

TRANSPORT (ROAD PASSENGER SERVICES) BILL 2018

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 15: Principles applying to safety duties —

Debate was interrupted after the clause had been partly considered.

Mrs L.M. HARVEY: Before we broke for question time, I was seeking clarification on clause 15(1) —

A safety duty cannot be transferred to another person.

I am trying to get an understanding of how that will work. Often businesses are set up with a board, a company or a company director. Generally, a manager of the business has, as part of the management arrangement, responsibility for ensuring that safety standards are complied with and that individual employees within a company are performing their safety duties appropriately to ensure that the company complies with the standards. Obviously, when something goes wrong, examination occurs as to who is ultimately responsible. I seek clarification. Will this provision be similar to corporations law under which, ultimately, company directors, members of the board and the manager and CEO hold responsibility for ensuring the safety standards of the legislative framework in which they work?

Ms R. SAFFIOTI: The directors of the corporation will have that responsibility as well.

Mrs L.M. HARVEY: If there is some sort of incident, will the directors ultimately be responsible, and any matters that fall to negligence on behalf of the CEO or manager will become a civil matter under that contractual arrangement?

Ms R. SAFFIOTI: It is shared responsibility; the responsibility will be shared among those that the member listed.

Mr W.R. MARMION: Safety is very important. I draw the minister's attention to the mining industry, which is regulated as such that accidents and near misses are reported to the Department of Mines, Industry Regulation and Safety. The mining industry has a very good reputation—far better, unfortunately, than the construction industry—because of its reporting requirements and the amount of attention that mining companies pay to safety. When the department framed this legislation, did it consider reporting arrangements that require the reporting of incidents to the department, which would put a bit of pressure on providers to make sure that they take this issue seriously?

Ms R. SAFFIOTI: Currently, and under this legislation, serious incidents have to be reported to the department.

Mrs L.M. HARVEY: Can the minister detail what she considers to be serious incidents?

Ms R. SAFFIOTI: Serious injury in a vehicle is an example.

Mrs L.M. HARVEY: To tease this out a little bit more—this might be more relevant in other clauses—there could be serious injury to a passenger and/or a driver. What about if a vehicle is involved in some kind of crash in which property is damaged or a vehicle runs into another vehicle? What about when the driver of an on-demand transport vehicle breaks some of the road traffic laws; how will that be delineated? Is speeding or running a red light considered a serious incident? Can the minister provide more detail as to what might be prescribed as a serious incident?

Ms R. SAFFIOTI: I think it is the first list that the member outlined: serious injury to passengers or pedestrians and damage to property. But accumulating demerit points or going through a red light would not constitute a serious incident.

Mrs L.M. HARVEY: I had one shocking example in a cab, I could not quite believe it—I was still Minister for Police at the time. I was driven through a red light 15 kilometres over the speed limit by a driver who was using his phone.

The SPEAKER: No hands on the wheel?

Mrs L.M. HARVEY: I reported the driver and I would consider that to be a very serious incident. I am wondering where the standards might sit. I gave him my business card and told him I was going to do something about it too. It is one of those situations in which I think: where is the threshold test here? My view is that that person should not be a driver.

Ms R. SAFFIOTI: I have just been informed that that situation would be classified as dangerous driving, given the combination of things that were occurring at the time. People also need to report those types of penalties or issues to the booking service, although, in a sense, running a red light would be found out by other authorities if they got caught. In the member's instance, it is about the passenger having access to somewhere to report, and that is available under this system.

Clause put and passed.

Clause 16: Primary duty of care of providers of on-demand booking services —

Mrs L.M. HARVEY: I understand that these safety provisions have been stronger than provisions in other states. In clause 16, under the heading, “Primary duty of care of providers of on-demand booking services”, it says that the provider of an on-demand booking service for an on-demand passenger transport service must ensure the health and safety of drivers, persons and passengers. That is a high threshold test. I am wondering why the word “must” was put in there, in lieu of words such as “must reasonably ensure”, or “must do everything reasonable to ensure the health and safety of passengers and drivers”.

Ms R. SAFFIOTI: The member is right, it is a strong clause, but defence is available to anyone charged if they can demonstrate that all reasonable steps were taken to prevent the breach. A person charged will have an opportunity to demonstrate that they had implemented business practices that include methods to identify, assess, control, monitor and review situations that put safety at risk. They may, for example, develop guidelines or mechanisms, or when the driver chooses to drive for the booking service it may set up processes that would require the driver to inform the booking service about any potential illness or anything that could impact their ability to drive.

Mrs L.M. HARVEY: Because this is an on-demand booking service, what sort of responsibilities would the minister expect dispatch operators, if you like, to take on to ensure the safety of on-demand drivers in their care and passengers in the care of the drivers? It is quite a big responsibility for a booking service to have to ensure the health and safety of a vehicle and a passenger that they may never have physical contact with.

Ms R. SAFFIOTI: One of the key requirements of the booking service is to ensure that the drivers are authorised. With the authorisation comes a number of checks and balances. Basically, they also have a safety management plan that identifies the types of services they deliver and any risks. It ensures they mitigate those risks. Yes, this is a new requirement for a booking service, but it is trying to capture the fact that if a person is using a booking service, the booking service has a responsibility to make sure that when a driver gets into a car, they are authorised, and a safety plan is in place. In using a booking service, a person is trusting that that booking service has done the required checks to make sure that the driver has met all its requirements.

Mrs L.M. HARVEY: I can see that this is important. I would suggest that if this clause were not in the legislation, the sole responsibility for everybody would end up with the person at the end of the food chain—the driver. We do not want that situation to happen. How is that going to work? Would that responsibility also extend, for example, to ensuring that the driver is not only authorised but also has their police checks in place? Do they need a working with children check? I am not sure whether that is required. Would they also need to take responsibility for ensuring, via the booking service, that the vehicle transporting the passenger and the driver is being regularly maintained? Does the booking service need to have some kind of check and balance in place to ensure that everybody beneath them, and, if you like, all the layers above in the sector, are complying with their responsibilities?

Ms R. SAFFIOTI: There are a couple of things. To be authorised, a driver needs the minimal health checks and other requirements, which I will pull out. The other key point is that there will be an online portal with the authorisation number of drivers. The booking service, for example, can go to the Department of Transport’s website of live data to make sure that the driver is authorised. That is one way of crosschecking. The same would apply to vehicles. That way, it is on one consolidated list and that booking service can crosscheck to make sure that the driver is authorised.

Mrs L.M. HARVEY: Does the minister envisage that that system will proactively manage the authorisations that have been issued? For example, with the swipe cards at pubs in Northbridge, if a person is a problem patron, the system picks up that they are a problem patron, if they have a barring condition on their details, and that they should not be admitted to any other venue. If a person’s authorisation falls away, such as when they have not renewed their authorisation, there is a problem with their authorisation. Is it envisaged that the department would push that information out to providers of the on-demand transport booking services, or will it be up to the booking services to maintain the constant check and management of the driver’s authorisations?

Ms R. SAFFIOTI: The booking service would need to instigate the check through the portal.

Mrs L.M. HARVEY: Just to be clear: will the system not be able to push out information to the sector if there are individuals whose authorisations have been cancelled or disqualified for any reason? Will the portal for serious incidents, for example, be likely to have a pop-up to say that these drivers have been banned this month or something like that to make it easier for the providers?

Ms R. SAFFIOTI: There would be a warning system—green light driver, all good; red light driver, all bad; and amber, investigations currently underway.

Mr W.R. MARMION: My question goes back to the words “must ensure”. Say I have an on-demand booking service and, heaven forbid, a passenger in one of the cars that I was responsible for dispatching is injured badly, and the cause of the injury is that the driver had been drinking alcohol. I have put all the checks in place. I have done everything possible. There is nothing more I could have done, except make sure I breathalysed every single driver before they picked someone up. Under this clause, would I be liable because I have not ensured the health and safety of the passenger in that particular instance? Is there a defence that would enable me to avoid getting

a fine or a black mark against me? In my view, I had done everything I conceivably thought I had to do, and the driver was subsequently dismissed because he did not follow the rules of the company. Clause 16 states that I “must ensure”. If, in that particular case, I had not done so, what would the penalty be?

Ms R. SAFFIOTI: Clause 24 outlines the reasonable steps defence. I alluded to that in the description that I gave earlier. If the on-demand transport provider had taken reasonable steps in that situation and done all the appropriate checks and did not know the driver was drinking heavily, they would not be liable under these clauses.

Clause put and passed.

Clause 17: Primary duty of care of providers of passenger transport services —

Mrs L.M. HARVEY: This is about the primary duty of care of providers of passenger transport services. Are these the drivers?

Ms R. SAFFIOTI: It is not the driver with the company, as far as I am aware; it is the person involved in supplying the service.

Mrs L.M. HARVEY: If I can relate that to the existing industry, can the minister give an illustration of who the provider of a passenger transport service might be?

Ms R. SAFFIOTI: I suppose the best example is a charter company that is providing the services and employing the drivers.

Clause put and passed.

Clause 18 put and passed.

Clause 19: Primary duty of care of drivers of vehicles used to transport passengers for hire or reward —

Mrs L.M. HARVEY: Once again, we have a very high test at clause 19. It states —

The driver of a vehicle must, while the vehicle is being used for the purpose of transporting passengers for hire or reward —

...

(b) ensure that their own acts or omissions do not adversely affect the health and safety of other persons; and ...

I want to get a good understanding of how this will work. Drivers often transport a wide range of people—they might have a disability, or have an impairment due to alcohol or drugs. I am wondering about the duty of care of drivers. If a driver has a drunk female passenger in the back of the vehicle who asks to be dropped at the side of the road, for example, would the driver have a duty of care under this new requirement to convey that passenger to a safer place to ensure that her health and wellbeing is looked after?

Ms R. SAFFIOTI: This is difficult, because there are so many situations to try to cover. The situation pointed out to me was that if a young female passenger was intoxicated and had passed out, we would not want the driver to roll that person out of the vehicle and dump her on the side of the road. We would expect that the driver would potentially take that passenger to a police station or hospital or something like that. It is difficult to try to define that explicitly. Each circumstance would be judged. However, there is a duty of care. If we think about it, it might seem unfair on the driver, but we do not want to create a situation in which people who are very vulnerable are left on the side of the road.

Mrs L.M. HARVEY: I understand the state of some passengers who get into a taxi. My concern is that it is a high test. I know that the bill provides a reasonable defence clause. A person who was very drunk might get out of a cab and trip over and hit their head on the concrete. If the driver knows that the passenger is inebriated, for example, what would be a reasonable duty of care in looking after that passenger? Should the driver make sure that the passenger gets out of their vehicle safely? I am trying to understand. Obviously this will be tested at some point.

Dr A.D. Buti: Yes, and the courts will decide it.

Mrs L.M. HARVEY: I am trying to get an understanding of what the minister thinks is reasonable.

Dr A.D. Buti: That will be for the courts to determine.

The ACTING SPEAKER (Mr S.J. Price): Member for Armadale!

Ms R. SAFFIOTI: I thank my lawyer friend for that one. It will be analysed based on each situation. It is reasonable to expect that if the passenger trips over on concrete, that is not the driver’s responsibility. However, the driver also needs to make sure that if they are asked to go to a particular address, they find that address, if

reasonable, and they find a safe place for the passenger to get out of the vehicle. I have seen that in a lot of situations, even myself, frankly, when I have caught a cab to go home, when near enough is good enough and the driver has dropped me on the side of the road by myself in the middle of the night, which is not a nice thing. So if it means that drivers are a bit more aware that they need to drop people off closer to their front door, that would be great. They are the types of situations that might occur. I think it is reasonable to expect that if a person gets into a vehicle and pays the driver to deliver them to a certain place, the driver will make an effort to deliver them to that place in as safe a way as possible. I think that is fair enough.

Mr W.R. MARMION: This raises another issue, which may be legal as well. This might be covered in another area. If a driver rocks up and someone is inebriated, and they have a person with them who is not inebriated, would the driver have a right in terms of duty of care to say, “I don’t want to take you; the person next to you who is sober must look after you; see you later”?

Ms R. SAFFIOTI: Yes.

Clause put and passed.

Clause 20 put and passed.

Clause 21: Safety duty offence: Category 1 —

Mrs L.M. HARVEY: This clause states, in part —

- (a) the person has a safety duty; and
- (b) the person knowingly engages in conduct that breaches that duty ...

Can the minister give me some examples of what a category 1 offence would be? The bill states that a category 1 offence is a crime. There are obviously lots of different crimes out there. Does this link into the Criminal Code or some other legislation to delineate which offence fits where?

Ms R. SAFFIOTI: A category 1 offence is an offence that has the risk of causing death or serious injury, as I understand it.

Mrs L.M. HARVEY: That is what I am trying to get to, because there are categories 1, 2 and 3. Categories 1 and 2 both state that failure —

exposes an individual to whom that duty is owed to a risk of death or serious injury or illness;

There are two different penalty mechanisms. There are obviously two different levels of crime here. I am trying to work out where the threshold is between the two different levels.

Ms R. SAFFIOTI: This is a good explanation. Category 1 has the key word of “knowingly” in part (b). “The person knowingly engages ...” Category 2—we are jumping to clause 22—states “fails to comply with that safety duty ...” An example given to me was that if a driver is drunk while driving and kills or seriously injures someone, that would be a category 1 offence, potentially.

Mrs L.M. HARVEY: The way this reads is that under a category 1 offence, a driver does not necessarily have to cause the death or serious injury, but expose an individual to the risk of death or serious injury. Is that correct?

Ms R. SAFFIOTI: Yes.

Mrs L.M. HARVEY: Most of these will be quite serious traffic offences or serious breaches of the Criminal Code, such as assault, sexual assault and those sorts of offences, or is it more around safety breaches rather than criminal actions?

Ms R. SAFFIOTI: It could be also when a driver is driving a car knowing there is a serious problem with the brakes, for example.

Mrs L.M. HARVEY: Obviously, there will be the three percenters who will be criminal offenders in any industry. They may be one percenters, I do not know. There is a whole class of criminal convictions and obviously different penalties apply to those if they occur. Are these offences more around the actual duty of care, the inherent problems in a vehicle, when a driver knows the vehicle is unsafe, knows they have had too much to drink or are fatigued, for example, but still takes passengers? Is it more that range of offences and the criminal offences fall under a different jurisdiction anyway?

Ms R. SAFFIOTI: Yes.

Mr D.C. NALDER: Picking up on “knowingly” and the categories 1 and 2—I know we are dealing with category 1 in clause 21 at the moment—a driver may not need to cause death or cause injury, they need only to expose someone to that. If a driver gets behind the wheel meth affected—we have seen those situations around Australia—or is even seriously drunk and is pulled over to the side of the road, that could expose that driver. Will they be automatically subject to a category 1 offence if they are meth affected, drug affected or very drunk?

Ms R. SAFFIOTI: Yes, they could be.

Mr D.C. NALDER: Sorry; I am not sure “could be” is really acceptable.

Ms R. SAFFIOTI: Sorry. Yes, they are.

Mr D.C. NALDER: The fine for an individual is imprisonment for two years and a fine of \$300 000. I want to clarify that there is no discretion to the judiciary to determine this. It is a fixed amount, so it is automatically imprisonment for two years and a fine of \$300 000. It does not say “up to” so I assume it is a fine of \$300 000 and two years’ imprisonment automatically if someone is convicted of drunk-driving or being drug affected when driving a passenger vehicle.

Ms R. SAFFIOTI: I have been advised that under the Sentencing Act, if it does not state that it is a minimum, it is an automatic maximum, so it is “up to”.

Mr W.R. MARMION: I think that helps answer my question. My next inquiry is about “knowingly”—a driver drives a car with bald tyres. The car is due for a service, but the driver thinks they can drive for another two weeks. They would be knowingly driving an unsafe car on a wet road. All they have done is hope it does not rain but then they expose a passenger to that. I think the minister has answered the question. That would be a category 1 offence but the driver would be unlikely to go to jail for two years for exposing someone to that sort of risk.

Ms R. SAFFIOTI: Yes, I think that is right.

Mr A. KRSTICEVIC: Can the minister explain to me, in terms of a driver’s motor vehicle safety, what sorts of things a driver has to be conscious of not compromising to avoid being caught under this provision? Bald tyres were mentioned. What about other things that could be wrong with a vehicle such as brake lights, indicator lights or a range of other things that could warrant the vehicle being given a yellow or red sticker, depending on the police view? Can the minister clarify what exactly she means by that and to what degree people need to be careful about their vehicle so that they understand their obligations under this legislation?

Ms R. SAFFIOTI: I think they need to make sure the vehicle is safe, is not missing any key parts such as indicator or stop lights and is safe to drive and is roadworthy. They would be the standards to look at.

Mr A. KRSTICEVIC: If a brake light is not working, would that expose someone to this offence if they are involved in a car accident?

Ms R. SAFFIOTI: Yes.

Mr A. KRSTICEVIC: What if a driver is involved in an accident and the brake light is not working and the accident is not the driver’s fault, someone else has caused it? I ask that because I know someone could be involved in a car accident, but it is not their fault even though they might be drunk. However, they can be blamed for being drunk and insurance will not cover the costs of repair et cetera. To extrapolate from that, if a driver’s car is not roadworthy because the brake light does not work, so it is not safe, and they are involved in an accident that was not necessarily their fault, would they still be exposed under this clause?

Ms R. SAFFIOTI: It is an interesting hypothetical but I am not going to make judgements on all causation and who was at fault —

Mr A. Krsticevic: No, it is just if the brake lights were not working, irrespective of the —

Ms R. SAFFIOTI: As we said, a driver has an obligation to make sure that their brake lights are working. If something happens as a result of them not working, then they would potentially be subject to the provisions in these clauses. I think that is the easiest way of saying it. Otherwise, like I said, we could go through 100 hypotheticals. I am not a judge, so I am not going to make those sorts of determinations. This provision puts in a requirement that a driver has to make sure their car is safe.

Mr A. KRSTICEVIC: Does that mean that every time a driver jumps in their car for the start of the day, they have to check the car in its entirety to make sure their brake lights are working, the brakes are fine and the tyres still meet the specifications? Or does the person just take it for granted that they checked them three weeks ago so they would not have to check them now? Does the minister expect drivers to check their cars on a daily basis when they start driving the car to make sure they meet all the safety regulations, or is it whenever they feel like it, when it is serviced, or whenever they happen to notice by accident that something is wrong with the vehicle? What is the minister’s expectation for the driver of the vehicle to make sure their vehicle is safe?

Ms R. SAFFIOTI: My expectation is that a person’s car is serviced on the required basis and that somehow they will notice if their brake lights have gone missing. I think that is important. I do not think it is beyond us to say that before someone uses a vehicle for hire and reward, they should check that their brake lights are working. I think that is fair enough.

Mr D.C. NALDER: We are putting in place a higher test for Uber drivers, taxidivers and all on-demand transport drivers about what is acceptable and understandable. Let us say that an Uber driver undergoes a breathalyser test.

Extract from Hansard

[ASSEMBLY — Wednesday, 19 September 2018]
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Mrs Liza Harvey; Ms Rita Saffioti; Mr Bill Marmion; Mr Dean Nalder; Mr Tony Krsticevic

Given that they drive standard vehicles, how will the police identify that it is actually a passenger vehicle? Given that we are establishing a higher test, how do we make sure that drivers are captured by that higher test, whether it be through a random breath test or they have been pulled over for a broken tail-light? How will the police identify that drivers fit under this legislation and are therefore potentially committing a crime?

Ms R. SAFFIOTI: There are two things: firstly, the vehicle will have a sticker on it to identify that it is a ridesharing vehicle; and, secondly, police share data with the Department of Transport. For the types of examples such as drunk-driving, that information will be given to the Department of Transport and crosschecked against the driver's licence and their authorisation. We do that now.

Mr D.C. NALDER: I think I have got it, but I will just check. The department maintains a register of car registrations—the licence plates—and the police access that information to determine that they are —

Ms R. Saffioti: Member, are we talking about drivers?

Mr D.C. NALDER: I am talking about —

Ms R. Saffioti: It will be on the driver's licence.

Mr D.C. NALDER: Is it on the driver's licence?

Ms R. Saffioti: Yes.

Mr D.C. NALDER: Police can check the driver's licence only by putting it into the system. Is there anything on the driver's licence to denote that they are an Uber driver?

Ms R. SAFFIOTI: The Department of Transport would be made aware of the offence. That is what would happen. The police data and the Department of Transport data would be crosschecked.

Mr D.C. NALDER: To see whether I can get this right, I will use an example when a driver has been pulled over for a random breath test and blown positive. Because they have blown positive, the information on their licence would then go through to the Department of Transport. There are processes within the Department of Transport to double-check that licence and ensure it is picked up. I am getting nods from the advisers, so that is a yes, to help speed it along. On that basis, at that point, would it go back to police because the person has committed a crime; would it not be identified at the point of committing the crime?

Ms R. SAFFIOTI: The Department of Transport would enforce that provision. As I said, the other thing in the first instance, which will take time to become known throughout the system, is that there will be identification on the vehicle that it is a ridesharing vehicle.

Mr D.C. NALDER: I suppose I am expressing concern that we have put in place a higher standard of test—we should; it is the right thing to do—but I am nervous because in some ways it is untested whether we can follow through on what this legislation is trying to uphold. At some point, the minister is telling us to take it at face value that the Department of Transport has these processes in place and that it will be able to identify people and ensure that they are charged with the appropriate criminal offences. I am just a bit concerned that because it is such a large piece of legislation, we therefore have to take it at face value that the department will ensure it is followed up. I am a bit concerned that police do not have the information at hand and we are not making it readily visible that these drivers are carrying passengers and therefore are responsible to a higher test. I am not sure we have fully thought this through.

Ms R. SAFFIOTI: The department has a drivers' suitability section. For example, I just asked how many times there have been instances in which we needed to act, and there was a case recently. A police report was crosschecked with the Department of Transport's data and someone's authorisation was cancelled. So it does happen and we will make sure, in the future, that we do everything we can. The member is right; it is a better test to make sure those provisions are enforced.

Mr A. KRSTICEVIC: The minister mentioned stickers on the cars, which will make them identifiable as ridesharing vehicles. Are the stickers permanently fixed to the back windscreen? Can they be removed, or are they put up and taken down? What is the offence for not displaying that sticker?

Ms R. SAFFIOTI: The offence will be in the regulations, and the signs will be removable so that people do not potentially have to keep their signs up when they drop their kids at school.

Mr A. KRSTICEVIC: When do drivers have to have their signs up?

Ms R. SAFFIOTI: It is when they are providing the passenger service.

Mr A. KRSTICEVIC: If a driver is between rides, because they have just finished a job, and they do not have another job, can they take down the sign or do they have to leave it up the whole time that they are available for ridesharing?

Ms R. SAFFIOTI: If a driver is looking for work, they need their sign up. If they want to pull it down between taking a job and going to KFC, they can take it down. There will be hundreds of circumstances but I am sure it will work itself out, because that is what normally happens with these types of changes. If a driver is out there requiring work and they take a booking, they need to have that sign up.

Mr A. KRSTICEVIC: The reason I asked that question is that the minister talked about a higher standard of accountability and the sign being able to identify drivers, so if they can take the sign down whenever they think they are not officially undertaking the rideshare, is it when they take the booking or when they arrive at the job? When do they have to put the sign up? If they do not have the sign up, when are they obliged officially to stick that sign up? Is it in the process of getting a booking?

Ms R. SAFFIOTI: When they take the booking and when they are looking for jobs; that is when they need it.

Mr A. KRSTICEVIC: What does the minister mean when they are looking for jobs? Obviously, with the rideshare, the jobs come onto the system. I do not understand what the minister means by “looking for jobs”. Is it when they receive the job? That is when they get the job. They might be available 24/7 to take a job, and they might get one job a week or they might get one job a month that comes through the system. Do they leave the sign up the whole time? Who makes the determination of when they are actually getting a job? Is that what they determine, or is that what the rideshare provider determines? Who determines when they are actually ready for a job, and how will the authorities be able to determine when they are and are not available for a job?

Ms R. SAFFIOTI: The driver will have the responsibility to make sure their vehicle has the proper signs. I suspect that we will trust the driver to do that. Just as we trust the driver to take a person from A to B, I would trust the driver to make sure they have the signage up at the appropriate time.

Mr A. KRSTICEVIC: What is the actual offence for a driver not having their sign up at the appropriate time?

Ms R. SAFFIOTI: We are developing regulations in relation to the offence.

Mr A. Krsticevic: So, is there nothing at the moment?

Ms R. SAFFIOTI: There is no requirement at the moment, so we do not need the offence.

Mr W.R. MARMION: It is always hard when framing legislation to put penalties in because there is a lot of debate on what they should be. Usually we look at what is in existence in other states. Could the minister explain to me how—it would have been tricky—she came up with the two years’ imprisonment and \$300 000, and how that compares with penalties in other states?

Ms R. SAFFIOTI: Our penalties are consistent with those in New South Wales, Victoria and Queensland.

Clause put and passed.

Clause 22: Safety duty offence: Category 2 —

Mrs L.M. HARVEY: This is the next step down, if you like. Rather than a person knowingly engaging in conduct that breaches their duty, this is when they fail to meet their safety duty requirements. Can the minister give us some examples of some scenarios to which this provision might apply?

Ms R. SAFFIOTI: This probably covers more of a situation in which a faulty brake light would come into consideration and the fact that a driver failed to carry out safety checks or check the vehicle. This is probably more when those situations come into play.

Mrs L.M. HARVEY: Would this also be a scenario in which they have failed in their duty of care in some way, shape or form? This is actually about exposing a passenger to a risk, the outcome not necessarily being an injury or other deleterious outcome of some sort. Is that right?

Ms R. Saffioti: Yes.

Mrs L.M. HARVEY: Okay.

Mr W.R. MARMION: This might be hard for the minister to answer off the top of her head. Because it is still quite a serious offence—it says that it is a criminal offence—there is obviously a range. If a brake light is out, that might be at the lower range because the other brake light might work, and if they apply the brakes, someone could see the remaining brake light. A seatbelt offence might be more serious. Does the minister have an indication of an upper end, serious offence for category 2, and what might be a lower offence before we get to a category 3 offence, just to give us a bit of an idea?

Ms R. SAFFIOTI: I think the member is asking particularly about categories 2 and 3; is that what he is asking?

Mr W.R. Marmion: What is the range of category 2, just to give us an idea?

Ms R. SAFFIOTI: I think the safety issue we just outlined about not undertaking safety checks of the vehicle could potentially be a category 2. Category 3, if we go to the next one, is similar to category 2 but they are not exposing anyone to the risk. They may be driving the vehicle but not with a passenger; that would be a category 3.

Mr W.R. MARMION: Just on that—we are jumping to the next clause, I suppose—it actually takes up what the member for Bateman said. If they get picked up for not having a brake light working, it would probably be covered by what the minister said before. If they have their sign up saying that they are in business, are they then liable for a category 3 offence, which would be higher than if they were a chap or a lady driving around and just got a warning?

Ms R. SAFFIOTI: I think in relation to the case that the member outlined, the answer would be yes.

Mrs L.M. HARVEY: Just to further tease this out, to go back to the drunk passenger, for example, if they deposit that individual in Northridge, and the passenger is inebriated and the driver has the sense that the passenger is not really in control of their faculties, would that fall into one of these breaches of a safety duty offence, if that individual then found themselves in trouble of some sort?

Ms R. SAFFIOTI: We are jumping a little bit to clause 24 and the reasonable steps defence. If it is out of their control, I think that would be a reasonable defence.

Mr D.C. NALDER: I want to think about an incident that could occur. The driver might run a red light and has a passenger inside, so they are putting the passenger at risk. The driver gets pinged and charged for running a red light. Let us say there is a camera. The driver gets charged for running a red light as a standard fee. Then when we go through to this offence, are they done jointly or are they totally separate offences and therefore the penalty they receive for the first offence has no bearing on determining the second offence?

Ms R. SAFFIOTI: I think in the example of the offence that the member gave, there probably would not be enough evidence to come under this legislation, because, as was pointed out to me, from a photograph of a vehicle going through a red light a number of things have to be proved such as the fact that there was a passenger, among others.

Mr D.C. NALDER: We have just opened a can of worms, because the minister just advised me that there would be a database on every vehicle and every passenger who is carried and that there would be registration connections to identify the vehicle. I would imagine that a record is held of every person who has been carried and when they were carried. I need clarity of whether that is not the case. If it is not the case, we have to start questioning some of the earlier clauses and some of the comments made about duties and responsibilities. If it is the case that there is that data, it should be identified that the vehicle is carrying a passenger. I would have thought that running a red light with a passenger in the vehicle was a serious offence and I would like some assurance that that is the case.

Ms R. SAFFIOTI: As has been outlined, it is purely about whether sufficient evidence can be obtained to have the standard of proof to be charged under this legislation. That is purely where the discussion will be. I understand the member's point. Data is being kept by the Department of Transport on the movement of people, and we will have a look at that, but this is all about making sure that we have the right provisions and the right penalties, and we will continue to work to make sure we can enforce them.

Mr D.C. NALDER: I am not really comfortable with the explanation to date. We have identified three categories of offence and the responsibilities of the drivers to adhere to their requirements. If a person drives through a red light, there should be data to identify whether they do or do not have a passenger. Let us say they do not have a passenger. They have then committed a category 3 offence; if it is not a category 2 offence, it is a category 3 offence. My original question remains about whether they are responsible for paying a fine as a normal traffic offence for running a red light. We know through the registration, as we have been advised, that they have stickers and that that feeds into the database in the Department of Transport, and it can identify these people. Let us say for the sake of the argument that it is an Uber driver who has run a red light. We would say that that breaches a safety duty of care. If it does not, we would like to understand what does constitute a breach of a safety duty of care. If there is a breach, the minister is saying that it has to be proven that the driver was carrying a passenger. I would say that for a category 3 offence, there does not need to be a passenger, because it is not an offence or a threat to someone else. If they breach category 2 or category 3, does the fine and penalty system apply independently of the original traffic offence or is it taken into consideration and taken off? Can two fines occur for this person?

Ms R. SAFFIOTI: Going through that, in the case of running the red light, it would not be a court process, but if it was dangerous driving, it would be, and the dangerous driving offence could be heard simultaneously. We are going through a previous point again. What would and could happen in the example of the red light mentioned before is that a driver goes through the red light. That comes up on the Department of Transport system and the department then has the ability to investigate and check whether there was a passenger in the vehicle. There is a system of doing that.

Mr D.C. Nalder: I thought so.

Ms R. SAFFIOTI: That is what we will be doing.

Mr D.C. NALDER: On that, running a red light and being picked up on a camera is an automatic fine in the traffic system; it does not go to court. But I would think that running a red light with a passenger in the car constitutes a breach. Firstly, the department gets the information. Secondly, if the driver was carrying a passenger, it would constitute a category 2 offence, would it not? I want to confirm that that is the case.

Ms R. SAFFIOTI: Yes.

Mr D.C. NALDER: Yes. On that basis then, I am still trying to understand. The driver picks up a penalty under a normal traffic offence for running a red light and they get fined a few hundred dollars or whatever it is and so many demerit points—I do not know what it is; I have never done it.

Mrs L.M. Harvey: Six demerit points.

Mr D.C. NALDER: Is it six demerit points? I thought it was four. Thank goodness I have not done it. I am still trying to understand. The driver gets that fine and the department picks up this information through the system. The department then pursues potentially a category 2 or category 3 offence against the driver, depending on whether or not they have a passenger, because they have run a red light. Category 1 and category 2 offences are criminal offences. Does the matter then get referred to the police or to the courts—to pursue it through the court system—or does the Department of Transport determine what the appropriate fine is and issue a fine? How does the system work?

Ms R. SAFFIOTI: It is a process.

Mr D.C. NALDER: Is it a court process?

Ms R. SAFFIOTI: Yes.

Mr D.C. NALDER: I know we are looking at category 2 offences, but this relates to categories 1, 2 and 3. If it is determined that the driver is not carrying a passenger and they have run a red light, so they have potentially breached category 3, does that entail a court process, because it is not a criminal offence? Again, is that done in conjunction with a normal traffic offence fine or is it done totally separately? Is the minister going to tell me that that also goes through the court?

Ms R. SAFFIOTI: It goes though the court; it is a simple offence.

Mr D.C. NALDER: Does it still goes through the court?

Ms R. SAFFIOTI: It is still a criminal offence.

Mr A. KRSTICEVIC: Are they offences only if the driver has a passenger? If the driver has just taken a booking and is on his way to pick up a passenger, is he still caught in category 2?

Ms R. SAFFIOTI: We have just gone through that. It makes me bit irritated when people go out of the chamber, come back and ask the same question.

Mr D.A. Templeman: He was out there stuffing a sausage roll into his mouth!

Mr W.R. Marmion: It was the last one too; I was waiting for that!

Ms R. SAFFIOTI: He could have brought one in for me too!

If the driver was not carrying a passenger, it would be a category 3 offence.

Mr D.C. NALDER: Can I also confirm that when this has been identified—a car drives through a red light—is the process in the Department of Transport an automatic referral through to the court system or the police for the driver to be charged? What is the process? They have gone through a red light, so I imagine they have committed a traffic offence. If they have committed a traffic offence in this situation, I imagine that there would be an automatic referral. I just want to confirm that it is an automatic referral to the courts and through to the police.

Ms R. SAFFIOTI: There is an investigation. The driver and the passenger are interviewed and a decision is made to charge.

Mr D.C. NALDER: Just confirming that, will the police carry out the investigation? Is it a referral to the police or does the Department of Transport do the investigation?

Ms R. SAFFIOTI: The Department of Transport does the investigation.

Mr D.C. NALDER: Given the number of incidents of people going through red lights and the number of on-demand transport vehicles we have, is there an understanding of the category 1, 2 and 3 offences that are likely

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to occur and, therefore, the resourcing that will be required by the Department of Transport to undertake the appropriate investigation work?

Ms R. SAFFIOTI: Again, with reform and change, once it is implemented, we will ascertain exactly what level of workload and additional resources may be required. We will be monitoring that.

Mr D.C. NALDER: Just clarifying, to date, has no modelling work been undertaken to ascertain what the responsibilities are likely to be for the Department of Transport in policing and enforcing this important legislation?

Ms R. SAFFIOTI: We have some information and statistics, so we will try to pull them out for the member. Given the legislation, like I said, it is only reasonable to expect us to work continually to make sure that we have the resources to administer the legislation correctly.

Debate interrupted, pursuant to standing orders.

[Continued on page 6318.]