

**TRANSPORT (ROAD PASSENGER SERVICES) BILL 2018**

*Committee*

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Adele Farina) in the chair; Hon Stephen Dawson (Minister for Environment) in charge of the bill.

**Clause 89: Term used: disqualification offence —**

Committee was interrupted after the clause had been partly considered.

**Hon ROBIN SCOTT:** I am not sure that I understood the minister's answer correctly. If a driver has an F-class licence and a T-class licence and an offence is committed while driving a standard, four-person taxi and he loses his T licence, does he also lose his F licence?

**Hon STEPHEN DAWSON:** I did not refer to this issue earlier; it was a different question. I am told that people generally do not have an F-class licence and a T-class licence at the same time, but it can happen. If a person did lose their licence as a result of that "fit and proper" terminology, then they would likely lose both licences.

**Clause put and passed.**

**Clauses 90 to 225 put and passed.**

**Clause 226: Terms used —**

**Hon SIMON O'BRIEN:** Clause 226 brings us into part 9 of the bill, which is entitled "Voluntary buyback and adjustment assistance payment schemes and levy". I think this is where much of the interest and dispute has been generated about the proposed new regime. Clause 226 is simply a definitions clause and it incorporates a number of terms with which we are all familiar. I want to confirm for the record that it is the government's intention that in future there will be no "conventional taxi plates", "area restricted plates", "MPT plates" or "peak period plates"—indeed, taxi plates of any kind—under what is proposed by this bill.

**Hon STEPHEN DAWSON:** I am advised that there will be no area-restricted or peak-period plates. Plates will be able to operate anytime or anywhere. Special licence conditions will apply to MPTs, for example, for the carriage of people with disability.

**Clause put and passed.**

**Clause 227: Net loss —**

**Hon COLIN TINCKNELL:** I would like to move an amendment to clause 227. I move —

Page 143, line 5 — To insert before "In this Division" —

Subject to subsection (4),

**The DEPUTY CHAIR:** Hon Colin Tincknell has moved the amendment standing in his name at 2/227.

**Hon COLIN TINCKNELL:** I would also like to move amendment 3/227 at page 143, line 16, to insert before "In this Division", "subject to subsection (4)".

**The DEPUTY CHAIR:** Member, you can move only one amendment at a time. I would like to give you an opportunity to speak to the amendment at 2/227. Would you like to speak to that amendment?

**Hon COLIN TINCKNELL:** This amendment and the following amendments apply to looking for some protection of plate owners in the future. If this bill goes through the house and is completely passed, these amendments are there to offer protection to plate owners.

**The DEPUTY CHAIR:** Members, I want to get some clarification. Hon Colin Tincknell has three amendments to clause 227 that are identical in form but relate to different parts of clause 227. The main substance of your amendment to clause 227 is at 5/227, because the others refer to the inclusion of that additional subclause. Is that correct?

**Hon COLIN TINCKNELL:** Yes.

**The DEPUTY CHAIR:** Member, the substance of your amendment is in amendment 5/227 so I think you need to speak to all the amendments at one time so that members in the chamber can get an understanding of the purpose of the amendment. I cannot move them all at the same time because they are different. If you would like to seek the leave of the chamber after you have given an explanation of that range of amendments, we could move amendments 2/227 to 4/227 en bloc, because they are identical amendments. Obviously, if they are not supported, then amendment 5/227 will fall away because it is related to those first three. Do you follow that suggestion?

**Hon COLIN TINCKNELL:** Yes; thank you, Madam Deputy Chair.

**The DEPUTY CHAIR:** Hon Colin Tincknell, did you want to speak further to this set of amendments?

**Hon COLIN TINCKNELL:** No, Madam Deputy Chair. I have explained the purpose of the amendments.

**The DEPUTY CHAIR:** Would you now like to seek leave to deal with amendments 2/227 to 4/227 en bloc?

**Hon COLIN TINCKNELL:** Yes, Madam Deputy Chair, I seek leave to do so.

**The DEPUTY CHAIR:** Leave is granted.

**Hon COLIN TINCKNELL** — by leave: I will add the next two amendments at 3/227 and 4/227. I move —

Page 143, line 16 — To insert before “In this Division” —

Subject to subsection (4),

Page 143, line 27 — To insert before “In this Division” —

Subject to subsection (4),

**The DEPUTY CHAIR:** Minister, would you like to respond?

**Hon STEPHEN DAWSON:** Sure, if I can —

**Hon Simon O'Brien:** What is the question?

**The DEPUTY CHAIR:** The question is that the words to be inserted be inserted.

**Hon STEPHEN DAWSON:** If I can, I am going to refer to all the amendments, combine them, and make a contribution to them all.

The term “net loss” in clause 227 is relevant to the payment calculations provided for in the bill. It provides for the deduction from the amount a plate owner paid for a plate of the amount the plate owner could have received as income from the plate during the period of ownership through the leasing of their plate to another person. This income from private leasing of the plate is considered a monopoly profit in that it would not have been able to be asked for if it were not for the fact that the plates were controlled in supply. The weekly rent amounts included in clause 227 are based on relevant data, including plate condition data, and supporting advice from industry. The calculations provided for by the bill, including in relation to the meaning of “net loss”, are the result of detailed modelling by the Departments of Finance, Treasury and Transport. The model developed is designed to meet the objectives of fairness, equity and parity for all the plate owners. The proposed amendment to the meaning of “net loss” would mean the estimated buyback payment amounts would be unknown by government in advance, making it difficult to budget accordingly. The policy intention is that the amounts to be paid out under the scheme are set by the legislation to the extent possible, and it is not considered appropriate to allow for matters that may have significant financial implications for individuals and the state to be left to the CEO’s discretion. This amendment would allow owners to claim to the CEO’s satisfaction that they did not earn \$355 a week up to 31 December 2015 and \$225 a week after that date with a conventional plate, presumably because they either drove the taxi themselves or shift leased the plate for less than the rate specified in the bill. The CEO could only be satisfied that the monopoly profits were not earned at the figures estimated if the plate owner furnishes certified records of the amounts charged for shift leasing for each week the plate has been owned and proof of income derived from driving—so not the value of fares, but just proof that they drove for each week the plate has been owned. We do not support these amendments.

**The DEPUTY CHAIR (Hon Adele Farina):** Members, by way of clarification, we are dealing with clause 227 and we are dealing jointly with amendments moved by Hon Colin Tincknell—2/227, 3/227 and 4/227—at page 143 of the supplementary notice paper. Amendment 2/227 states —

Page 143, line 5 — To insert before “In this Division” —

Subject to subsection (4),

There are similar amendments at page 143, line 16 and also line 27. The question is that the words to be inserted be inserted.

**Hon SIMON O'BRIEN:** I think as Madam Deputy Chair correctly pointed out, of course, a lot of this hinges on a further amendment that is scheduled to come at page 144, after line 6, to insert a new subclause (4). We are entertaining a question that at three places in the clause we insert the words “subject to subsection (4)”, but at the moment there is no subsection (4). Was it Otto von Bismarck who once said that if you have respect for the law or you like sausages, you should not watch either being made? Anyway, we are relying on the

substantive schedule of amendments that Hon Colin Tincknell has moved that is about inserting a subclause (4), which states —

An eligible owner (buyback) of the taxi plates may apply to the CEO for a determination by the CEO of the eligible owner's actual net loss, if the eligible owner can establish to the reasonable satisfaction of the CEO that the deductions referred to in subsections (1), (2) and (3) do not reasonably apply to the eligible owner's ownership of the plates.

In contemplating that, I think you will allow me, Madam Deputy Chair, to canvass the substance of existing clause 227. I will ask an important question of the minister that I think the chamber will want to know and also to establish for the record: how, for example, were the figures of \$355 and the \$225 referred to in subclause (1) arrived at? If the minister could give us that data first, we could start to contemplate the whole clause.

**Hon STEPHEN DAWSON:** I am advised that the government has set the maximum price that could be asked for an owned conventional plate lease at \$355 a week for many years, although industry is free to negotiate rates lower than this based on supply and demand. The net loss calculation recognises that since January 2016, when reform of the industry was mooted by government, the price that could be asked for plate leases fell from the industry maximum of \$355 a week to around its current level of \$225 a week.

**Hon SIMON O'BRIEN:** Are the figures we are talking about in the first example really an optimal amount that might have conceptually been achieved or are they less than that?

**Hon STEPHEN DAWSON:** I am told that we do not have definitive information, but the data available shows that in May 2003 plate lease rates were regulated at a maximum of \$453 a week; however, a report at the time found that the average market plate lease rate was \$345 a week.

**Hon SIMON O'BRIEN:** It is a matter of getting a feel for this. I think this amendment was proposed by a correspondent on behalf of a group that has written to a lot of members. They have suggested that this provision is what we need to insert in the bill to ensure that a whole range of plate owners are not hard done by, but that is about the strength of it. They do so by pointing out to the government that it is putting to us that these plate owners would have accrued certain incomes or financial benefits from the possession of their plates, and that calculation of benefit is being brought into play in arriving at the proposed buyback figures, which are on a scale that depends in turn on a number of other factors. That is what we are looking at. The proponents or the advocates of this amendment are clearly of the view, I think—I will stand corrected—which has been expressed to many members in the chamber, that they are being hard done by and that the government is being unrealistic and unfair in what it has said their income is notionally taken to be. The way out of that—what they would like to get by way of relief—is proposed in this amendment. It is their view that the government is being less generous in its buyback offer than it should be and they reckon that either together, as a class, or certainly as individuals, they can demonstrate that that is not what they have derived over time, and any reasonable person—bear in mind, they are appealing to the government in this—looking at their circumstances and their records would come to the same conclusion and say, “Yes, you've got a point; let's recalculate what it would be just for you to receive.” The mover of the amendment is nodding his agreement, so I will take that to mean that I am analysing the situation accurately. The solution is contained in the terms of an amendment that we have some notice of, 5/227, which we may come to in due course, but it is a package with the amendments now being considered.

There are two parts of the question confronting us here, and I will now put them to the government, if I may. The opposition also wants to see everyone get a fair go. I was trying to tease this out with my earlier question, so I will ask the minister to again have a look at it. How can the government demonstrate that the figures shown in this clause are fair, all things being considered? That is the first question I ask the minister to contemplate. Then, in due course, I propose to go into the second question, which is: does this proposed amendment provide the mechanics to achieve something else? In the first instance, I will perhaps just ask the minister. I know that I am making this a long question. Unless they were here in person, a reader of *Hansard* would not be aware that the minister is getting some advice as I speak. How can the chamber rely on these figures, as they are drafted, to be reasonable figures on which to base the whole package?

**Hon STEPHEN DAWSON:** I am told that advice from the industry is that they were charging the amount specified in this clause. I want to say again that this is the most generous scheme in the country, and the floor payment provided for in the bill will ensure a minimum payment amount. Taking into account individual amounts received and possible variations will delay the process of the applications, and therefore cause more concern and anxiety in the sector. I am told, further, that should we do what is being suggested in these clauses, this will involve considerable administrative burden and unknown cost to government in the impact on the consolidated account.

**Hon SIMON O'BRIEN:** I thank the minister for that. I appreciate that it is a difficult question. We also have to remember that the whole package hinges around the calculations based on this. We have had advice in writing

from the government that if we do not agree to it, the whole lot will be consigned to the scrapheap. That also weighs upon our consideration here. Madam Deputy Chair, if it would not be out of order, is there any indication of when you feel you might be reporting progress, given that we have some other business to attend to?

**The DEPUTY CHAIR:** I will report progress in about five more minutes.

**Hon SIMON O'BRIEN:** In the first instance, it would seem that the opposition is sympathetic, as I said during the second reading debate. We are all sympathetic to owners who feel that they are not getting fair compensation. In all these matters, and again without wanting to revisit the second reading debate, people will be dissatisfied when they are, in effect, forced out of their long-term plans under the regulated system. Whether they like it or not, they are forced out and there is a buyback offer on the table. Inevitably, people are going to think that they have been duded by the government offering a package. I think we all understand that, and I am not taking issue with anybody about the rights and the wrongs. The proposal here does two things. Firstly, it threatens the future of the bill if it were to be supported. That is something that, as the official opposition, we are honour bound not to do. The other thing is that—this is the second point that I alluded to earlier, and the minister at the table has already addressed this point, I think—given the nature of a buyback and deregulation package, it would be asking for quite extraordinary difficulties if buyback amounts, to use a colloquial term we are using, were left to the discretion of some individual, when everything else is to be dictated by statute. With regret, and with sympathy for those who are unhappy, the Liberal Party is not able to support the proposed amendment on the basis that it would be administratively highly problematic and difficult to implement without sabotaging the whole process. With all due respect, I do not think that we will be able to support the question before the Chair.

**Hon MARTIN ALDRIDGE:** Before time runs out, I thought I would ask a couple of questions about this amendment, which we have only received relatively short notice of. The first question I want to ask, given that the chamber has been given the indulgence to address all the amendments at once because they are related, is whether the mover of the amendment can explain how he established that the CEO is the right person to make this decision as opposed to other mechanisms, people or bodies. Given that there does not seem to be, from my reading of this, any cap on the type of compensation that could be provided, if it is indeed going to come down to the call of one person, the CEO, and it is not capped, is that appropriate, or were other considerations made by the mover of the amendment?

**The DEPUTY CHAIR (Hon Adele Farina):** Does Hon Colin Tincknell wish to reply?

**Hon Colin Tincknell:** No.

**Hon MARTIN ALDRIDGE:** That is interesting. It is hard to try to understand an amendment when the mover of the amendment is not willing to respond. Nevertheless, I move now to another aspect of the amendment, which is, as I read it, the level of compensation that could be provided is not capped, so it could be any number. What will happen if an eligible owner, to get the language right, seeks this course of action, if this indeed becomes law? What will happen when the CEO determines that the amount payable to the owner is less than what would have ordinarily been available under the net loss provisions as they stand in the bill? Has that been considered by the mover of the amendment, and is, indeed, that scenario possible?

**The DEPUTY CHAIR:** I acknowledge the questions are being asked by the member, but it is up to Hon Colin Tincknell whether he chooses to respond.

**Progress reported and leave granted to sit again, on motion by Hon Stephen Dawson (Minister for Environment).**