

TRANSPORT (ROAD PASSENGER SERVICES) BILL 2018

Consideration in Detail

Resumed from 19 September.

Debate was adjourned after clause 43, as amended, had been agreed to.

Clauses 44 to 149 put and passed.

Clause 150: Terms used —

Mrs L.M. HARVEY: Clause 150 is about confidentiality and the exchange of information. We really just want a little bit more detail on what the requirements are going to be on the on-demand transport industry for keeping the privacy of their members' databases confidential. Obviously, the on-demand transport industry holds a lot of information. The companies have the names and addresses of individuals and often other extraneous data is collected so they can profile their customers and consumers. The opposition would like to know what the requirement will be on the on-demand industry to maintain the confidentiality of this data. In addition, there will be a requirement for the on-demand industry to hold on to data for a certain period so that reporting requirements to the agency can be met; what will the requirement be for the period that data is held by these companies? Will they be required to dispose of this data after a period; and, if so, what is that period?

Ms R. SAFFIOTI: Clause 151 requires that information required under this legislation is kept confidential. For the information required by the legislation, the booking service has an obligation not to disclose that information. For any other more general information the companies may collect, there are no specific provisions in this act about that information. The confidentiality clauses relate specifically to the information that is required to be disclosed to the booking service. The booking information is kept for two years and the tax information is kept for five years.

Mrs L.M. HARVEY: What are the penalties for noncompliance with those confidentiality requirements? Is it in clause 151?

Ms R. SAFFIOTI: Yes, at clause 151.

Mr W.R. MARMION: My question is based on recent personal experience when I caught a taxi and the driver found out who I was and then, when they dropped me off, of course they knew where I lived. As a result, some information was put through my letterbox and I got some emails from this taxidriver. Does the confidentiality clause relate not only to the booking service data but are there also confidentiality requirements around drivers keeping confidential any information they might ascertain from a passenger?

Ms R. SAFFIOTI: To clarify, this provision is in relation to the information provided to the booking service and not to the driver. There is no specific provision about the driver. It would not cover the situation the member was in, which was a bit disturbing.

Clause put and passed.

Clauses 151 to 157 put and passed.

Clause 158: Exchange of information between CEO and road traffic CEO —

Mrs L.M. HARVEY: Clause 158 covers the exchange of information between the CEO and the road traffic CEO. I want to understand why this provision has been put in here. Is it about vehicle and driver authorisations and data being exchanged between agencies?

Ms R. SAFFIOTI: This clause helps to address an issue that was raised yesterday about driver suitability. It enables the transfer of information to assess a driver's suitability to carry on a particular authorisation.

Clause put and passed.

Clauses 159 to 165 put and passed.

Clause 166: Authorised officers —

Mrs L.M. HARVEY: This part of the legislation refers to enforcement. I want to get some clarification. Obviously, there are authorised police officers, which one would expect, and it also refers to "a person designated by the CEO under subsection (2)" to be employed by the department for the purposes of the enforcement of the on-demand industry. Obviously with a brand-new regulatory system, enforcement is going to be quite important. How many individuals does the minister anticipate will be authorised officers to carry out the enforcement functions of the legislation? Will they be additional FTE positions to those who are currently employed?

Ms R. SAFFIOTI: Currently, there are eight officers in the unit, plus other resources across the department. We are also in the process of going through a tender process to employ a particular service for controlled operations.

They are, I suppose the word is, “undercover” but I hate using that type of term. They are the investigators who ride as normal customers but make sure that everything is going okay. Clause 216 refers to controlled operations activities. We are in the process of developing a tender for those services.

Mrs L.M. HARVEY: Obviously, there will be a training requirement for pretty much everyone in the industry once this legislation goes through. Are those eight officers who are currently employed by the department already receiving training on the new regime? Where can we expect them to focus their attention with respect to enforcement?

Ms R. SAFFIOTI: Yes, they are going through some preparatory training for the new legislation. They will be focusing across the metropolitan area and specific regional areas. The member for Bunbury, for example, has raised his concerns in particular about relatively new entrants, their competition with the existing taxi industry, and their use of rank and hail. They are going to be looking, in particular, at areas where there are new entrants, but focusing extra compliance activity on specific regional towns where we have seen those new entrants.

Mr V.A. CATANIA: Has the minister allocated any financial resources to the department to assist with navigating this quite lengthy piece of legislation for not only metropolitan on-demand transport services, but also regional on-demand services? Will there be a website or a portal one can navigate to see what the requirements are? It is quite a lengthy piece of legislation; even we find it difficult to get our heads around it, let alone anyone who is not versed in legislation. The question is: has the minister put any financial resources into assisting the industry; and, if so, what is it made up of?

Ms R. SAFFIOTI: I have asked for a specific education strategy. That is being developed. If the legislation gets through, it will be online, and information will also be distributed to key industry stakeholders, plus the court action, in the sense of pointing to where they can go to find additional resources. There will also be phone numbers that people can access to get information. We have also looked at having people on the ground—going to taxi ranks, in particular, and talking to drivers directly. As we know, the industry is fragmented and it is very hard to talk to the industry as a whole. It is pretty much impossible through any one mechanism, so we looked at different mechanisms. One of the ideas we are looking at is going to places where there are a lot of taxis and talking to the drivers and giving them information directly. It is a fragmented industry, it is very complex and the change is significant; I understand all that. We are looking at different ways. We are not looking at advertising in the sense of, “This is all great”, but more like, “This is changing. If you need any information, come to this website and find out information, plus a phone number.” They are the types of programs we are looking at.

Mr V.A. CATANIA: That is good to know, minister. Assuming all goes well with this legislation and it is passed in the next few weeks, the government can start enacting it in the first quarter of 2019. Will that process commence once this legislation goes through the Parliament? Obviously it is going to take time to get to a lot of on-demand transport services around the state. Specifically, has the minister put in the \$120 million that the government will raise, with \$1.2 million going towards administration? What component is going towards the education of the industry, with all these new changes?

Ms R. SAFFIOTI: We do not currently envisage using the levy collection because it has not reached us yet. It is more looking at the existing resources of the department. A lot of work is being done in preparing the legislation, and the regulations will also require work. I have asked for an allocation of resources within the department to make sure that we have sufficient funds to do that communication. We will ramp it up. To be honest, we were not sure how the legislation was going to go, so it is really in the past week that we have become confident that it will potentially get through but, as I said, I do not know! We have been cautious in our approach but now we are ramping up those resources and basically realigning resources within the department to make sure that we have enough to spread that information to the right areas. That is something we are doing now.

Mr W.R. MARMION: Just to explore this a little further, I think I heard the minister say that eight extra officers would be available in the Western Australia Police Force for that.

Mrs L.M. Harvey: Eight inspectors.

Mr W.R. MARMION: Eight inspectors; okay. I have two questions, I guess. The first is about the sharing of information. My understanding of how the police operate now is that if they drive up behind someone with new number plates, the data about them and their car, whether it is stolen and who they are, is there, and that obviously helps them in their policing. Will the information that they are a rideshare operator be on the police database so that when they come up behind a car, they have that information straightaway? If they are inspectors, they will know that they can pull that car over and inspect because of the database, rather than driving around trying to find the car. Secondly, if that is the case, it would be useful information for all police officers if they are all trained to know that when they pull someone over for an offence, they can also check that the person has the right authorisation papers.

Ms R. SAFFIOTI: Just to clarify, there are eight compliance officers, two investigators, and regional officers in regional WA. There are also other resources within the portfolio. Sorry; I focused earlier on compliance officers. With regard to the police, they currently access the Department of Transport database, which shows whether the licence fee has been paid or if there are some issues to do with the roadworthiness of a vehicle. I am advised that that database will include whether or not the vehicle is an authorised vehicle, so that will be part of the checking.

Clause put and passed.

Clauses 167 and 168 put and passed.

Clause 169: Powers in relation to vehicles —

Mrs L.M. HARVEY: The next few clauses have very far-reaching powers for the authorised officers, including powers to be able to stop and detain a vehicle for as long as is reasonably necessary to exercise the powers under the act. Bearing in mind that for the drivers, these vehicles are their office, there is the ability for an authorised person to go into that vehicle and demand that the driver produce documents for inspection. We would expect them to be able to demand the driver's authorisation document and driver's licence, but this also gives them the ability to inspect any equipment in the vehicle, to photograph anything in the vehicle, and to seize any documents they might decide to seize to ensure that there is compliance with the act. I would like some information as to whether the officers currently employed already have these powers or whether they are a significant addition to the powers they are already entitled or trained to exercise.

Ms R. SAFFIOTI: The enforcement provisions in this bill are largely modelled on provisions that already exist in the Taxi Drivers Licensing Act 2014; the Taxi Act 1994; the Transport Co-ordination Act 1966; and the Transport (Country Taxi-car) Regulations 1982. Specifically, the provisions of this bill are consistent with those that were introduced in 2014.

Mrs L.M. HARVEY: I do not have a copy of the other legislation. Are there any additions to these powers for vehicles compared with what was introduced in 2014?

Ms R. SAFFIOTI: There are in relation to clause 169, but not for vehicles. Clause 169(1)(d)(iii) on page 110 of the bill says —

state the person's name, address and date of birth ...

The date of birth is the additional requirement. That is just from a quick flick through. There might be something else we pick up. We will keep looking.

Mrs L.M. HARVEY: That is probably a sensible addition, given some of the allegations about people in the industry to switching drivers around without necessarily being authorised. That sounds quite sensible.

Mr W.R. MARMION: Given that this is a build-up of a provision already in use, are there any instances when this is used? I would like to know what happens to the customer. If there is a poor old customer in the car who is late for the start of a West Coast Eagles game, the taxi gets pulled over and the taxidriver is pulled out, is there a protocol in place so that the customer is looked after first and they can book another cab so they are not late to their engagement? At the end of the day, this is about the customer. I know it is important to prosecute someone who does not comply with the rules, but at the end of the day we should look after the customer. I wonder whether there is any protocol around looking after the customer.

Several members interjected.

Ms R. SAFFIOTI: I was going to say catch the train! There is a specific "do not be late for the Eagles game" clause coming up, as opposed to the "if the Dockers ever get into the finals" clause!

Several members interjected.

Ms R. SAFFIOTI: Pardon?

Mr V.A. Catania: We are just having a dig at you!

Ms R. SAFFIOTI: About the Dockers?

Mr V.A. Catania: Yes!

Ms R. SAFFIOTI: Fair enough.

I have been advised that unless there is something very serious, the authorised officers normally wait for the customer to leave the vehicle so they do not create the inconvenience the member outlined.

Clause put and passed.

Clause 170 put and passed.

Clause 171: Entry of premises —

Mrs L.M. HARVEY: Clause 171 gives officers powers of entry into premises. I note they can enter only under subclause (1)(a) to (f) and perform those functions either with the consent of the occupier of the premises or under an entry warrant presumably issued by a justice of the peace. Are these provisions consistent with what currently exists in the legislation or are these new?

Ms R. SAFFIOTI: They are consistent primarily with the Taxi Drivers Licensing Act 2014 and the Criminal Investigation Act 2006.

Mrs L.M. HARVEY: I recognised that provision from the Criminal Investigation Act, and I was a bit surprised to see it in the Transport (Road Passenger Services) Bill. I was not aware that people other than police officers had such powers of entry. How many warrants have been applied for by the department since the legislation was changed in 2014?

Ms R. SAFFIOTI: None, because although the act was passed it never commenced because it was put on hold for these reforms. I should have mentioned that before.

Clause put and passed.

Clauses 172 to 215 put and passed.

Clause 216: Controlled operations —

Mrs L.M. HARVEY: I expect that controlled operations by the Department of Transport would be done by individuals pretending to be passengers checking out what is happening in various on-demand transport vehicles. I suspect these powers might have been in the 2014 legislation, but were never used. Are these new powers?

Ms R. SAFFIOTI: These are new powers that did not exist before.

Mrs L.M. HARVEY: I obviously have some familiarity with the checks and balances put in place around controlled operations that police may be involved in, and it is pretty tricky to ensure that officers are appropriately trained so that any evidence they gather as part of a controlled operation can be used to prosecute. Will the officers undertaking controlled operations receive additional legal training or training from police officers or others on how to conduct themselves to ensure the evidence they gather will be able to be used and that they are not engaging in any coercive behaviour with any drivers of the on-demand industry?

Ms R. SAFFIOTI: I will outline the process. We are going to market, in a sense, to hire trained investigators. They will be briefed by the department. They will be operating under the CEO's authorisation and they will be under the responsibility of one of the two investigators—or maybe more as we continue to look at our compliance activity—in the department.

Mrs L.M. HARVEY: Under what circumstances will a controlled operation be undertaken by the department? For example, will it be in response to complaints or reports of noncompliance or will it just be around auditing function?

Ms R. SAFFIOTI: It could be in response to complaints about a particular booking service or it could be random. I recall there were some issues for the member for Bateman, when he was Minister for Transport, of one ridesharing company getting to know some of the key customers who worked for the Department of Transport. They were then blocked and not able to ever do their compliance work because they never got picked up. This is a way of trying to make sure that we can check all the companies in the market.

Mrs L.M. HARVEY: When a controlled operation is going to be undertaken, what is the requirement for the CEO before the CEO signs off on it? For example, when police or fisheries officers are going to do some kind of controlled activity, they need to outline very clearly what they intend to do, how they intend to do it, the actions that they intend to take and the way that they will undertake that particular controlled operation. Midway through a controlled operation, if they need to change tack, some checks and balances are in place. There needs to be further authorisation from the CEO or the authorising officer for any change in tack in the controlled operation. Will those sorts of checks and balances be in place for this activity?

Ms R. SAFFIOTI: The CEO has to specify what actions can be undertaken and the investigator or the officer cannot go outside the directions that they have been given.

Mrs L.M. HARVEY: Aside from the CEO, is there any other oversight of controlled operations? I note that the next clause provides that the CEO, if requested by the minister, needs to provide a report containing particulars of a controlled operation. However, it would seem to me that if an agency is conducting controlled operations, there should be some kind of reporting mechanism and public oversight to ensure that things are being conducted in an appropriate manner.

Ms R. SAFFIOTI: It has been pointed out to me that clause 216(4) restricts the kind of activity that can be undertaken. Compared with what is undertaken in the police force, it is much more limited. It is contained to —

(a) entry and travel in the vehicle;

- (b) booking a journey in the vehicle;
- (c) paying for a journey in the vehicle;
- (d) any action that is ancillary to an action ...

It is a far tighter range of activities than would normally be the case in the agency that the Deputy Leader of the Opposition used to oversee.

Clause put and passed.

Clause 217: Reports of controlled operations —

Mr V.A. CATANIA: Given that the Deputy Leader of the Opposition was talking about controlled operations and how they could be subject to police investigations and court proceedings, clause 217 states —

The CEO must, when requested to do so, give the Minister a written report containing any particulars of a controlled operation that the Minister requires.

Does that not jeopardise any potential legal or criminal action that the department or a prosecutor may take in relation to what has occurred in a controlled operation? Could the minister asking for that information and the minister or staff understanding what the operation is all about, jeopardise those legal proceedings? Is it a normal procedure for the minister to ask for what has happened with controlled operations by the department?

Ms R. SAFFIOTI: As this provision brings the minister into the loop of information, the minister, whichever minister it is, would have to be aware and cognisant of the sub judice of any information and be very careful with any information if there were any subsequent release of that information.

Mr A. KRSTICEVIC: I am wondering how and when the minister will be informed that operations are taking place.

Ms R. SAFFIOTI: This allows the minister to request the information, so there is no requirement to report under any particular timetable; it is more if the minister requests it.

Mr A. KRSTICEVIC: How can the minister request information on an operation if the minister is not even informed that operations are taking place? What would be the trigger for the minister to say that they want to know about operation X, Y and Z? When, prior to the minister asking that question, would the minister be informed that an operation was taking place?

Ms R. SAFFIOTI: Potentially, I, or any other minister after me, could ask what compliance activities or controlled operations occurred over the past six months and ask for an update. I suspect that would be the first request for information. I would not ask it because somebody told me about it. I would ask it because I might want to check whether there has been any controlled operations and then get any feedback about that.

Mr A. KRSTICEVIC: If the minister did not ask whether any operations had been undertaken in the proceeding period—however long that period was, whether it was a year, five years, or 10 years—how would the minister know whether any operations were taking place at all?

Ms R. SAFFIOTI: The alternative could be regular updates saying that the department has undertaken X number of controlled operations over the past six months and then I would have the ability to ask for the outcome and more specific details if I was that way inclined.

Mr V.A. CATANIA: Does the minister have the power to direct the CEO to instigate any controlled operations under this legislation?

Ms R. SAFFIOTI: No.

Mrs L.M. HARVEY: We are a bit uncomfortable with this clause. I think it probably would have been more appropriate for the CEO to report to the minister on an annual basis on the number of controlled operations that have been undertaken and the outcomes of those controlled operations, so that the minister has some oversight of whether these clauses are being used appropriately and whether the evidence that is being gathered is useful in securing prosecutions against people who have contravened the act and are noncompliant. It seems to me that there is not really any oversight of the CEO unless the minister happens to have an idea that perhaps she should request that the CEO report about controlled operations. Obviously, the opposition has been told that the minister will not contemplate any amendments to this legislation, but I think it would be a good thing for the minister to consider, when the legislation goes to the other place, establishing a firmer oversight of controlled operations and a requirement that the CEO report to the minister on a six-monthly or an annual basis on whether controlled operations had been undertaken, who was involved in them, whether evidence was successfully collected and whether prosecutions resulted from those controlled operations. I would like an undertaking from the minister on whether she might consider that. I was commenting to my colleagues that I suspect that if we were occupying the government benches and tried to introduce powers such as these, we might be having a fairly difficult time getting them through. However, if I could get the minister's comments on that request, I would appreciate it.

Ms R. SAFFIOTI: Previously, I was talking more specifically about individual investigations. As minister, I receive a compliance report on the industry. It is envisaged that the compliance report will contain the normal statistics that the member just outlined, and then I can request further information about any particular case or issue. I will confirm that before the bill goes to the upper house, I will put in writing for the member how that transfer of information will happen and, in particular, what we envisage will be in the compliance report. Currently, I receive a report about a lot of different aspects of the taxi industry, so it is envisaged that that report would be broadened to include the high-level activity, as the member outlined, and that that will give me, or any minister after me, the ability to request more information about any particular case.

Mrs L.M. HARVEY: I thank the minister for that reassurance. I feel that if officers are undertaking controlled operations of any sort, there needs to be a report back on their success or otherwise, to ensure that everything is being conducted appropriately. It is one of those very tricky areas of enforcement.

Mr A. KRSTICEVIC: How many controlled operations will be undertaken; for what reasons will they be undertaken; and will the reports be made public?

Ms R. SAFFIOTI: It is not planned that the reports will be made public, and these operations, as I outlined before, will be used in a number of circumstances in relation to specific issues raised with the department, or randomly as well. This is basically the ability to make sure that the industry is functioning as required.

Mr A. KRSTICEVIC: The minister mentioned issues raised by the public. Who will make the decision about when those issues warrant a controlled operation? Is the minister saying that the operations will be secret? The minister said that the reports will not be available to the public, so people will not know what the operations are, what the outcomes are, and whether they result in improvements. Is this a secret operation that will be hidden from freedom of information rules, or will the industry and the community know about it?

Ms R. SAFFIOTI: That is an interesting point. Those investigations that are proceeding to further legal action will be sub judice. In reporting, we have to be careful about exactly what we report, because the whole thing about controlled operations is that we do not want to alert the booking services or the industry about exactly how we do our operations. I will think about that in my correspondence to the opposition about the reporting framework. Currently, I think that providing too much information to the industry about exactly what we are doing and who we are targeting could become a problem. The other question was: who decides about potential lines of inquiry? The Department of Transport investigator and the CEO will decide whether information provided by a member of the public would warrant that type of response.

Clause put and passed.

Clauses 218 to 225 put and passed.

Clause 226: Terms used —

Mrs L.M. HARVEY: This is getting to the voluntary buyback payments. A number of terms are used here. Regional plate owners are currently not eligible for part of the buyback, even though a value is attached to their plates, and they have been traded. It is not a high value, admittedly, because those businesses are somewhat marginal. What are the minister's plans for the regional plate operators when they are faced with the increased competition from the on-demand industry, given that the restrictions on operating in regional areas will be removed once the legislation is finalised?

Ms R. SAFFIOTI: I know there is a lot of debate in regional Western Australia about plate ownership versus the annual licence. The country taxi-car licence is not an owned plate that is paid for; it is an annual licence. That is the first key difference. It is very different from the plates under the Taxi Act 1994. I also want to note that the transitional assistance of \$20 000 under the previous government was paid to plate owners. That seemed to be the definition of plate ownership that was used under the previous government in paying the \$20 000.

Mr V.A. Catania: Was it paid to regional owners?

Ms R. SAFFIOTI: No, it was not paid to regional taxis because it was paid to the plate owners. As I said, the regional issue is complex because every business is set up differently. They had annual licences, but there was an expectation that they would continue to have the annual licence. It is difficult to develop a policy that suited every particular business or owner. People in the metropolitan area, people on leases for example, would have the same expectation, but the buyback is for the plate owners. We are very keen, as I said, to continue to support regional operators. Some of them will see the flexibility that this legislation will give to allow them to expand their business. Others do not see that flexibility opportunity. I was just informed by another regional member that competition in ridesharing has entered many of those markets anyway, but this is a program of reform and we are very keen to work with regional operators.

Mr V.A. CATANIA: The first definition under clause 226(1) reads —

area restricted plates means taxi plates used or to be used on a taxi operated subject to conditions restricting the operation of the taxi to specified areas;

Can the minister explain what the specific area of restriction is, say, between the country and the metropolitan area? Is that what this is related to? What are the restrictions that the government has in place, particularly for regional areas?

Ms R. SAFFIOTI: Regarding the area of restricted plates, these are the plates issued in the metropolitan area to identify areas of market failure, normally in the outer suburbs where geographical borders were put on the activity of the taxi in that area. I understand some were in the north-east corridor and in the hills.

Mr V.A. CATANIA: Those borders are now gone, so it is a free market, if one can say, and taxis can go into those areas at their whim?

Ms R. SAFFIOTI: Yes, that is right. Again, noting the advent of the competition in the market, it was felt that it was difficult to contain one sector of the industry into these geographic borders while other entrants that have come in are going everywhere. It was seen as not fair to contain a particular part of industry through these restricted licences.

Clause put and passed.

Clause 227: Net loss —

Mrs L.M. HARVEY: Regarding net loss, could the minister please explain how the figures, the monopoly profit values detailed in subclauses 1, 2 and 3, have been arrived at?

Ms R. SAFFIOTI: The term “net loss” in the bill is different from a net loss payment and represents the amount a plate owner paid to the seller for purchase of the plate minus the amount they would have received as income over the years from the leasing of their plate to a vehicle owner–driver. This income from private leasing of a plate is considered a “monopoly profit”, in that it would have been able to be asked for if it were not for the fact that the plates were controlled in supply. For many years the government set the maximum price that could be asked for an owned conventional plate lease at \$355 a week, although industry was able to negotiate different rates. That \$355 was set by regulation. The net loss calculation recognises that since January 2016, when reform of the industry was mooted by the government, the price that could be asked for plate leases fell, and that amount fell from \$350 a week to the current level of \$225 a week. That is how those two key components were negotiated.

Mrs L.M. HARVEY: Just to be clear, this \$355 a week from the date of purchase of the plates to 31 December was a regulated amount that a plate owner could charge a driver for the use of the plate per week?

Ms R. SAFFIOTI: Yes.

Mrs L.M. HARVEY: Some of these plates have been owned since the 1970s and the 1980s. Did that value of \$355 not fluctuate over the past 40 years?

Ms R. SAFFIOTI: Yes, it did, but we had to define a monopoly profit and we used the reference rate at the time.

Mrs L.M. HARVEY: This is obviously a bone of contention with a number of plate owners because many of them know that they were not receiving \$355 a week from the day that they purchased their plates. How far back has the department kept records of the regulated fee that could be charged for the weekly lease of a plate?

Ms R. SAFFIOTI: We are getting the information. I absolutely understand the contention, but the aim was trying to understand how to discount it. There were two ways we could go and one was a flat rate for everybody. I know many in the industry wanted that, say \$160, \$140, \$200 or whatever. There was definitely an aspiration to have a flat rate. Many plate owners are not happy that some are getting more than others.

Mr V.A. Catania: Did you think before you got into government that having a flat rate was probably a way forward?

Ms R. SAFFIOTI: In many instances I raised that I thought we would have to reflect the financial exposure of those who recently bought the plates. Many people did not like that, but I did. I understand that some people bought it as superannuation and that people thought that this would go on forever, I understand that. Honestly, I feel sorry for everybody in the industry because it is changing and it is tough. Many in that industry know it well and have been working hard their entire lives—I understand that. But we had to look at those who bought recently and were not able to get a rate of return in a controlled market. That is the economics of it. The fact is that if a person bought in 2014—many of the people who were the most financially exposed were the ones who bought recently and did not have the time to recover their costs through a controlled market—and we were to give them \$140 and everyone else \$140, I think that would not have been fair either. This is not a debate; you can look at it from a hundred different ways and, to be honest, I have thought about this many, many times. I have tossed and turned about it because there is a potential justification for every way that we go and I understand that, because this is life and there is justification to consider a whole range of issues. But I had to make a decision within the financial

constraints that this government operates in and I had to develop a package that I could get support for and get through the Treasury mechanisms that people saw as fair, deliverable and reflected those who really were exposed. We looked at the other states. Initially we were looking at, for example, compensating one plate and we changed that. Models in other states do not pay for a second, third or fourth plate in many instances. We did per plate and we made some adjustments. Like I said, we can look at it in a hundred ways and get a hundred answers. The industry is divided on it; some are very disappointed. If I could deliver everything every individual person wanted, I would have, but I had to make some decisions. Like I said, I feel very, very strongly for many of those people who are not getting what they wanted or what they believe they deserved, but ultimately I can step back and say that we worked very hard on this, we believe the package is fair and we believe it is the most generous in the country.

Mrs L.M. HARVEY: I am not sure whether the minister has the answer about how far back the records go with the Department of Transport of the regulated weekly leasing price.

Ms R. SAFFIOTI: We are still looking at the earliest records we had, but I will give the member an example. Data available shows that in May 2003 plate lease rates were regulated at a maximum of \$453 a week. However, a study at the time found that the market plate lease rate was less than that, about \$345. If we had tried to use a discount that reflected previous prices, it could have worked against some of the plate owners. Again, it is all a matter of which model we use. We think we have worked to a fair model.

Mrs L.M. HARVEY: Can I get some clarity on why the cut-off date is 31 December 2015. My understanding is that Uber entered the market in 2014. I would have thought that there would have been more logic in having the cut-off date be when Uber launched in Perth.

Ms R. SAFFIOTI: There was an entrance before then, but that date is targeted at when the member for Bateman as Minister for Transport announced that the market would be deregulated. Before that time there were questions about compliance and everyone was grappling with the future of that company in this market. There were still questions about going heavy on compliance to try to run it out of business and there were some court cases about whether we could stop it being in the market. But comments were made in January that deregulation was inevitable. That was the trigger of the notion that deregulation was going to happen and it had an impact on plate prices. That was the central point.

Mrs L.M. HARVEY: Does the minister have any data on the number of plates that changed hands between Uber entering the market and 31 December 2015? I realise that it is a big ask for this bill, but the advisers have very big files and I thought they might have the information available.

Ms R. SAFFIOTI: We will have a look. Does the member want to ask another question while we look for it?

Mrs L.M. HARVEY: I will give the minister some background on why I am asking the question. Once Uber had entered the market, it was probably not a terribly good business decision to buy a plate. Some savvy operators in the industry probably got out as quickly as they could. I am interested to know how many plates changed hands between Uber entering the market and the announcement being made that the market would be deregulated. That data may illustrate some problems that were perhaps foreseen by people operating in the industry.

Ms R. SAFFIOTI: I thank the member for that question. I think it is an interesting point. Looking at the data in front of me I see that in December 2014 there were a number of transfers and that the average transfer value was \$300 000. As the year progressed it changed to \$250 000. In 2015, it began dropping to \$200 000. I think that the member is right. We have been told that in many instances drivers who were leasing plates were told by the owners that if they did not buy the plate, they would not be able to drive the vehicle. Those drivers, as they saw it, faced the prospect of losing their entire livelihood. I believe there were some transfers during that time, but it will be the new owner who will be compensated by this package.

Mrs L.M. HARVEY: Further to that, how many plates changed hands from April 2014 to December 2015? It would be great if the minister could do that calculation. While that is happening I will ask another question.

The figure of \$225 is in proposed section 227(1)(b). Was that lease fee also regulated? Did the regulations drop as a reflection of the market price for the leased plates from January 2016?

Ms R. SAFFIOTI: I think the member is right. I think there was a change in the regulation. The figure of \$225 was what industry had informed us was the average lease cost after that announcement of deregulation.

Mrs L.M. HARVEY: I take it that the regulated amount that could be charged for a leased plate is a regulated maximum and not a minimum.

Ms R. SAFFIOTI: Yes, that is correct.

Extract from Hansard

[ASSEMBLY — Thursday, 20 September 2018]

p6481c-6493a

Mrs Liza Harvey; Ms Rita Saffioti; Mr Bill Marmion; Mr Vincent Catania; Mr Tony Krsticevic

Mrs L.M. HARVEY: Given the information the minister has put forward previously that in 2003 plate owners were allowed to charge up to \$450 a week, but at that point were only getting \$345 a week, do the figures in this legislation reflect a market rate rather than a regulated rate?

Ms R. SAFFIOTI: Yes, that is correct.

Mrs L.M. HARVEY: I take it that a similar methodology has been applied to the calculation of the net loss for area-restricted plates and the peak-period plates. Can I get confirmation that a similar methodology has been applied for those other areas? I have to say that I do not envy the department in having to try to come up with a formula. It is certainly a difficult task.

Ms R. SAFFIOTI: Yes, it was the same methodology. The Economic Regulation Authority estimated the rates at 40 per cent and 28 per cent of conventional plate lease rates for area-restricted plates and peak-period plates respectively. It took a percentage of the average weekly lease in determining that net loss.

Mrs L.M. HARVEY: I am waiting for that information about the number of plates that changed hands.

Ms R. SAFFIOTI: We have data in front of us and are confident with the average prices, because they seem correct, but the transfer numbers seem very high. I have previously seen numbers that were not that high. We will get that information for the member after lunch.

Mrs L.M. HARVEY: Part of my reason for asking is that one of the concerns about the buyback scheme we had as an opposition is that other jurisdictions that chose to have an assistance package for plate owners have placed a restriction on the number of plates that they would pay out. An issue we are trying to understand is whether owners of multiple plates decided to transfer their plates to family members in anticipation of a buyback scheme. I note that there was a cut-off point once the scheme had been announced by the government and that any plate traded after the cut-off date would not be eligible for the buyback, which is appropriate, but this industry has some very savvy investors. I would not like to see the smarter operators getting an unfair advantage over people who genuinely invested their savings and lost money as a result of the changes to the industry.

Ms R. SAFFIOTI: Those are good points about, in a sense gaming, a potential buyback or compensation model. The other point was that post the announcement of the style of reform, which was November 2017, we have had a different mechanism that involves the seller. A lot of people sold because they were just desperate and had to get out. I know of instances of people selling for \$50 000, \$70 000 or \$80 000 just to get out. They were normally the highly geared ones. We are making sure that the new buyer does not get the windfall gain.

Mrs L.M. Harvey: Yes.

Ms R. SAFFIOTI: The compensation will be shared between the new buyer and the seller in that instance, so someone who bought in January this year will not get any windfall gain whatsoever.

Mr W.R. MARMION: To finish off on this clause, if we do the calculation—which is basically the purchase price of a plate, and then this is about the net loss—how many have made net profits? In other words, how many people who paid \$100 000 for plates 10 or 15 years ago will get a positive result out of this?

Ms R. SAFFIOTI: Using that strict calculation and those deductions, basically anyone who purchased for less than \$100 000 would not be getting anything.

Mr W.R. Marmion: Sure.

Ms R. SAFFIOTI: In a sense, based on the model, a lot of people would be getting more if we had not put the floor in. The floor, in a sense, is basically there to try to make sure that the majority had some fall in their payment. I do not think anyone has had a windfall gain out of this, although a lot of talkback callers and some members of the public would suggest that that is the case. There are people who bought for less than \$100 000, but they would then come and say, “Well, if I bought property, I would have got more than that.” So, I would not say that anyone has had any real super gain out of this one.

Mr W.R. MARMION: It would be handy to know the figures; that is all.

Ms R. SAFFIOTI: Approximately 72 per cent paid about \$100 000, and about 28 per cent paid over \$100 000.

Mrs L.M. HARVEY: Just with respect to the hardship assistance grants that were provided, does the minister have any data on the number of plate owners who received them? I think nearly everybody in the industry got \$20 000, which was more to get financial advice than anything else.

Ms R. Saffioti: Yes.

Mrs L.M. HARVEY: But in the information flyer that we were given during the briefing, there is an example of someone purchasing a plate at peak price and receiving a hardship payment, and that payment amount was \$92 300. How many plate owners received hardship assistance and what was the value of that, if that information is available?

Ms R. SAFFIOTI: A total of 84.

Clause put and passed.

Clause 228: Plate purchase amount —

Mrs L.M. HARVEY: These plates were not purchased from the government; they have been traded since plates have been allowed to be traded in the marketplace. How confident is the minister that the traded price for the plates that people will claim will be accurate; and what the ability does the minister have to crosscheck that? For example, can it be crosschecked with the duty paid at the time by the individuals? I just want to make sure that we can be certain that what people are saying they paid for their plates is actually what they paid for them.

Ms R. SAFFIOTI: For more recent ones, we have accurate information on the transfer documents and stamp duty. For earlier ones, there have been some information gaps in a sense, so that is when the department has gone to the plate owners to ask them to provide information on how much they paid. For those earlier ones, most of them would be under \$100 000 anyway, so they would not be subject to those detailed calculations.

Mrs L.M. HARVEY: I guess some plate owners borrowed to purchase plates, so there would be loan documentation from banks and things like that that they could use to verify the purchase price of a plate. What kind of verification will the government request from plate owners to back up their claim of what they purchased their plate at?

Ms R. SAFFIOTI: That process has pretty much been undertaken already, because we started alerting plate owners last November about potential payments and so forth. Most of that is now on record. As I have said, we are confident about the more recent information because of the databases that the government now has. Earlier, when there were information gaps, the department requested further information from the plate owners, and that is what has happened.

Mr W.R. MARMION: I ask for clarification around the treatment of the amount of money a person will receive for their plate. I assume that will be treated as capital by the Australian Taxation Office; that is, if someone borrowed against it, it will be seen as an asset. I imagine it will not be seen as income; it will be treated as capital so that the ATO will determine whether someone has made a profit or a loss.

Ms R. SAFFIOTI: Again, we will get the information. I am pretty sure this issue was raised by the Victorian government, and I thought we had provided some information on it. The general answer, of course, is that it relates to an individual person and their particular tax circumstances. I thought there was a particular bit of advice that the Victorian industry or government sought, so I am just trying to track that down for the member.

Mr W.R. MARMION: There may have been an ATO ruling that might help; otherwise, I imagine the amount received for the plate would be treated as part of the business. It would be handy to know, because I think taxi owners will want to know the ATO's position on it.

Mrs L.M. HARVEY: Further to what the member for Nedlands said, it would be a most unfortunate circumstance for Western Australian consumers to be contributing to a levy, only to have 48 per cent of it flow back to federal coffers as a tax payment, if the ATO determined that the taxi buyback amount was actually income. It would be very useful to get that determination from the ATO to ensure that plate owners can actually use this to settle their debt as appropriate, rather than send it back to Canberra to spend on other things.

Ms R. Saffioti: Redistribute.

Mrs L.M. HARVEY: Yes.

Mr V.A. CATANIA: It is an interesting debate about a levy—whether it goes over east and does not come back. We had that debate prior to the 2017 election about a 25c levy that is being imposed on Rio Tinto and BHP. The argument then by the opposition was that there was no point in increasing the special lease rental—a levy—from 25c to \$5, because it would all be lost —

The ACTING SPEAKER: Member, to the clause?

Mr V.A. CATANIA: I am just going to relate it to this clause.

The ACTING SPEAKER: Thank you.

Mr V.A. CATANIA: It is very critical to know whether the levy that will be collected and paid out to taxidivers will be subject to tax. I think it is a fair and reasonable question. I would have thought it may have implications for other levies that the government wants to impose from time to time, or could impose on various companies to look at ways in which the government could enhance the budget, rather than it being ripped out by the federal government over east. It will be interesting to see what the outcome will be. I just wanted to make that point.

Clause put and passed.

Clause 229: Application for buyback payment —

Mrs L.M. HARVEY: I started to make this point last night. It is really a question to find out how the buyback payments will occur. The minister mentioned that the payments might be staged in tranches. A lot of multiple plate owners in particular have other businesses and it might be beneficial for them to have a staged payment. Rather than make their application for a payout for three plates considered en bloc, could they have the ability to stage those payments over time? I do not know whether that is being considered but am interested to know, if they make one application for three plates, does it need to be considered en bloc or can their applications be staged, if there is a staged payment process?

Ms R. SAFFIOTI: We did not envisage that, but will take it on board, in particular staging it across financial years. There is a cash flow in the forward estimates and changing the cash flow with Treasury has proven to be very hard! I will do my best to see what can be accommodated. Currently, there is a period in which people can apply for the buyback. I am very keen to try to progress it as quickly as possible given the constraints of government processes and accountabilities that we need to have in place, but I take on board the member's point. It is an interesting point and, as I said, if the administrative burden is not too costly and I can get it through the Treasurer, we will see what we can do.

Mrs L.M. HARVEY: I can see that it might be an advantage for some operators. If they have three or four plates, or even two plates, they might be receiving a couple of hundred thousand dollars for them. If they have borrowings against them and they end up with a loss, sometimes from a business perspective it is more beneficial to carry that loss over a couple of financial years rather than all in one year. I appreciate that the minister is considering doing that.

Clause put and passed.

Clause 230 put and passed.

Clause 231: Amount of buyback payment: taxi plates purchased on or after 1 January 2016 —

Mrs L.M. HARVEY: Regarding the amount of the buyback payments, I understand the methodology and am comfortable with it. Obviously, 72 per cent of owners are looking at receiving \$100 000. Of the remaining 27 per cent, what is the average that those individuals would expect to receive? Does the minister have those figures available?

Ms R. SAFFIOTI: I do not have an average of the remaining but the maximum is about \$250 000 per plate. The maximum per individual is different because some have multiple plates. I recall that one owner will get \$250 000 for one plate. I do not have an average for the rest of them, but we can work that out for the member if she would like and provide that to her.

Mrs L.M. HARVEY: It would be good if we could get that information so we have a clear snapshot of the value that is being achieved by some of the plate owners in the industry.

Clause put and passed.

Clauses 232 to 237 put and passed.

Clause 238: Amount of net loss payment: taxi plates purchased before 1 January 2016 and sold on or after 1 January 2016 and before 2 November 2017 —

Mr V.A. CATANIA: I know we had a debate last night about the GST and the effect it could have on the levy, including how much the on-demand service is going to pay to the taxman. To clarify, clause 238D refers to —

the amount received for the sale of the taxi plates, excluding any GST liability incurred in connection with the sale;

Could the minister explain that scenario of the GST liability incurred by taxi plate owners? Also, clause 238 is not just about the amount they will get back. It is also the hardship fund—the whole gambit. Is that all subject to GST? If plate owners incur a loss of, say, \$90 000 or \$100 000, will they also incur a significant loss—it is a loss—of GST, which they will have to pay because of receiving a payment from the levy? It would be good to get that clarification because otherwise it will chew up all the benefit of paying money out to taxi plate owners.

Ms R. SAFFIOTI: I want to clarify a comment that I made before about the interim period in which people sold plates and we are compensating the person who sold them; that was for the period from 1 January 2016 to 2 November 2017. This equation is in the bill to differentiate between them. It was from the period when there was going to be deregulation to when we announced what type of deregulation there would be and people sold. We did not want anybody to have, like I said, a windfall gain by taking advantage of the person they sold to. This is the calculation for those instances. That is why we are excluding GST in this calculation. GST was not received by the person who paid for the plate; that is why it has been excluded from the equation. I think that is the best way to explain that.

Mr W.R. MARMION: I understand that. This equation is correct; it takes off the GST so it is actually a straight transaction and they are not stuck with the GST, but I think the member actually asked another question as well.

He was exploring the possibility of whether the net loss payment would be subject to GST as well. I think that was the other part of the question.

Ms R. SAFFIOTI: We are awaiting an ATO ruling on the tax treatment. The bill allows for any GST liable on the payment, if the ATO rules it so, to be captured as part of the payments made to owners and for the Department of Transport to claim the input credit. This would mean that the GST would not impact on the plate owner's amount, because if they are charged, we would claim it as input credit, and then the net payment to the owner would not change.

Mr V.A. CATANIA: I may not be up with it here. That may be the case, but what about the taxi owner? Once that money goes into his or her account, what impact will it have on their business if they have to pay GST on the money they receive?

Mr W.R. Marmion: Are you talking about the levy or the capital?

Mr V.A. CATANIA: I am talking about the money being paid, whether it be \$100 000 or \$250 000. Will they have to pay GST on that money?

Ms R. SAFFIOTI: If it applies, the purchaser—which is us—will have to pay it, and then we will claim it back as an input credit.

Clause put and passed.

Clauses 239 and 240 put and passed.

Clause 241: Terms used —

Mrs L.M. HARVEY: This clause commences a division that deals with collecting the money to pay for the buyback scheme. Last night we were trying to understand how the 10 per cent on the levy was going to be charged. I will explain to the minister where the confusion is coming from. For the sake of round figures, we will use a \$100 fare that a passenger has paid. If they purchase the service through the app, they pay \$100 plus GST—\$110—for their cab fare. They get a receipt that says their fare was \$100 plus \$10 GST. That money is collected by the booking company. The driver is paying 27 per cent of their fare to the booking company as part of their arrangement, so the booking company is collecting \$27 and the driver is collecting \$73. The minister was talking about the 10 per cent being charged on the revenue being collected by the booking agencies. Is the \$27 that the driver pays to the booking company the gross revenue or the net revenue?

Ms R. SAFFIOTI: Yes, sorry, there was some confusion last night. It is the gross revenue, minus the GST. It is not the \$27, it is the \$100. That is what the 10 per cent calculation is based on. I thank the member for the opportunity to clarify that.

Mrs L.M. HARVEY: Yes, that is why there was confusion. The minister is saying that the \$18 000 leasing costs will come out of the sector, so it may be that the 10 per cent levy is not an added charge, but basically consumers will not have any knowledge of their contribution to the scheme because it is paid for by the company that they are paying their money to. Will those companies inform consumers of the value of that levy?

Ms R. SAFFIOTI: The companies are required to provide a detailed receipt. We are still developing and finalising the regulations on what information will be provided. The other point I make is that we are developing the concept of comparisons on a portal or website of how much is paid to the driver; I think that is important. There could also be reference rates on fares to keep people aware. People are pretty savvy, to tell the truth. They go from point to point and compare prices all the time. We are looking at ways of having those sorts of comparisons made available to the public. It will be part of the information gathering that the Department of Transport will undertake.

Mr V.A. CATANIA: That clears it up a bit. The 10 per cent levy is identified on the ticket or Uber receipt—whatever the case may be—but that still does not preclude the service provider that collects the 10 per cent levy and passes it on to government from charging the 10 per cent plus the costs associated with collecting the 10 per cent levy. There are accounting fees, bank charges and the whole works. They will have to be passed on to the consumer on top of the 10 per cent. We can say that it is all about competition, whether that 10 per cent is passed on, but I go back to what I said last night about ATMs. They are a classic example of how fees vary and are passed on, as are banks' interest rates and charges and the ways in which they are passed on. Generally, everyone passes on the costs associated with doing business. I cannot see how this is going to be different because we will find that everyone will pass on that 10 per cent. What will vary will be the additional costs associated with individual business models. I do not know whether the government can put a cap on or stop the companies from passing the additional costs on to the consumer, or perhaps incorporating the levy into the 10 per cent. Perhaps it should be seven per cent plus three per cent utilised for accounting fees and charges so the consumer is not paying above the 10 per cent to pay out taxi plate owners. We have identified that it could be 11, 12, 13 per cent that is actually passed on to the consumer.

Extract from Hansard

[ASSEMBLY — Thursday, 20 September 2018]

p6481c-6493a

Mrs Liza Harvey; Ms Rita Saffioti; Mr Bill Marmion; Mr Vincent Catania; Mr Tony Krsticevic

Mr W.R. MARMION: Further to that and to embellish what the member just said, I assume some operators will try to recoup some of the levy. A \$100 fare may become \$105 after the levy comes in. Hypothetically, they might charge the customer only half that. Let us say it is \$105. If GST is paid on \$105, instead of GST being \$10 it will be \$10.50, so there is a bit of a windfall if the operator decides to charge the customer a bit more to make up the levy. There will be an increase in the GST payment to the commonwealth; would that be correct?

Ms R. SAFFIOTI: A windfall to the commonwealth?

Mr W.R. Marmion: I wouldn't say a windfall; a payment.

Ms R. SAFFIOTI: Yes, but we would expect the GST on the taxi fare to fall, for example. The point is that every fare they take comprises many different elements and parts. Predicting how each of those constantly move in this type of market is difficult. Currently, when someone hires a taxi, implicit in the cost is the weekly lease costs that are being paid to the owner, if it is not an owner-operator. We would expect that cost to fall significantly. The important point is that the state is paying out \$120 million. We are sucking \$120 million worth of capital costs out of the industry. That has associated costs that are all embedded in the fares people pay. Those costs and other costs are taken out, such as the cost of dispatch. Some drivers are also unable to use multiple booking services. I understand the member's point about the GST, but the other point is that in some parts of the industry, and particularly the taxi industry, we will see the total fare fall because there is not the implicit lease cost embedded in the weekly hiring fee.

We are keen to look at moving an amendment in this area to ensure that we are not picking up anyone in the regions that we did not want to pick up. I would like to share that with the opposition. We will do that now and I am sure after the break we can finalise it.

Debate interrupted, pursuant to standing orders.

[Continued on page 6510.]