

## ROAD TRAFFIC (VEHICLES) AMENDMENT (OFFENSIVE ADVERTISING) BILL 2022

### *Second Reading*

Resumed from an earlier stage of the sitting.

**HON JAMES HAYWARD (South West)** [5.05 pm]: In order to recap where I was before question time, I mentioned that we need to make this move and introduce the Road Traffic (Vehicles) Amendment (Offensive Advertising) Bill 2022 into Western Australia, because if we do not, we will usurp legislation in other states and, as other speakers pointed out, vans could be registered in Western Australia, where they would be out of reach of other jurisdictions. I also believe there could be some problems with implementation, particularly around cost. I mentioned that I had previously been through this experience with Ad Standards. I had a television commercial that was complained about and I had to go through the process. I also had a TV advertisement that made the *Gruen Transfer*; that was pretty cool, too. Regarding the process, it is a fee-for-service organisation. I recall that in those days, a complainant needed to pay around \$107 to make a complaint and the advertiser needed to pay around \$2 000 to have the complaint dealt with. I checked the website today to see whether I could get an update on those fees and perhaps in the minister's reply, and certainly in committee, we might get the answer to how that works. Obviously, it would be unsatisfactory if somebody complained about a van on the road and they had to pay \$107 to register that complaint. I am sure that that has been resolved, but we will find out with one of the questions during the Committee of the Whole stage.

One of the other concerns I have is around what is advertising and what is, effectively, vehicle artwork. I use that term loosely. I am not referring to it as art, but the reality is that the vans have artwork on the side of the vehicle that is probably not consistent with a logo, a brand name or something like that. One of the things talked about in the details of what the Ad Standards people will not look at is packaging. Obviously, they have a space for vehicles. I do not know whether at some point somebody would run the argument that livery on the side of a van is effectively packaging of a product, and whether that will cause difficulties for the ad people to deal with. That is something I am not sure about either. I think there will be some challenges in that space.

The ad industry traditionally has things such as what we call “out-of-home advertising”. Members might have seen “oOh!” next to billboards, driven past and thought it says, “Ooh”. That stands for “out of home”, which refers to advertising that people take in when they are out of home. That is fairly obvious. Billboards and the like, such as digital displays around the place, are all considered out-of-home advertising. Traditional television, radio, newspapers, magazines and some internet make up the advertising industry. As members can imagine, they are fairly sophisticated and quite structured. They have bookings and clients et cetera. Those organisations work cooperatively with Ad Standards Australia. I noticed in the second reading speech the parliamentary secretary said that one of the problems is that Ad Standards does not have any power to make an advertiser change or remove their ad. That is true for these vans but it is not entirely true for how the ad industry works. At the moment, if Ad Standards says an ad is no good, television stations will pull it. It will not be shown on television again. It does have power within traditional media methods but obviously paint on the side of a van falls outside that. It is not regulated. It is very difficult to stop someone from painting on the side of a van. Hon Dan Caddy said in his contribution that self-regulation has not worked. That is not true. It actually works quite well in situations in which advertising standards can be regulated through that more traditional structure. People painting slogans on their vans and vehicles is not a regulated activity. Hon Nick Goiran said in his contribution that there were issues with Honey Birdette's advertising. He talked about expanding this legislation so that things could be more easily dealt with. Ad Standards already upholds advertising standards for out-of-home and it impinged Honey Birdette for its ad. It took some time, I accept that, and it was slow. What we are putting through here will also be slow and perhaps not as quick as some people would hope and expect. The problem is that we are outsourcing our compliance to a third party, which I am not completely against. As I said at the beginning, I think it is a bit of out-of-the-box thinking in some ways because it utilises a service that is already there. I would also suggest that the issues around the Honey Birdette ads were somewhat different from the offensive slogans and artwork displayed on the vans. The Honey Birdette ad was pinged for its lack of sensitivity but I do not think they reach the horrendous nature that some of the slogans on the vans have reached.

I think there is a bit of a concern, which Hon Dr Brian Walker pointed out. We do not want these things to be weaponised to shut down freedom of speech. Hon Kate Doust talked about a particular political stance of being anti-environmental. Some of the vans carry anti-environment messaging. Although some people will be offended by that and see it as quite negative and destructive, the reality is that there is a place for political expression, but certainly not the offensive material we have seen on these vans. I am also concerned about bumper stickers or wraps that might be placed on a person's private vehicle. Members can imagine a political campaign, potentially, in which somebody wipes out their back window with a political slogan across the back. I worry that these laws may not be effective in dealing with offensive material that may be on those or whether people's idea of offensive material may interfere with people's rights to air their political views. From the reading I have done, it is clear that the Western Australian government will not provide the Ad Standards Board with somebody's personal information.

One of the other challenges is that if it is not completely obvious that a van is Bill Smith's electrical service and it has offensive material on it, how will the complainant identify who that person is or how Ad Standards can reach them? We will explore this a bit more during the Committee of the Whole but I understand that the state government is not prepared to give Ad Standards access to people's names and addresses from registration plates, for instance. I think there could be some challenges in that space as well.

Ultimately, decision-making will be done outside by a third party. Hon Dr Brian Walker said he did not know how it would go in court. The reality is that it will not go to court. It will be a panel that is initially convened to deal with the matter and it will bring down its standards. Those standards will change as the community standards change in Australia over years, so I expect that they will be contemporary. The reality is, what happens next is that an order is placed in Western Australia and somebody may challenge that order. Potentially there could be some grey areas and I do not know how the legislation will stand up to that kind of scrutiny. Again, these are more questions to be perhaps asked during Committee of the Whole House.

I remember we did television stories on these vans in regional Western Australia back in the early 2000s when they first started appearing. Initially, there were not too many of them but they would turn up in Broome and Exmouth particularly. I remember John McCourt doing a story about them. He stopped doing GWN news stories probably around 2005 so it must have been in that early period when they first came to town. People were pretty upset about them. The local shire was pretty upset about them. They do not like them and, as has been pointed out by other members, they are not a good look on the street or down at the beach or places you want to encourage tourists, families and others to be at. One of the things the police were doing in those days, as I understood, was delivering vans a yellow sticker. I am not sure exactly what it was based on. The police officers who spoke to me told me there was some issue with inconsistent paint on the vehicle. I do not know whether that is under the Road Traffic Act or is some kind of vehicle requirement, or perhaps the vehicle was registered as a particular colour and therefore could not be identified as that colour because of the artwork; I do not know. That is the method they were using back then. I do not know how effective it was and I would be interested to know whether the parliamentary secretary has any background on how those things worked or did not work and what the issues were. I know police officers who have stopped people walking in shopping centres with swear words on their shirts. They tell them to take it off, put it inside out and put it back on. I presume they have authority to do that, unless it is just a local grumpy community police officer telling people what to do. I would certainly support that because I think it is fair enough; those things are offensive and should not be there. I come back to that there are a lot of stickers on the back of cars, which some people would certainly consider offensive. The question is whether this legislation will potentially affect them. They are not an advertiser. Whether that is part of a wider advertising campaign is something that would need to be considered.

In reality, this is a step forward and I will support the legislation but I think there is more work for the McGowan government to do. In particular, I would like to see the police have authority to seize a vehicle immediately and that that vehicle would not be released from the police impound yard until it was rectified. Certainly, in the worst cases, that would seem to me to be the most effective method of dealing with it. As I said, there is a big difference between the Honey Birdette ads, which were considered to lack sensitivity but in some contexts may have been okay and what is written on the side of some of these vans, particularly, which can never be okay. Those are the ones I think, if the police had powers to seize the vehicles and release them only after they had been rectified, we would see a much swifter response to dealing with this problem.

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [5.18 pm] — in reply: I rise to thank members for their support the Road Traffic (Vehicles) Amendment (Offensive Advertising) Bill 2022. I can make some comments now on a couple of issues that were raised in the course of the second reading debate.

One of the questions asked by Hon Nick Goiran was about how long it might take to get an offending vehicle off the road. He also noted that the Ad Standards process itself is lengthy. It is the intention of the process to allow for procedural fairness for an advertisement to be considered. The time frames are an indication of timings. It is possible that an advertiser might move sooner or remove the advertisement well before the full time frames have been proceeded with. When Ad Standards receives a complaint, it will notify the Department of Transport that a complaint has been made about a particular vehicle. Ad Standards will engage with the advertiser but will not know the details of the vehicle licence holder. When notified of the complaint, the Department of Transport will check whether the advertiser is the vehicle licence holder. However, the department will not disclose any information to Ad Standards, as there is no legislative authority to share that information. If the Department of Transport finds that the vehicle licence holder is not the advertiser, it will notify the licence holder that a complaint has been made about the vehicle for the licence holder's awareness so that they can take action themselves to remedy the issue to avoid the possible cancellation of their vehicle licence. If the Ad Standards community panel determines that an advertisement is offensive, it will write to the advertiser requesting the removal of the offensive elements from the advertisement and provide time for the advertiser to do so, which will be approximately 25 days. If the advertiser fails to remove the offensive elements within the required time, Ad Standards will notify the Department of

Transport, which, in turn, will notify the licence holder of the intention to cancel the vehicle licence if the offensive ad is not removed within 28 days. If it is not removed within that period, the department will notify the licence holder that the vehicle licence will be cancelled on a specified date.

A question was asked by Hon Neil Thomson about whether the Department of Transport will be providing information to the public about the proposed changes. The department will inform the community about the proposed changes when enacted. The department will provide information, including the mechanism for resolution and the potential consequence of vehicle licence cancellation on the department's website. The department will also raise awareness of the changes through its Facebook account and the network. Hon Neil Thomson also asked a question about a recent Wicked Campers case on 25 January. Ad Standards determined that the offending advertisement breached the code of ethics. Ad Standards undertook to refer the matter to the South Australian Department for Infrastructure and Transport in accordance with its provisions. A question was raised by Hon Neil Thomson and Hon Nick Goiran about why the scope of the bill is limited just to vehicles. Really, it comes down to government being confronted with an issue. One of the levers that we have is the licensing of vehicles. So, yes, this is quite a narrow bill. It is quite specific. It is about using the levers at hand to government, noting the whole debate that has to happen about whether self-regulated advertising is suitable for Australia in 2023. That is a debate that has to be had nationally, and I encourage everybody to engage in that.

Hon Dr Brian Walker commented that we do not want unreasonable standards to be applied when determining what is offensive advertising and that we would not want to weaponise against freedom of speech. I make the point that freedom of speech is not unfettered, it has never been unfettered and it will not be now. The sorts of things that Ad Standards will take into account are: offensive advertising includes advertising that uses obscene language that is degrading, that deals inappropriately with sex or violence, or discriminates against or vilifies any section of the community. If that is weaponising, so be it. It is weaponising that I can live with, because I think those things are entirely unreasonable and that the community wants us to act on them.

I thank the other members who made a contribution. There was a question asked about costs. I can advise that there is no cost to make a complaint to Ad Standards. Once the Ad Standards panel makes its determination, if either party wants to take that to a review, that will cost them. For a complainant, the fee for a review of a decision will be \$110; for an advertiser who actually contributes to the advertising self-regulation levy, the fee will be \$1 100; and for an advertiser that does not pay the levy, the fee will be \$2 200. This bill is based on and is similar to the provisions in place across Australia. In terms of identifying any implementation issues, a good thing about coming towards the end is that we have had an opportunity to see what those issues might be. I am not anticipating the issues that the honourable member seemed to be suggesting might occur.

With those comments, I thank everybody from across the chamber who has contributed for their support and I commend the bill to the house.

Question put and passed.

Bill read a second time.

*Committee*

The Deputy Chair of Committees (Hon Sandra Carr) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

**Clause 1: Short title —**

**Hon NICK GOIRAN:** The minister will recall that during the second reading debate there was an exchange with respect to the issue of the number of complaints that had been received. The parliamentary secretary, who delivered the second reading speech for the government, made some remarks about that, and I also did in my contribution to the second reading debate. How many complaints has the Minister for Transport received in relation to offensive advertising regarding vehicles?

**Hon SUE ELLERY:** While the advisers are checking whether there is further information, 36 complaints related to vehicles that would be captured by this bill. We are just checking whether there is other information. The member will appreciate that there are different agencies, so we are just checking. I can add that in addition to those 36, there were 10 complaints about Wicked Campers, the company, specifically.

**Hon NICK GOIRAN:** I thank the minister. So it is 36 and then, it seems, there are an additional 10. Over what time are we talking about? Is it the life span of this current Minister for Transport—so the last six years?

**Hon SUE ELLERY:** It is five years, so 2017 to 2022.

**Hon NICK GOIRAN:** Has the minister also received any complaints about advertisements on public buses?

**Hon SUE ELLERY:** The 36 that I referred to relate to a vehicle that will be captured by “bus”. Each complaint was about an advertisement on a Transperth bus.

**Hon NICK GOIRAN:** That is interesting, minister. The bill before us seeks to deal with the deregistration of vehicles in the event a person has what is deemed by Ad Standards to be an offensive advertisement on their vehicle. After the notice provisions and the various elements of the scheme have been complied with, a person could have their vehicle deregistered. There were 36 complaints about Public Transport Authority buses and another 10 complaints about what might be described as private vehicles. I take it that the offensive advertising scheme that we are agreeing to here will apply equally to Public Transport Authority buses as it will to private vehicles?

**Hon SUE ELLERY:** Correct. I said that will be captured by this bill.

**Hon NICK GOIRAN:** I think we can move forward on the basis that it is improbable that a government department, in this case the PTA, would allow offensive advertising to remain on its bus to the point of deregistration by the Department of Transport. That is just an absurd scenario. Nevertheless, the rule of law applies equally to government as it does to every other Western Australian, so it is appropriate that it will be captured.

The minister will recall one of the concerns I raised in my contribution to the second reading debate was the length of time that this process will take. We will have to wait for Ad Standards to make a determination and so forth. The heart and the spirit of this bill is that the government made a policy decision to say that it is not going to support and it does not condone this offensive advertising and wants to see change. By implication, that means the government, and in this instance the PTA, should be a model citizen. In how many of the 36 complaints that have been received did the PTA then remove the advertisement that was complained of?

**Hon SUE ELLERY:** I am not sure that I can give the member an accurate answer with the information that is available to us at the table today. I can tell the member that one of those complaints was about a particular advertising campaign that had advertising material on 30 buses, and that was all removed. It is a reasonable question of interest so I can undertake to ask the minister to provide that information to the member separate to this process, but I do not have it available to me from the advisers at the table.

**Hon NICK GOIRAN:** I thank the minister for that response. I am happy to move forward on the basis that, as I mentioned earlier, we as legislators can reasonably expect that whilst this legislation will apply to everybody in Western Australia equally, at the end of the day, it will ultimately be utilised and targeted toward owners of private vehicles because any government-owned vehicles will already be operating at a higher standard. I think we can work on that basis.

This goes somewhat to my point that I am concerned about the delay that is going to take place with Ad Standards. I will give a practical example of what I am talking about. The PTA ordered the removal of an advertisement that Ad Standards had endorsed. It was a reverse scenario of what we are trying to deal with here. Thank goodness, in this particular instance the PTA was on the ball. I will quote an article by Collective Shout, which is the organisation I referred to in my contribution to the second reading debate, entitled “Ad Standards endorses ‘JobSeeker boob job’ ad on Perth bus—weeks after Peter from the Public Transport Authority ordered its removal”. The article published on 11 December 2020 has a subheading that reads “Another Ad Standards fail”. I will briefly quote the article to underscore my point about concern within the community about delays. This is a good bill that will be and has been supported, yet it has this element in the scheme that caters for this delay by Ad Standards. The article goes on to say —

One man, five days and **actually caring about the community** has achieved what Ad Standards, a comprehensive advertising Code of Ethics (and accompanying Practice Note), a 22-member panel and a weeks-long review process could not: takedown of a sexist, objectifying advertisement from Perth’s public buses.

After receiving public complaints and media inquiries, Peter Jones from Western Australia’s Public Transport Authority ... gave the final word on cosmetic surgery company Cosmetique’s offending ‘JobSeeker boob job’ ad and ordered its contracted advertising company JCDecaux to remove it.

The ad gained media attention in October after a video showing its placement on the back of a Transperth bus traveling on suburban streets was shared to social media. It drew objections for its use of sexist, degrading imagery—an oversized image of a woman’s bikini-clad breasts and torso (she was rendered faceless due to the position of the route number signage and ad text). And of course for its message encouraging women to use JobSeeker payments for breast enhancement—what a mockery of the intention of the JobSeeker program, designed to prevent total devastation due to COVID-related unemployment.

Its placement on a Transperth bus meant that it was presented indiscriminately, on state government property, to a non-consenting, all-age audience.

The PTA was quick to respond, determining that the ad was out of line with its values. Peter Jones told us:

*“Once Transperth was made aware of the contents of the advertisement, we considered it to be inconsistent with our brand values, and advised our contractor ... it was not a suitable image*

*to display on our infrastructure. We will continue to work with JCDecaux to ensure that advertisements on Transperth buses align with our organisation's values."*

While it doesn't preview ads before they are placed on Transperth buses (this is tasked to the Outdoor Media Association which, we were told, knocked back Cosmetique's first 'two or three' backside-bus boob job ads before approving this one), the PTA investigates community complaints to determine whether ads comply with its own standard and takes action accordingly.

The article continues but the relevant point there is that the role of the PTA in being a model citizen is to deal with complaints after the fact. According to the authors of this article at least, the PTA is not tasked with previewing the ads before they are placed on Transperth buses; apparently, that is, if you like, outsourced to the Outdoor Media Association. Is the minister in a position to confirm whether it will remain the case that the PTA's role will really be after the fact? Will it be a reactive, complaints-based role, rather than a proactive or preventive role?

**Hon SUE ELLERY:** The point the honourable member raises is an interesting one, and I think we need to put it in a bit of context. If we start with the fact that we have one of a few tools available for us to use, we do not have to create our own bureaucracy from scratch to set standards and determine whether something meets a standard on this side of the Western Australian border as opposed to anywhere else. Therefore, we sought to use what is available to us. Part of what is available to us, in my personal opinion as a citizen of Australia, is the unsatisfactory arrangement that says that the advertising industry is self-regulating. I, personally, have the view that that is not satisfactory. Nevertheless, if we are going to put in place a bill that does not require that we have to establish a whole new bureaucracy from scratch—that sends very clearly a public message about what we as a government and a Parliament think is acceptable—and we use the licensing tool that we have and we rely on a determination made by Ad Standards, that is as good as we can get. However, I understand completely that that has its limitations, and I do not disagree with the member and the example that he gave in that Ad Standards found that it did not breach the code, and the PTA made a decision anyway.

The PTA has a contractual arrangement with a company that places the ads. Prior to placing those ads, the contractor must ensure that the advertisement complies with the code of ethics and the PTA advertising policy, and, where necessary, it will also seek independent advice to ensure compliance. Therefore, there is an element built into the system whereby PTA policy is proactive and acts at the beginning of the process rather than at the end.

But regarding the general point that the member made, this does rely on a body that is self-regulated. I completely understand the point the member made. I understand it, and I agree with it. I think the most effective part of this is the debate that occurred when the state started putting these laws in place, and the fact is that we do not now see that many Wicked Campers around the place because the message was successful. There has been a more symbolic public messaging effect than might otherwise be the case in other various legislative frameworks that we put in place.

**Hon NICK GOIRAN:** Thanks, minister, for that comprehensive response. Having dealt with that more systemic issue and concern, I have a couple of smaller technical matters to address. They could easily be dealt with at a different clause, but with such a small bill, I will just quickly wrap it up in clause 1 from my perspective. I acknowledge and thank the lead speaker for the opposition, Hon Neil Thomson, for his indulgence for me to ask these questions now.

If a person unknowingly has purchased a vehicle that is subject to one of these licence warning notices, what will prevent them from transferring the vehicle into their name even if they have paid the purchase price to the responsible person?

**Hon SUE ELLERY:** As soon as the department has advised that Ad Standards is looking into a complaint in respect of a particular licence holder, a hold will be put on that licence so that it cannot be transferred until the department knows whether the matter has been resolved.

**Hon NICK GOIRAN:** That sounds like an excellent safety mechanism. What is the provision in the bill that guarantees that mechanism?

**Hon SUE ELLERY:** I am advised that a provision is not specified in the bill; it is a policy decision that the PTA has taken, which it will apply. Sorry; not the PTA, the Department of Transport.

**Hon NICK GOIRAN:** Thanks, minister. I am glad we could get that on the record. I would then encourage the department to maintain that policy for as long as this scheme is in place. My personal preference is that it would be enshrined in the legislation, but I acknowledge that, at the very least, it is now on the record.

Will the CEO—that is the director general of the Department of Transport—be required to cancel the licence of a vehicle that has advertising that has not been removed by the time outlined in the licence warning notice, or will that cancellation be a discretionary matter?

**Hon SUE ELLERY:** If the advertising is not removed within the time frame, the licence will be cancelled.

**Hon NICK GOIRAN:** I note that at clause 8, there is the use of the discretionary word “may” rather than “must”, but I acknowledge that the minister says that it will be done. Will that, again, be a policy matter?

**Hon SUE ELLERY:** Yes, it will be, honourable member.

**Hon NICK GOIRAN:** In the same vein, will the same situation apply with regard to the suspension of the licence of a vehicle that has not removed its advertising by the time outlined in the licence warning notice? In other words, even though the scheme will technically allow for discretion as to whether the licence will be suspended or cancelled, as a matter of policy will it be suspended and cancelled?

**Hon SUE ELLERY:** The point of having the discretionary suspension option is if the vehicle were, say, in a remote or regional area, where it is hard to get to—what do you call them; I used to go to them a lot in my younger days when I kept having accidents—a panel beater. Thank you. If the vehicle cannot get to a place to get the stuff removed, the department will act “sensibly”. If it is the department’s view that the vehicle owner is not endeavouring to get the problem fixed, the licence will be cancelled.

**Hon NICK GOIRAN:** Will it be a case then of a two-phased approach—that is, suspension first and then followed by cancellation?

**Hon SUE ELLERY:** No, it will not, honourable member. It will be a notification of intention to cancel the licence. But there will be the capacity that if someone said, “Look, I’m trying my very best, but I need to get a tow truck,” or they need whatever, that will be taken into account. The intention is that the person needs to take all steps, as quickly as they can, to remove the offensive material.

**Hon NICK GOIRAN:** Earlier, the minister referred to a hold that will prevent the vehicle from being transferred. That hold will start when the Department of Transport becomes aware that Ad Standards has an interest. As this process unfolds, is that hold maintained throughout the entire process?

**Hon SUE ELLERY:** Yes, it is.

**Hon NICK GOIRAN:** Is my understanding correct that in order for anything to happen here, the first trigger is that the CEO of the Department of Transport must receive a notice from Ad Standards?

**Hon SUE ELLERY:** Yes, it is. It might be the case that a person does not know where to go to make a complaint and contacts the department. The department will refer them to Ad Standards and tell them that once they do that and Ad Standards gets back to the department, there will be a hold placed on that vehicle, so encouraging people to make a complaint.

**Hon NICK GOIRAN:** The genesis of the whole scheme is it starts with a complaint from a person about an allegedly offensive advertisement, but in order to trigger the engagement of the Department of Transport, the department—specifically the CEO—must receive this notice from Ad Standards. That is really the start of the mechanism. I take it, then, that there have been some conversations happening with Ad Standards to make sure that it is entirely on board and is happy to issue these notices?

**Hon SUE ELLERY:** Yes, that is the case.

**Hon NICK GOIRAN:** That said, even though there has been this consultation with Ad Standards—it is not a Western Australian agency, so it has been done in a cooperative fashion—it is under no obligation to issue a notice?

**Hon SUE ELLERY:** It does not have to; it is not mandated. That is part of the nature of a self-regulating industry. But the practice in other jurisdictions is that Ad Standards has been referring to the relevant department, whether it is the Department of Transport or another department under the relevant legislation in that jurisdiction. All observations and experience to date would suggest that Ad Standards has taken its responsibility seriously and is referring.

**Hon NICK GOIRAN:** As a consequence of that, is there some form of memorandum of understanding between the Department of Transport and Ad Standards or something similar that confirms this voluntary but mutual agreement on how this might work?

**Hon SUE ELLERY:** I am advised that there is not a memorandum or a contract or formal arrangement in place, but there has been a high degree of consultation and discussion. Ad Standards has been seeking assistance to understand the policies and procedures in Western Australia. On evidence and observation to date, it has been following the provisions that have been put in place in other jurisdictions. There is no reason to think that it will not do that in Western Australia, as well.

**Hon NICK GOIRAN:** Is there some form of in-built review mechanism to ensure that this seemingly positive arrangement with Ad Standards is actually working, that it is effective and efficient, and if there needs to be any tweaking, that will be done?

**Hon SUE ELLERY:** No, a formal kind of evaluation process is not built in. I am advised that the jurisdiction that has had the scheme in place the longest is Queensland, which put it in place in 2017. I asked whether it has had

to amend or tweak its arrangements, and the advice I have had is no, it has not, so there is no reason to believe that we have missed something or that it will suddenly fall into a hole. I am advised that the agency will monitor the number of complaints. If there are a lot or if there are none, that might trigger it to have a conversation with Ad Standards about the arrangements, but I am advised, on the basis of observation and the experience of the other jurisdictions, that it seems to be working to the satisfaction of everybody involved.

**Hon NICK GOIRAN:** I might just make a comment at this time that my expectation is that the number of complaints will be small, particularly if we look at the data that the minister kindly provided earlier, which suggested that there were 10 complaints relating to private vehicles over a five-year period, but time will tell. I hope that those Western Australians who are entrusted with monitoring this scheme will take it upon themselves as a matter of good internal governance to review this mechanism from time to time, whether that be on an annual basis or some other suitable period.

I have two final questions. One relates to the licence warning notices. Why was 14 days chosen as the minimum time to allow for removal of the offensive advertising? Obviously, this independent body will have already deemed that the particular advertisement is offensive. In line with government policy—certainly what I was articulating in my second reading contribution—the concern is how this impacts children in particular. They cannot unsee those things. Seemingly, 14 days is, at the very least, a generous period. Why was 14 days chosen?

**Hon SUE ELLERY:** I am advised that there are two reasons. One is that a physical notice needs to be sent out. To make sure that Australia Post can do that, given that I think it is now delivering only every second day, 14 days was deemed a reasonable amount of time to get to the furthest point, if that is what has to happen. The other is to reasonably enable people to continue to use their vehicle while they make alternative arrangements. That does not go to the member's issue of a child unseeing what they have seen, but it is trying to find the middle ground. We do not want to leave people stranded without use of their vehicle, but it was mainly driven by the prospect of getting a physical notice to people.

**Hon NICK GOIRAN:** I am only thinking of this now—now is not the time to unpack this—but it would be interesting to compare and contrast the notice period. The minister might recall the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill that we dealt with. Under that legislation, bikies are not allowed to have certain tattoos and the like and are subject to a notice. It would be interesting to know what period applies to the covering up of those in comparison with this notice period, but I will not take it further. I just make that observation.

**Hon Sue Ellery:** They can put a jumper on, as opposed to what you can do with a vehicle.

**Hon NICK GOIRAN:** Yes, that is true. This is my final question, dare I say it, because one never knows whether a supplementary will arise. Is there a time frame within which the CEO must remove any of these impediments? The minister will remember that we talked earlier about the hold, which is a very sound policy, which has my full support. But if a person ultimately complies with everything that they have had to do, it is appropriate that the department remove that hold and any other notices once it is satisfied that the conditions have been met. Is there some time frame that the CEO must mandatorily comply with; and, if not, what is that time frame intended to be?

**Hon SUE ELLERY:** The intention is that as soon as the CEO is satisfied, the hold will be lifted.

**Hon NICK GOIRAN:** Within one working day? Within 24 hours? What is meant by “as soon as”?

**Hon SUE ELLERY:** I am advised that the intention is the same day and that these things are generally generated overnight. I am advised that it is not infeasible.

**Hon NICK GOIRAN:** The last supplementary question, minister, is: How will the CEO satisfy themselves that the conditions have been met? Will they need to see a photograph? Will an independent person need to audit it or sign off on it?

**Hon SUE ELLERY:** There are two mechanisms. One is to present the vehicle for inspection. The second is to provide a photo and a statutory declaration that demonstrates that it has been removed.

**Hon WILSON TUCKER:** I have two points I would like to raise, which I felt were probably best raised in committee as opposed to the second reading debate. I say from the outset that I am supportive of this bill and the intention to outlaw or ban offensive slogans on vehicles. In the classic case of Wicked Campers, those slogans are outdated, do not pass the public sniff test and have no place in modern Australia and Western Australia. My first point relates to the narrow focus of this bill in outlawing or banning those offensive slogans on vehicles. Given the resources, time and cost associated with passing this legislation—indeed, any piece of legislation—through this place, I am curious about whether the government has taken a broader look at potentially outlawing or banning other forms of offensive material in public, rather than just the narrow focus on Wicked Campers, as a classic example, or vehicles in particular.

**Hon SUE ELLERY:** I did try to address this issue in my second reading reply and it does go a bit to the things I canvassed in the exchange with Hon Nick Goiran about the fact that we are dealing with a national advertising standards body that has a self-regulating industry. Those are the limitations we operate within. One question the government had to answer was: what is the easiest way to put something in place to deal with a specific complaint that has been made, bearing in mind the levers that we have? One lever that we have is the capacity to issue and cancel licences. We are operating in a national environment in which we do not set up, police or enforce advertising standards; it is self-regulated and done nationally. That is why I made the point in my reply to the second reading debate that this is something we all have to take up and argue about if we believe it is appropriate that this be changed nationally. The question we had to answer was: should we set up our own bureaucracy to deal with matters that are deemed to be socially or politically unacceptable or do we work with the tools that we have and live to fight another day on the issue more broadly of what we, as a nation, want to do about the advertising industry?

**Hon WILSON TUCKER:** I thank the minister. I agree that it is a fair approach to try to leverage the existing Ad Standards process and the rules in place around what constitutes offensive advertising. The minister touched on the self-regulating nature of this. That leads to my second point. I know this has been fleshed out a little already in this chamber, but I just want to go into that topic again. The public sentiment is that people do not necessarily agree with those slogans. Therefore, we have seen self-regulation happen here through the decline in the number of these offences and offensive slogans appearing in public. There appears to have been a long tail between the public outrage, the subsequent media coverage and the government's response. There has been a passage of time. I think the last media report that I saw was from around 2019, yet here we are dealing with this bill in 2023. Three to four years later, we will have rules in place that will basically use the stick method to outlaw behaviour that is no longer occurring. The public does not accept those slogans and does not want to see them; therefore, the self-regulating nature of Ad Standards and the advertising industry has already changed the behaviour of the advertisers.

We saw this recently with the animal welfare and trespass legislation; by the time the government responded, we were not seeing any of the incidents that had been the impetus for the government's initial response and the bill. I guess I am just looking for a little bit of commentary around that. Is the government marching forward blindly on the back of a promise? Were there any discussions behind the chair that the government could potentially change its approach, given that self-regulation of the offensive slogans has occurred?

**Hon SUE ELLERY:** I think that was a second reading speech and not a clause 1 question! A decision was made by Ministers of Transport around Australia in 2019. At the beginning of 2020, COVID-19 struck, so our legislative priorities fundamentally changed. That is why it has taken us to this point. I do not apologise for that. The member is quite right: the public outcry that occurred at that time drove the fact that we do not see many Wicked Campers around now. The point about still proceeding with this legislation is that we are having a debate now and we will have the debate in our communities when we are asked what we have been doing in Parliament. It is an important debate to have about what is acceptable advertising. Frankly, if it does nothing else than to get the 36 people in here talking to other people about whether it is acceptable to have an advertising industry that is self-regulated, that is fine by me.

**Hon NEIL THOMSON:** I will be very brief and we will finish this today. I acknowledge the minister for her response to the second reading debate. She answered a number of questions, which I appreciated. I think the debate is being handled well today, so I wanted to acknowledge that. I will ask a couple of questions on clause 1 that will not be covered by my honourable colleagues, assuming that no-one else raises any more questions. I acknowledge the point about the self-regulation debate. That is obviously noted, given the situation we have. I want to point to the issue around the definition of "advertising" under the Australian Association of National Advertisers Code of Ethics and where it does not apply, which I raised during my contribution to the second reading debate. Paragraph (b) of the definition refers to corporate reports, including corporate public affairs messages in press releases and other media statements, annual reports and statements on matters of public policy. It also covers broadcast media. Is there any situation in which a department might envisage presenting a slogan or other offensive material on a vehicle and that somehow escaping the advertising definition, so that it could still be presented in public view? Has there been any consideration of that issue?

**Hon SUE ELLERY:** The only one that has been contemplated is vanity numberplates, because they are excluded from the code, but the department has its own system of putting that through a vetting process so that nothing offensive is included.

**Hon NEIL THOMSON:** Thank you for that; we are confident that we will not see anyone get around this process for vehicles.

The other set of questions I have relate to support that might be provided to a complainant. I note that the process is laid out for someone to go online and complain to Ad Standards. It is quite a reasonable process; I had a look at it on its website. Will the department provide advice and support to persons who might, for one reason or another—or who might not be familiar with the internet—write a letter? Some people still use letters and some people still



visit licensing at the Department of Transport. When someone raises an issue, will the department assist people lodging a complaint? What will be the process for someone who has not, for one reason or other, been able to avail themselves of the Ad Standards complaint process? For example, there might be persons with disabilities or people who might not have the ability to make a complaint to Ad Standards. Will the Department of Transport provide support for complaints being lodged?

**Hon SUE ELLERY:** No; that question needs to be put to Ad Standards. What arrangements does it have in place to assist people to make complaints? From what I have seen of its material, it tries to help people to make complaints. But, no, the Department of Transport will not write letters for people or assist them to fill in forms, but it will advise people how to get information about how to make a complaint.

**Hon NEIL THOMSON:** My other question, following on from the matter that Hon Nick Goiran raised about buses, is about how the department has other significant assets. There were some electric billboards, although there have been changes to that. I saw something recently about billboards near freeways and also at some marine facilities. The government has a lot of advertising space that it earns revenue from. In a similar vein to the matters raised by Hon Nick Goiran about buses, if somebody lodged a complaint regarding the department's other contractual arrangements, would they be dealt with directly by the department as opposed to requiring a complaint to Ad Standards?

**Hon SUE ELLERY:** It will depend. This bill applies to vehicles, including government vehicles. It does not apply to billboards and the like, so that is really not on point with the bill that is in front of us now. The Public Transport Authority has a policy, which I have described before, on advertising on public transport. With the advice I have at the table I am not in a position to talk about elements outside what is in the bill in front of us now. I am sorry, I cannot provide the member with any information about that.

**Hon NEIL THOMSON:** By way of comment, given that the CEO will be responsible for the implementation of this law, I hope that the department would have a policy beyond the PTA. We are talking about a significant amount of advertising and revenue generated by the Department of Transport. I hope the department has policies and guidelines and a process that is consistent with the intent of this law. By way of comment for the record, that is something that could be followed up if it is not already in place. I hope that that is the case.

My last question is about monitoring and reporting. We discussed a review, and I assume that the peak body for review would be the Council of Australian Governments' Transport and Infrastructure Council. That is the process whereby it would be reviewed at an interjurisdictional level. Regarding the state's monitoring and reporting on this matter, will any performance indicators be presented through the Department of Transport's annual report to outline how many of these matters have been dealt with and the time in which these matters were dealt with?

**Hon SUE ELLERY:** There is no intention to do that. The department might decide to do that but there is no plan to do that at this point.

**Hon NEIL THOMSON:** By way of comment, I assume that the CEO is following this debate. That would be advisable and welcomed by Parliament given the enormous bipartisan interest in this matter, the matters of public interest and also the broad understanding of not only the weaknesses and shortcomings, but also the practicalities of this matter, and the balancing of that. On that, I finish my commentary, but by way of comment, I hope that is inserted into the annual report in due course.

**Clause put and passed.**

**Clauses 2 to 9 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

Bill read a third time, on motion by **Hon Sue Ellery (Leader of the House)**, and passed.