whether it is a tourism passenger, courtesy transport or community transport service and to get that exclusion from the levy? I am interested in the minister's comment.

Ms R. SAFFIOTI: The comment is that they would not need to be installing more seats. It would not be picked up for a number of reasons, including that it is not an on-demand service. It will have regular stopping patterns. I will not be able to ring up and say, "Tram, come and pick me up from the footy grand final; I want to get home." That is not going to happen.

Mr W.R. MARMION: What if the operator determined that it would work better if that is what it ended up doing? If they decided to make it an on-demand service, they could change its route based on what the calls might be.

Ms R. SAFFIOTI: If they changed the complete operating nature of the tram to create an on-demand service, it would be subject to the levy.

Clause put and passed.

Clause 7: Tourism passenger transport service —

Mrs L.M. HARVEY: Clause 7 gives the definition of a tourism passenger transport service. The explanatory memorandum says —

Whether or not a person is 'carrying on the business' of providing a tourism passenger transport service would generally depend on a range of factors, such as whether the service is provided in an organised way, on a repeated basis and with the aim of generating revenue through charging of a fare or for other consideration. It does not matter if the person providing the service is doing so for profit, or on a not-for-profit basis.

I am just trying to put that paragraph into the context of what clause 7(2) is articulating.

Ms R. SAFFIOTI: The example was given of a sporting club wanting to go to the Pinnacles for the weekend. This provision is trying to make sure that we exclude a business that is operating a tourism service and those types of functions that may be a tourism-style activity, but we are not wanting to regulate those under certain parts of the legislation. Again, it is just the driver who would need to be an authorised driver. We are not trying to pick them up in this legislation. If they start doing a tourism service for the general public, they would be covered by the legislation. This is again trying to ensure that we do not overly regulate normal activity that happens in sporting clubs or community groups.

Mrs L.M. HARVEY: I refer to the paragraph at the bottom of page 31 of the explanatory memorandum. It states in relation to clause 7(2) —

An employee of a person who is carrying on the business of providing a tourism passenger transport service is not intended to be treated as the provider of the service for the purposes of the Bill, even though they may have a role in its provision.

Can the minister please explain what this is about? For example, a person is an employee of a service. If they are employed as the manager and have responsibility for the provision of that service, I would have thought that the responsibilities of managing that service and safety et cetera would fall to that person as an employee.

Ms R. SAFFIOTI: This is again just noting that it is the employer who has the responsibility of ensuring that ride authorisations are in place. It is not the employee's responsibility; it is the employer's responsibility to ensure that the authorisation, for example of the vehicle, is in place. That is what that paragraph is alluding to.

Mrs L.M. HARVEY: I just want to be clear. There is quite a lot of explanation for what looks to be a fairly discrete subclause. For example, if there is an issue with the tourism passenger transport service, is the minister saying that it is the employer who is responsible for making sure that the drivers providing that service have the appropriate authorisations and that the vehicles have the appropriate authorisations? Is the minister saying that it is not the employee's responsibility to ensure that they have the appropriate authorisations?

Ms R. SAFFIOTI: Yes, but when we go through the safety section, employees will have roles, too. In this instance, it is outlining that the employer is the main person responsible for ensuring that the authorisations are in place.

Mrs L.M. HARVEY: Subclause 4(a) and (b) is over the page on page 12. This will probably also cause the government some grief in the Legislative Council, because it is a regulation-making provision. Will these provide for the different definitions of tourism passenger transport services or exemptions, for example, from the levy?

Ms R. SAFFIOTI: This is, again, a just-in-case clause; maybe I should not describe it that way, because the upper house will have problems with it! This creates the flexibility to deal with any circumstances that were not envisaged at the time of drafting that we would need to deal with by way of regulation. It gives the government the option to make those exclusions if required, but builds in the ability to reflect what may happen in the market that we cannot see right now.

Clause put and passed.

Clause 8: Community transport service —

Mrs L.M. HARVEY: This clause defines “community transport service”. Looking further into the future, when the legislation is in operation, will retirement villages and other charitable institutions such as Activ that have transport vehicles need to have a different form of authorisation for their drivers from what they currently have?

Ms R. SAFFIOTI: If the driver is driving as an incidental part of their employment, they will not need the correct authorisation, so it will be very similar to what is the case now. But if they are driving for hire and reward, they will need that authorisation.

Mrs L.M. HARVEY: Further to that, as an example, a driver at Juniper Chrystal Halliday Village drives residents around in a vehicle—that is his job—every morning and every afternoon, seven days a week. He is employed by that organisation. Will he need a different authorisation from what he currently has?

Ms R. SAFFIOTI: I am advised that in that circumstance the driver would currently need an F-class authorisation, so this would just transition that to the new authorisation that is required—the on-demand driver authorisation. F and C classes move into that new authorisation—sorry, F and T. I think I said a rude word there! F and T classes move into the new authorisation. There will be a transition period, similar to what we discussed last night about transition periods, but the same situation will apply in the future; it is just a different name for the licence.

Mrs L.M. HARVEY: I just want to work out how this will be picked up. If they have a motor vehicle driver’s licence with an F or T classification on it, will those individuals be picked up by way of regulation as being providers of a community transport service, or will they need an authorisation under this legislation as well as renewal of the motor vehicle driver’s licence?

Ms R. SAFFIOTI: In this instance we are looking at the role of the driver. Currently, that role does not really change under this legislation. The way they are regulated will not change dramatically; it is just the name of the licence, in a sense, that will change. There will be a transition also. As motor vehicle licences expire, or through a transition period in particular, they will be converted to the new licensing regime.

Mrs L.M. HARVEY: I just want to get this clear. For community transport services there is a suite of volunteers; my dad is one. He has the appropriate driver’s licence and drives the community bus for his retirement village when they have excursions. Obviously, that is not going to be picked up by this. Why would individuals who are currently employed to operate a transport service for a retirement village be picked up under this at all, as a classification? What they are doing will not change.

Ms R. SAFFIOTI: I am trying to understand. This basically continues the existing arrangements for the driver, in particular. Currently, the driver needs the appropriate licence and this will continue that role in relation to having the appropriate licence. There is no special subcategory for a driver who drives for community purposes, so it is just whether they are driving as part of their role in the retirement village, or driving for hire and reward. If they are driving for hire and reward, that forms part of the authorisation.

Mrs L.M. HARVEY: So there is no expectation that people in those existing roles are going to need to apply for a different kind of authorisation or have a different designation on their motor vehicle driver’s licence, or any other changes in that way?

Ms R. SAFFIOTI: There will continue to be a single authorisation, with the same requirements; it is just that the F and T classes are being replaced with the passenger transport driver authorisation. That is what will change in the circumstance that the member outlined.

Mrs L.M. HARVEY: So when the five-year period of the driver’s licence expires, will there be a designation at that point, or is this more an administrative thing for the employer of the driver?

Ms R. SAFFIOTI: Hopefully I can explain it better. Basically, the driver's licence will be transitioned into the new licence category over the transition period, so if their licence expires in four and a half years' time, there will be a transition period in which the F and T classes are replaced with the new class of authorisation.

Mrs L.M. HARVEY: Are there any amendments to the authorisation to drive legislation, as part of the bill?

Ms R. SAFFIOTI: Yes, it will amend the relevant regulations from the road traffic legislation.

Mrs L.M. HARVEY: I refer to clause 8(3) on page 13, which states —

The CEO may declare by notice published in the *Gazette* that a specified service is a community transport service.

When does the minister envisage that this will be used?

Ms R. SAFFIOTI: The CEO will only be able to declare that a service is a community transport service, meaning it is not regulated as an on-demand or tourism passenger service. This will enable small-scale community-based operators to seek confirmation of the status under the bill. For example, a sporting club wanting confirmation of the status of the service it provides could request the CEO to make that declaration. Such a declaration would not overrule the definition of “community transport service” in the bill or regulations. It gives groups that want confirmation the ability to get it from the CEO.

Mr W.R. MARMION: I just seek clarification. I understand that this clause is about defining a community transport service such that they are exempt and do not have to pay. At the hospital in my electorate, we have volunteer providers of transport services for individuals. I think they use their own cars or they may have some cars available. I think the Lions Eye Institute does it. It has a group of volunteers who pick up an elderly person or someone like that. They provide a service, but it is free. Regarding the conversation that has just been going on, can the minister clarify whether that person will have to have a different type of driver's licence? I assume they are just driving a normal passenger vehicle.

Ms R. SAFFIOTI: If it is not for hire and reward, they will not need that special licence.

Clause put and passed.

Clause 9: Courtesy transport service —

Mrs L.M. HARVEY: I want to make clear where I was going with the community transport service and also the courtesy transport service. Obviously, these people are just operating. We do not want them captured by the on-demand reforms, and we do not want to their lives to change substantially with any additional regulation as a result the legislation. I really just want some clarification from the minister about this—and could we also roll the community transport services into this question. Will there be any additional administrative process for the drivers or providers of the courtesy transport services as a result of the legislation?

Ms R. SAFFIOTI: No, we do not believe there are any further regulations. They will be transitioned, but there is no further regulation on them.

Mrs L.M. HARVEY: I just want to get on the record that the definition of “courtesy transport service” would cover things such as a loan car from a car yard—a service provider where someone might be getting the car serviced for a day that has a loan vehicle dropping off people into the city or whatever. Would that fall under this category?

Ms R. SAFFIOTI: A loan car would not come under passenger service, because a person is driving it.

Mrs L.M. Harvey: I mean the shuttle.

Ms R. SAFFIOTI: The shuttle would be part of this.

Clause put and passed.

Clause 10: On-demand booking service —

Mrs L.M. HARVEY: I want to tease this out a little more, because we had a conversation last night about some of the small operators in the on-demand industry that have very small collectives of drivers they coordinate. I want to know a little bit more about what the requirements on these providers will be. Clause 10(1)(c) says that an on-demand booking service is —

a service that facilitates the provision of on-demand passenger transport services including by providing any of the following services —

- (i) communication services for on-demand drivers and on-demand vehicles;
- (ii) controlling, co-ordination or administrative or other services for on-demand passenger transport services;
- (iii) safety management systems or regulatory compliance services ...

In the industry there are dispatch operators. There are also companies that are fleet managers. Then there are plate owners and drivers. Will the fleet management services be picked up as an on-demand booking service or in one of these categories, and what are the new administrative requirements for those fleet management services under the legislation?

Ms R. SAFFIOTI: This is really referring to the dispatch service that moves into the role of the booking service. This is the key clause that picks up the ridesharing industry, which is currently not part of any regulatory framework. The clause has been structured in a way to ensure that all those operators that basically facilitate passenger transport would fall under the definition of the booking service. This is a key part of the whole framework regulatory—that is, the creation of the notion of the booking service. That reflects the old dispatch services, but also picks up the new entrants into the market.

Mrs L.M. HARVEY: Further to this, I notice page 15 states —

(5) For the purpose of determining whether a person provides an on-demand booking service it does not matter —

...

(b) that the provider of the on-demand booking service is located outside the State if the on-demand passenger transport service is provided wholly, or partly, within the State.

Obviously, with Uber and some of the other entrants to the market, the difficulty has been for the department to capture these individuals in the regulatory mechanism. How confident is the minister that this legislation will be strong enough to capture those companies with a business model being operated in places other than Australia, such as international jurisdictions, and bring them into the regulations?

Ms R. SAFFIOTI: We are confident—the bill is structured in such a way. One of the reasons the bill was introduced was so new entrants are on the same regulatory framework as existing market participants. Last night, we discussed the definition and the appointment of the responsible officer, and that every booking service requires a responsible officer to be in the state too. They will be the key point of contact with the Department of Transport. Again, we are just trying to make sure that someone in WA is responsible to the Department of Transport for the communication of information we need and of course in relation to the collection of the levy.

Mr D.C. NALDER: I understand that this clause is to look at what were traditionally dispatch, pick-up, app-based services and all of those that are coming into it. This might be covered elsewhere in the legislation, but I just wanted to check how this applies to rank and hail. For example, people walking out of Northbridge might order a cab on the spot because it is driving by and they call it over. I know we are changing systems, but it is still a form of ordering a cab, albeit by hailing it. I would imagine that we would want to capture data, but I do not get a sense that this is being picked up in here as part of an on-demand booking service. I know that there could be a slight definition, but I just want to check what is going with the rank and hail in this clause.

Ms R. SAFFIOTI: I thank the member for the question. Under the definition clause, there was a definition that taking a booking includes the hiring of a vehicle as a result of a rank or hail service. Clause 10(1) refers to taking a booking. Basically it picks up—I always say “hank and rail”; I have been so good this time!—the rank-and-hail service because of what is included in the definition of “taking a booking”.

Mr D.C. NALDER: I missed that one. Rank and hail is covered through here on the booking. Is the purpose for the department to capture all the data through this process and feed the information back so that we understand what is going on in the marketplace? Are the reporting aspects covered in this on-demand booking service?

Ms R. SAFFIOTI: This requires information to be collected by the booking service and communicated to the department. Again, another part of the new accountability chain is that the booking service will be required to provide information. It would probably be much better placed to monitor what is happening in the industry too, because I think that was a bit of a problem in trying to get regulations and legislation in place. A lot of it was done through anecdotal evidence of how many drivers and Uber vehicles were operating in the past few years. I think this will assist with the collection of information and the ability to make policy decisions into the future.

Mr D.C. NALDER: With this information, are the aspects of the data that need to be provided somewhere else in this legislation or do the services have to provide a breakdown of data that gives us an idea of what is coming in through the computer, phone calls, the phone app and rank and hail? Is the department getting a breakdown of that information to get an understanding of the mix of business?

Ms R. SAFFIOTI: It is similar to some of the data requirements that are kept now for the regulated industry. That includes data on trips, fares and all that sort of information, and the revenue to calculate the levy. Again, this ensures that the same requirements for data coming from one part of the industry will be collected from all parts of the industry. As I said, I think it will make it so that all future transport ministers can deal with policy decisions much more easily because they will have a better suite of information.

Mr D.C. NALDER: On that question, will the government look at the source of the booking so that it has a record of whether it was through a phone app or rank and hail and so forth? The minister did not quite answer that question about the source.

Ms R. SAFFIOTI: Yes.

Mr W.R. MARMION: This opens up a whole new ball game in innovation and what we can use the data for. Does this bill allow Main Roads Western Australia, for instance, to get real-time data to monitor the operations of the whole road transport system? It could then use the big data, through clever people in Main Roads or somewhere, and distribute that information to road users, maybe in a few seconds outside real time, so that we can decongest the road system by making sure that people know not to travel on certain roads.

Ms R. SAFFIOTI: We do not think they will provide real-time data. They will collect information for Main Roads Western Australia. As the member for Nedlands would be aware, because it was probably something that he was involved in when he was the minister, the new road network centre in the city is collecting information already. Main Roads is already doing a lot of this live real-time analysis. Through the collection of Bluetooth information, it is really starting to get the ability to monitor what is happening across the network at any point in time. We can share de-identified aggregated data, but we are not envisaging that use. As I said, Main Roads and the Public Transport Authority are both already working on their data collection of real-time information to help to inform policy decisions.

Mr W.R. MARMION: I raise this issue, because it is an opportunity if we have many people using Uber. I use Uber and also taxis. I mix and match. I notice that when I am using Uber, the driver does not always take the same route. My understanding, from what I have been told, is that they already have the technology to optimise the route based on the current traffic times going from A to B. In licensing an on-demand booking service, it would be useful if that became a requirement. If they already have that information, it could be provided to a properly regulated or responsible body that is not going to use that data in a bad way, such as a state government authority. That data should be made available to the state government so that we can use it for the benefit of the taxpayers of Western Australia.

Ms R. SAFFIOTI: It is an interesting point. I will triple check what we can use the data for. I take that on board. I believe, and I think everyone believes, that having constant real-time information flows helps to deal with congestion. That was part of the projects that both the member for Bateman and the member for Nedlands worked on, so I acknowledge that. To monitor what is happening on the network and then feed that information back to the drivers is also a way of reducing congestion and improving traffic flow. I will take that on board. A lot of work has been done, as members would be aware, because, as I said, both members were involved and started much of that work on getting better data to manage the system.

Mrs L.M. HARVEY: In the section of the explanatory memorandum on clause 10, the third paragraph on page 40 gives this example —

... businesses that provide phone, internet and other booking facilities to the country taxi-car and charter sectors are not regulated by the existing passenger transport framework unless they happen to be the same entity who provides the vehicle required to be licenced for use in the provision of the service.

This sounds to me like a new regulatory requirement on the country taxis and charter services. Could the minister explain what is meant by that paragraph?

Ms R. SAFFIOTI: The example given to me is that if a business or a booking service is using a call centre or another third party to run, in effect, its communication, only the booking service is authorised under this legislation.

Mrs L.M. HARVEY: The next paragraph down goes to that example I gave the minister last night of the smaller boutique operators that use a mobile phone booking service to hand out jobs to five or six drivers. For providers such as that to become an authorised on-demand booking service, what will be required of them? If they are using only a mobile phone to coordinate the booking service, how does the agency envisage acquiring the data collected by those individuals?

Ms R. SAFFIOTI: Those operators have similar data requirements, but how they choose to collect that data will be up to them. The creation of the booking service concept and how that relates in the entire chain is new and will have to be worked through. That is why it is a staged implementation. Obviously, the big ones would transition pretty easily, but it is really about working with some of the smaller operators to make sure that they are aware of the new provisions and they are not unfairly positioned in this.

Mrs L.M. HARVEY: I want to explore this a little bit more because I would hate for the industry to be swallowed up by two or three major booking services with the smaller intermediate operators that provide a nice, tailor-made boutique service falling out because the data collection requirements are beyond their capacity. What will the agency require? Will it be mobile phone records or will operators have to keep data on every job, every destination or every fare? What will be the requirements of smaller operators if they wish to continue the way that they are?

Ms R. SAFFIOTI: As I understand, the requirements of small charters will not change. The corporatisation of the taxi service happened in a sense with the entrance of Uber. The taxi industry was a collection of small businesspeople who were operating in the industry. There is no doubt that the innovation of apps has corporatised the industry in a very significant way. We believe that we have flexibility with either being a booking service or having an association arrangement that boutique or niche services will continue. The strong relationships will continue through the legislation. I will work in particular with the smaller providers to make sure that they continue. It is a challenge in a very corporatised industry and, as I said, with the advent of massive global companies entering provincial markets and dominating through technology, it has been a challenge. Yes, it is sad because, particularly in the taxi industry, there are a lot of longstanding small business people who are operating services. I know the taxi industry has a bit of a bad reputation in some instances but there are those in the industry who are generally committed to promoting WA and operating an excellent service, and they are doing a great job. The wave of competition has completely changed the market and we want to make sure that we have the flexibility for boutique, niche or small operators to continue.

Mr W.R. MARMION: This is probably one of the most important clauses in the bill because it provides for the change. I have previously mentioned data. There is a good side of data and a bad side of data. When the minister is bringing in something new like she is now, she is in the box seat in terms of putting in regulations and rules that can be policed. On the bad side of data, when a person signs up to a provider—I use Uber as an example—and when they sign up and register their kids to play hockey and footy, they have to fill in forms, and unless they fill in every single box they cannot register. There is an opportunity for these providers to gather a whole lot of information about us, our kids, what we eat, which footy team we barrack for and a lot of stuff that is irrelevant to providing a passenger transport service. Has the department considered—I do not like too much regulation—ethical rules around what information an on-demand booking service can gather from the public? I guess there would be an option for all the other ones. I would be very interested to know whether the minister has considered that.

Ms R. SAFFIOTI: No, we are not going as far as saying what information booking services can request. Of course, there is information that the state will request from booking services but we will not go the next step and say that they cannot ask a customer certain types of questions. That is not part of the legislation. It is incredible what they do with the data. Uber Eats is an example of how technology can completely change the market for a food outlet in any particular suburb. After doing an internet search, we are all surprised by what appears on our Facebook feed. It is scary. It is a whole new world and people of our era are struggling with it a bit more than young people who are able to navigate their way through these systems much better.

Mr W.R. MARMION: I raised that as a possible thing to look at in the future because, as the minister quite rightly said, things pop up and we might get invitations; I do in emails for all sorts of Ticketek events. Obviously, they have worked out which events I might like to see. I will not bore the minister with what they are. They work out people's likes and this will only become more invasive.

Ms R. Saffioti: Is Taylor Swift coming up on your feed?

Mr W.R. MARMION: No, I got that last time.

Clause put and passed.

Clause 11: Hire or reward —

Mrs L.M. HARVEY: This clause articulates the definition of “hire or reward”. Going back to some of the conversations we had previously about drivers of courtesy vehicles, community vehicles and tourism services, can the minister articulate the definition of “hire or reward” in this clause? Does it specifically identify hire or reward for the provision of providing an on-demand transport service?

Ms R. SAFFIOTI: I will go through the notes, which may make it easier. A passenger transport service will be captured by the bill only if it is provided on a hire or reward basis. A service will be for hire or reward if there is any form of hire agreement or payment is made for the provision of a service if the amount received is greater than the running costs of the vehicle for the journey. That is the definition.

Mrs L.M. HARVEY: How will the running costs for a vehicle be determined?

Ms R. SAFFIOTI: There will be a prescribed amount in the regulations similar to the existing situation.

Mrs L.M. HARVEY: I need to understand this a little bit better. Under this definition, the minister said that a prescribed amount will determine the running cost per kilometre of a vehicle and if someone charges in excess of that, they will be captured under the provisions of the bill.

Ms R. SAFFIOTI: Yes.

Mrs L.M. HARVEY: Obviously, a range of vehicles operate in this on-demand transport space. Will a different amount be prescribed for different vehicles based on their age and obviously the number of kilometres they have travelled?

Ms R. SAFFIOTI: Currently, they are set by the Australian Taxation Office. We will pick up those because they are national standards. We will pick up the requirements listed by the ATO according to engine size.

Mrs L.M. HARVEY: The ATO requirements are obviously for people who try to claim a tax deduction for the running of the vehicle, which may or may not necessarily fit with what it costs them to run the vehicle. Will this cross-reference that section of the ATO regulatory framework or will we copy the regulation?

Ms R. SAFFIOTI: We have given dollar values and when things change, we change the regulations.

Mrs L.M. HARVEY: Does the minister envisage that at any time there might be a different cost in managing a different prescribed amount for different parts of the state with an on-demand service?

Ms R. SAFFIOTI: If there are any issues in the future they would be similar to the issues of the past. There will always be discussion and deliberation over differing rates, but we have to use one reference point and this seems to be a good reference point.

Mr W.R. MARMION: It is very pleasing to see that the minister is allowing an exemption for carpooling. There are a lot of definitions of what constitutes carpooling, but I draw the minister's attention to subclause 5(c) where it says —

the transporting of the passengers is not the result of plying or touting for hire by the driver or another person; ...

What if a person in a big organisation, let us use Main Roads as an example, is doing some pooling and they put a notice up on the board on one of the floors. Is that considered touting or applying for passengers?

Ms R. SAFFIOTI: No.

Mrs L.M. HARVEY: In the example of a vehicle pooling arrangement or carpooling, if we have the actual cost per kilometre of running that vehicle and that cost is then shared amongst the nine passengers of the vehicle for the journey, would they be captured under this legislation?

Ms R. SAFFIOTI: No.

Mrs L.M. HARVEY: Can the minister explain, in the legislation on page 17, why, in this vehicle pooling arrangement, the maximum number of persons in the vehicle including the driver is limited to nine?

Ms R. SAFFIOTI: I think this definition is pulled from legislation from another state, either New South Wales or South Australia, but nine was considered an appropriate number. It was adopted from another state because the question would be whether beyond nine would be a legitimate carpool arrangement.

Mrs L.M. HARVEY: The legislation now has arbitrary numbers in which if the vehicle has 12 or more seats they are exempted from the legislation. Why would we have nine for carpooling instead of 12?

Ms R. SAFFIOTI: Twelve or more is exempt from the levy, not the legislation; this is a subset of that. Nine passengers is fair. I am not going to debate it too much, but it is a number, as I said, that we referenced from another state. We had to pick a number and I would suspect that beyond nine would not normally be a carpooling situation. It would be very rare.

Clause put and passed.

Clause 12: Close associate —

Mrs L.M. HARVEY: Could the minister please explain the background and the purpose behind defining a close associate in this way?

Ms R. SAFFIOTI: The provisions of the bill relevant to close associates permit the CEO to refuse to grant, or suspend or cancel a booking service authorisation to a person if a close associate of the person had previously held an on-demand booking service authorisation that has been cancelled, or if a close associate has been charged or convicted of a disqualification offence. Basically, it is trying to keep any bad apple out of the industry.

Mrs L.M. HARVEY: I see that a close associate is defined as having some kind of previous financial arrangement. In the event of a married couple who separated and one of the partners has criminal convictions, will this clause prohibit the remaining partner from being able to participate in the industry?

Ms R. SAFFIOTI: It relates to the ability to currently influence the decision-making of the business. In that situation, if they are divorced and their financial interests are now separated, that would not be defined as a close associate.

Mrs L.M. HARVEY: How will the agency enforce compliance in this section? Will this be more of a response to reports of bad or criminal activity? Obviously, the taxi industry is like many others, in which there is a fair bit of

competition, it deals with lots of plate owners and there are a lot of conspiracy theories out there. How will this clause be administered so that it is effective and does not capture individuals who really have no case to answer?

Ms R. SAFFIOTI: The member is right, we will probably not be out there knocking on doors; there will be more of a reporting process. An investigation would occur before any final decisions were made.

Mrs L.M. HARVEY: I want to get some idea about how the regulatory mechanism might form around this. This clause captures an entitlement to receive any rent, profit, or other income in connection with the use or occupation of premises on or from which the on-demand booking service is or is to be provided. In some circumstances there are partnership arrangements as part of a trust. A person might own a warehouse facility within which an on-demand transport fleet is managed and serviced, or an on-demand booking service might operate. If an individual is charged with an offence and finds themselves in jail, for example, and they might be a one-fifth share partner in a structure like that, how do we make sure that the other associates are not unfairly disadvantaged? It often takes years to unwind those sorts of complex trust arrangements that often exist in these sorts of industries.

Ms R. SAFFIOTI: The CEO would consider all those circumstances. I like all the hypotheticals, and in legislation we can create hypotheticals that would be challenging to the minister in the environment. But again, this would give the CEO the ability to take those circumstances into account in their investigation.

Mrs L.M. HARVEY: I understand the intent and it is necessary to have a clause like this in the legislation, I just want to make sure there are no unintended consequences about it being here. We do not want people who have been disqualified, convicted of serious sexual offences, con artists or those sorts of individuals to be driving in our on-demand passenger industry. It does need to be here. I guess it will have to be tested before we can work out if we have it right. Is this close associate clause operating in any other state at present?

Ms R. SAFFIOTI: Yes, New South Wales.

Mrs L.M. HARVEY: In New South Wales, have there been any disqualifications from the industry as a result of the legislation or any inquiries launched into unsavoury characters who might be in the industry?

Ms R. SAFFIOTI: The legislation is quite new, and we are not aware of any disqualifications.

Mr W.R. MARMION: The minister may have answered my question. This looks to me like a really good clause. I have not seen similar clauses in other acts. Is there a similar clause in the current legislation in Western Australia or is this a brand-new initiative?

Ms R. SAFFIOTI: There is not in the legislation, but in some licence conditions there is.

Clause put and passed.

Clause 13 put and passed.

Clause 14: Safety duties and standards —

Mrs L.M. HARVEY: This is, once again, an area that needs to be in the legislation—I think it is important that it is there. However, I want to get a good understanding of how these safety duties will operate and be enforced. The explanatory memorandum states that regulations will be made to set out the safety standards that must be met by certain persons. I want to get from the minister what requirements and what areas will be prescribed by regulation as part of the safety standards.

Ms R. SAFFIOTI: In answer to the member's question, a number of safety standards will apply. For example, regulations will require that the provider of an on-demand booking service must have a safety management system in place that identifies and keeps a record of reasonably foreseeable hazards. A fatigue management system will also be required. Those types of occupational health and safety measures will be brought into this bill.

Mrs L.M. HARVEY: Does the minister envisage that the fatigue management system will be similar to the system that exists in the heavy haulage industry, where they need to keep logbooks of their travel times and rest times and those sorts of things? How will that be managed, and what kind of auditing arrangement will be put in place?

Ms R. SAFFIOTI: We will not be prescribing in detail what they will need to do, but they will need to have a system to manage fatigue. We will not be prescribing all those other requirements; it is more that they need to have a system in place to manage fatigue.

Mrs L.M. HARVEY: I just want to get an understanding of that. Obviously it is very important from a road safety perspective to manage fatigue, and there are significant penalties in later clauses for failure to comply with these safety standards and safety duties. Is it envisaged that when an on-demand transport provider applies, for example, to be part of the industry, or has a licence renewal or something like that, they will be required to provide to the department that they have a fatigue management system in place and that they can detail their policy and their occupational health and safety policy around their drivers and passengers?

Ms R. SAFFIOTI: A couple of things. Audits will be done to see what systems they have in place. Another point is that drivers will also need to take responsibility for fatigue management. So, again, there is the chain of accountability—I have said that quite a bit—of booking service, driver, and vehicle.

Mrs L.M. HARVEY: The bill has safety duties versus safety standards. How does the minister differentiate between what the duties and the standards will be?

Ms R. SAFFIOTI: The standard is basically the standard that they have to adhere to, and the duties is what they have to undertake to adhere to the standard. As I would describe it, it would be a noun and a verb in a sense—one spells out the actions, what they need to do, and the other is the standard, what they need to achieve. That is how I would describe it.

Mrs L.M. HARVEY: It sounds as though it is a bit of a catch-all, because under the new regime it will not be good enough to have a booklet of policies, procedures and standards for the organisation. They will also need to demonstrate that they are performing adequately by taking on the duty of enforcing those standards in the sector. It sounds as though it is a double requirement. They cannot just pay lip-service to the standards by purchasing a book of standards for somebody who might provide such things to the industry, as the Western Australian Local Government Association does for local government. They have to also detail the duties of the responsible officers in maintaining the standards. Am I reading that correctly?

Ms R. SAFFIOTI: I think so. But they have to undertake the duties, whether they are reportable or not. The standards are there to set out what they have to achieve. The duties is what they have to do. Then if something happens in relation to a failure in that system, there will be repercussions, because they have not been undertaking their duties. With the duties, it is more what they have to undertake rather than what they have to report, if the member knows what I am saying.

Clause put and passed.

Clause 15: Principles applying to safety duties —

Mrs L.M. HARVEY: Clause 15(4) provides —

If more than one person has a safety duty for the same matter, each person —

- (a) retains responsibility for the person's duty in relation to the matter; and
- (b) must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter or would have that capacity but for an agreement or arrangement purporting to limit or remove that capacity.

This is obviously around when an incident occurs, and there are multiple people who would have responsibility for the safety management of that incident. How does the minister envisage that responsibility would be apportioned for an individual around a particular matter? Will each individual be apportioned 100 per cent of the responsibility for each incident, or does the minister envisage that when it comes to a penalty regime, for example, a level of responsibility will be apportioned to different people through the food chain in the industry?

Ms R. SAFFIOTI: What would occur would be subject to the investigation and how the fault was apportioned.

Mrs L.M. HARVEY: Further to that, clause 15(1) states —

A safety duty cannot be transferred to another person.

With respect to the owner of a company having a contract with the CEO of the company for the management —

The ACTING SPEAKER (Ms J.M. Freeman): Member, just take a seat. Members, you might want to be a bit quiet. I understand we are about to go to question time, but it might be worthwhile to be a bit quiet. Thank you very much.

Ms R. SAFFIOTI: The CEO or the manager has a contract with the board, and contractually he is obligated —

Debate interrupted, pursuant to standing orders.