

STANDING COMMITTEE ON LEGISLATION

ROAD TRAFFIC AMENDMENT BILL 2001 ROAD TRAFFIC AMENDMENT (VEHICLE LICENSING) BILL 2001

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH,
WEDNESDAY, 22 AUGUST 2001**

Members

**Hon Jon Ford (Chairman)
Hon Giz Watson (Deputy Chairman)
Hon Adele Farina
Hon Kate Doust
Hon Paddy Embry
Hon Peter Foss
Hon W.N. Stretch**

Committee met at 10.20 am

MAUGHAN, MR TREVOR,
Manager, Legislative and Legal Services,
Department for Planning and Infrastructure,
441 Murray Street,
Perth, examined:

NEILSON, MS REBECCA,
Legislation Officer, Department for Planning and Infrastructure,
441 Murray Street,
Perth, examined:

DOMBROSE, MR JOHN,
Manager, Vehicle Standards,
Transport WA,
21 Murray Road South,
Welshpool, examined:

STILES, MR JIM,
Legislation Officer, Legislative and Legal Services,
Department for Planning and Infrastructure,
441 Murray Street,
Perth, examined:

BRANDIS, MR KENNETH,
Principal Policy Officer, Registration, Department of Transport,
441 Murray Street,
Perth, examined:

The CHAIRMAN: You will have all signed a document entitled "Information for Witnesses". Have you read and understood that document?

All Witnesses: Yes.

The CHAIRMAN: These proceedings are being recorded by Hansard and a transcript will be provided. To assist the committee and Hansard, please quote the full title of any document referred to during the hearing. The transcript will become a matter for the public record. If for some reason any witness wishes to make a confidential statement, he or she should request that the evidence be taken in closed session. If the committee grants that request, any public or media or attendees will be excluded from the hearing. Please note that, until such time as the transcript of the public evidence is finalised, it should not be made public. Premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege. Does any witness wish to make a statement to the committee?

Mr Maughan: The committee's research officer was kind enough to provide some preliminary questions. We have prepared written responses to those questions. I tender those responses.

Hon ADELE FARINA: I suggest that we still go through the process of asking the questions. We are grateful for the written answers, but it would be worth going through them for the record. We do not want the witnesses to wait while we read through the documentation.

Mr Maughan: I will make some preliminary comments about the legislation. It flows out of agreements entered into by the State of Western Australia with the Commonwealth Government relating to a number of modules that fall out of the national road transport reform process, to which Western Australia is a signatory. The first Bill before us is the Road Traffic Amendment Bill, which puts in place a number of mechanisms to allow those elements of the module to be adopted in Western Australian law. It amends the regulation-making powers contained in the Road Traffic Act and will provide for the minister of the day to exempt vehicles from certain requirements in the regulations to extend their ambit to some areas that would not come within the common understanding of a "road".

Hon PETER FOSS: Proposed section 103A provides -

The Minister may declare that a regulation specified in the declaration applies to a specified area of the State that is open to or used by the public.

Mr Maughan: That is correct.

Hon PETER FOSS: It is stated that this would be used for places such as a mine site or somewhere else to which the public has access. Surely that would be caught in the definition of a road. For example, the areas providing vehicular access within a private mine site or port may not be considered to be roads for the purposes of the Road Traffic Act. The only reason they would not be seen as roads would be that they were not open to the public. Once they are open to the public, they are roads.

Mr Maughan: There are areas, particularly in the south west - for example, some logging roads - to which the public is allowed limited vehicle access. They would not come within the strict definition of a road as contained in section 5 of the Road Traffic Act.

Hon PETER FOSS: Why not?

Mr Maughan: Because access is restricted; it is not free.

Hon PETER FOSS: I agree. What does proposed section 103A pick up? It contains exactly the same words; that is, it states "that is open to or used by the public". If the definition does not pick it up because of that, proposed section 103A will not take us anywhere.

Mr Dombrose: In many cases the public would require the assistance of a solicitor to work out whether a road is a public road, because the road may or may not be open all the time.

Hon PETER FOSS: This will not help.

Mr Dombrose: This will enable the minister to say that a road is deemed to be a road for a specific period. That will provide total clarity and people will not have to wonder whether the laws apply.

Hon PETER FOSS: I beg to differ. I refer to the definition of "road" in the Road Traffic Act and proposed section 103A. The power to make it a place to which the regulation applies depends on its being open to or used by the public. If it is not, it cannot be declared. If it is open to and used by the public, and it is a road, then it is a road for the purposes of the Road Traffic Act. There is no difference in the definition in proposed section 103A and what is already in the legislation, apart from the fact that it does not refer to roads. What will be declared to be a road that is not a road under proposed section 103A that is not already caught by the definition of "road"? The answer that has been provided does not deal with that issue.

Mr Maughan: All I can say is that there is no intent to declare anywhere other than the areas we have indicated; that is, port areas and mining sites. While I accept the point that technically some of these could come within the definition of a road, the advice we have received is that it is not wide enough to encompass all such areas. Given that advice, we have proposed the amendments to section 103A.

The CHAIRMAN: This is an opening statement rather than question time.

Mr Maughan: I was giving an outline of the legislation. It simply provides the ability to make regulations, to declare areas and to exempt vehicles from certain compliance.

Hon PETER FOSS: Why can the exemption not be included in the regulation that declares it?

Mr Maughan: I do not understand.

Hon PETER FOSS: The minister may declare that the regulation specified in the declaration applies to a specified area of the State that is open to and used by the public. Why can that not be done by regulation?

Mr Maughan: Parliamentary counsel advised that that should be in the statutes. We followed that advice.

Hon PETER FOSS: Proposed section 103B provides -

The regulations may provide for the Minister to declare, in writing in accordance with the regulations, that a specified requirement of the regulations does not apply to a specified person or vehicle.

The advice was that that should not be in the regulations.:

Mr Maughan: The exemption clauses will appear in the regulations, but we will need a regulation-making power in the substantive statute. This is the regulation-making power that parliamentary counsel saw as the appropriate mechanism to make the regulation.

Hon PETER FOSS: The declaration would be a non-disallowable regulation.

Mr Maughan: That is correct.

The CHAIRMAN: Please list all the relevant intergovernmental agreements that relate to the Road Traffic Amendment Bill and the Road Traffic Amendment (Vehicle Licensing) Bill.

Mr Maughan: As I said in my opening statement, Western Australia is a signatory to a number of agreements that are schedules to the National Road Transport Commission Act: the light vehicles agreement; the first light vehicles amending agreement; the heavy vehicles agreement; and the first heavy vehicles amending agreement. These agreements commit Western Australia to participate in the process of developing and implementing uniform or consistent road transport legislation and administering that legislation to bring about minimum common outcomes. In addition, Western Australia is a signatory to the national competition policy agreement, the competition principle agreement, the code of conduct agreement and the agreement to implement the national competition policy and related reforms, which link competition payments to the implementation of agreed national road transport reforms, among others. Implementation of the reforms with which these Bills are concerned is linked to national competition payments.

The CHAIRMAN: Please explain the national competition payments.

Mr Maughan: All state heads of Government entered into an agreement with the Commonwealth Government some time ago to review legislation and put in place mechanisms to remove anticompetitive practice and regulations. As a carrot for the States to proceed with that, the Commonwealth makes payments to the States - national competition payments - which are based on their meeting certain outcomes set by the National Competition Council. These reforms form part of that assessment process and failure to comply with them or to instigate legislation to achieve them may result in funds being withheld by the Commonwealth.

The CHAIRMAN: The Bill refers to recovering costs in regard to road funding.

Mr Maughan: No, this is completely independent of that. This is a grant made by the Commonwealth. That has no relevance to the content of the Bill, other than the fact that the introduction of these legislative reforms is part of the assessment process to determine whether we are granted that funding.

The CHAIRMAN: It is an out-and-out carrot.

Mr Maughan: Yes.

The CHAIRMAN: Why is it necessary for these amendments to be made to the Road Traffic Act 1974 for Western Australia to effect the matters dealt with in these intergovernmental agreements?

Mr Maughan: The aim of the intergovernmental agreements is to put in place a common regulatory and legislative framework for road transport in Australia. As members are aware, these are currently covered by a number of statutes in each jurisdiction - in Western Australia by the Road Traffic Act and the regulations made under that legislation. To implement the reform process, we had to amend the Act itself to provide the mechanisms to install the new framework.

Hon PETER FOSS: Does that mean all States will have a section 103A and 103B equivalent?

Mr Maughan: Yes. We are the only State in Australia that does not have that.

The CHAIRMAN: What is the name of the relevant cooperative scheme?

Mr Maughan: The establishment and implementation, by the parties to the heavy vehicles agreement, of a cooperative scheme is referred to in Recital D of that agreement. The cooperative scheme referred to concerns the process by which jurisdictions will consult with each other and participate in the development, implementation and administration of uniform and consistent road transport legislation. The titles of the relevant road transport reforms with which these Bills are concerned are the Road Traffic Amendment Bill, the heavy vehicles operating standards and the combined vehicle standards. I draw the committee's attention to the fact that the legislation was developed cooperatively with all jurisdictions; it is not something that the Commonwealth simply drafted and put out. Western Australia was represented on the committees developing the legislation. The legislation also went to the Australian Transport Council, which comprises transport ministers from each jurisdiction and the commonwealth Minister for Transport. The draft legislation was passed by that body.

The CHAIRMAN: I refer to clause 2. Why is the operation date to be "fixed by proclamation" as opposed to specifying a date?

Mr Maughan: The Bill will facilitate the introduction of nationally consistent vehicle standards and heavy vehicle operating standards in Western Australia. The standards themselves are to be promulgated in regulation. The drafting of those regulations is in progress, but it is a significant task. It was intended that the amendment would commence operation simultaneously with those regulations. However, because it is putting in place only regulation-making powers and declaration powers, there is no technical reason that the Bill cannot come into effect on the date of assent. It was merely one option of many.

Hon PADDY EMBRY: Will Western Australian operators have to make many changes? In other words, did Western Australia get its way at the conference or were we put down?

Mr Dombrose: To the contrary, we managed to convince people we are doing things very well. There will be only a small number of variations relating largely to environmental issues that will make it much easier to enforce noise and emission pollution regulations. They are the main differences that will come out of this for Western Australian operators. We have had extensive consultation with them and they are happy with the tightening up in that area. They are becoming more responsible as an industry and want the public to be on their side, and this is one way of achieving that.

Hon W.N. STRETCH: Did they discuss the jake brake issue? Was it necessary to compromise for noise emission?

Mr Dombrose: The jake brake is a specific problem that is being discussed outside these standards. Those standards are still being reviewed at a national level. The jake brake issue, because it is so

complex, is being dealt with as a special project by the National Road Transport Commission. It was not addressed in the standards, but it is part of an ongoing NRTC program.

Hon PETER FOSS: Will that standard be imposed nationally? Will it not be a decision for Western Australia, but a decision made in the process that will flow through?

Mr Dombrose: It will go through all the regulators, then to the Australian Transport Council for the ministers' approval and then be put back into the system.

Hon PETER FOSS: Will it come back to the Western Australian Parliament?

Mr Dombrose: If it is dealt with as a regulation, it will appear in Parliament as part of the normal tabling of a regulation.

Hon W.N. STRETCH: Will we still have the scope under our regulation-making power to exercise our discretion as a State?

Mr Dombrose: All new regulations will follow the normal regulatory process.

Hon PETER FOSS: It will not if it is a change in a vehicle standard.

Mr Dombrose: It will mean a change in our regulations. Therefore, it will sit on the Table for 14 days.

Hon PETER FOSS: If it is a change in vehicle standards, it will not come back to Western Australia.

Mr Maughan: There are two types of standards: first, the Australian Design Rules, which are set nationally for the construction of new vehicles; and, secondly, the vehicle standards, which are regulations made under the Western Australian Road Traffic Act. When we refer to these standards, which will be identified nationally, they fall within that second category. As such, they will be amending regulations and will come before the Parliament.

Hon PETER FOSS: Under clause 6, we can adopt a regulation made by someone else. We can adopt a standard, a rule or a code that is set by another body. That can be done in two forms: either "as from time to time amended", or "as applied at a specific date". Whether it applies as from time to time amended or as from a specific date will be in the regulations that will come before the Parliament. If Parliament determines that they will be as at a specific date, that will be it. If the regulations provide that we will adopt a set of regulations from time to time amended, and they are amended to eliminate the brakes referred to, that would not come back to the Parliament. That is what this is all about - to allow us to do that without having to pass separate regulations in each State.

Mr Maughan: It would depend on the wording of the original legislation, whether it adopted it from time to time amended or applied it from a specific date. The intent of including "from time to time amended" is to relate back to the adoption of the Australian Design Rules, because they change on a regular basis. For Western Australia not to adopt them "as from time to time amended" would be pointless. We are part of the process of developing those national design rules and vehicles will be manufactured according to those rules no matter what we say - the commonwealth legislation requires that. It is not intended to adopt other codes "as from time to time amended".

Hon PETER FOSS: But that is not prevented by this legislation.

Mr Maughan: No.

Hon PETER FOSS: At present there is no intention to hand the regulation-making power to one body and for all States to adopt them "as from time to time amended".

Mr Maughan: There is no intention to go towards peg legislation.

Hon W.N. STRETCH: Do the Australian Design Rules state that exhaust braking will no longer be allowed on vehicles brought into the country or manufactured here? Does that mean that that is it, and that those vehicles cannot operate Australia wide?

Mr Dombrose: That issue is being progressed at the moment, but no decisions have been made. If the design rules are changed, that change will apply to all new vehicles manufactured or sold in Australia - no matter where they are manufactured - from a specific date onwards. That is the way the design rules work. If it becomes an in-service requirement, that standard will come into our regulations.

Hon W.N. STRETCH: Please explain "in-service".

Mr Dombrose: The ADR are standards for vehicle manufacturers. They contain highly technical and very detailed information. A manufacturer can build his vehicles according to the ADR. We apply our in-service standards once a vehicle is registered and used on the road. We cannot expect the public to work with the ADR specifically, so we have in-service standards. That means people know what they have to do with their vehicle once it is in service.

Hon PETER FOSS: Are those things picked up when a vehicle is inspected after a red or yellow sticker has been issued?

Mr Dombrose: ADR non-compliance can be picked up during an inspection. An obvious problem is someone who removes all the environmental protection equipment.

Hon PETER FOSS: Is that relicensed vehicle judged on the ADR when it is initially licensed or when it is being inspected?

Mr Dombrose: All ADR look forward; they do not generally look backwards.

Hon PADDY EMBRY: So we are definitely not looking at retrospective legislation.

Mr Dombrose: Not in the design rules. However, in our own regulations, depending on what comes out of the deliberations, people may have to do certain things to their vehicle's jake brakes to make them quieter if we find that is possible.

Hon PADDY EMBRY: Would the reason be only in relation to noise?

Mr Dombrose: There would be no other reason. It is most unlikely jake brakes would be prohibited. It is more likely a noise limit would apply.

Hon PETER FOSS: One can use them, but one should not make a noise.

Mr Dombrose: They are on modern engines and it is difficult to hear them.

Hon W.N. STRETCH: You referred to the ADS standards, but you said there was another set of standards.

Mr Dombrose: There are the Australian Design Rules and our in-service standards, which are our regulations.

Hon W.N. STRETCH: Is it all done by regulation?

Mr Dombrose: Yes.

The CHAIRMAN: In relation to clause 4 and the proposed section 103A amendment, please give the reasons that the minister needs the discretion to declare that a regulation applies to a specified area - as opposed to specifying the areas the regulations are to apply to in the Act itself or in the regulations. Please give examples of occasions when such a declaration would be necessary.

Ms Neilson: Trevor Maughan touched on the answer to this briefly and we have noted Hon Peter Foss's comments. The need to provide that regulations apply to a specified area is likely to arise either because of an urgent need to regulate traffic within the area and/or to ensure the safety of vehicle users and other persons within the area, or because a special event involving vehicles is to

be held in a particular area for a specific period. For example, areas that provide vehicular access to a private mine site or a private port may not be considered to be “roads” for the purposes of the Road Traffic Act 1974. As Trevor indicated, that has been our legal advice although we note Hon Peter Foss’s comments. They may, however, be open to persons and vehicles other than the owners or employees of the mine site or port, such as transport operators, their employees and their subcontractors. It may therefore be appropriate that road traffic laws and/or vehicle standards apply in respect of vehicles used in those areas.

A declaration is considered the most appropriate means of achieving the above outcomes. A declaration may be made quickly in relation to an important factor such as where it is to be made for safety or traffic regulations. In addition, proposed section 103A(2) provides that a declaration must specify the period of its duration. When it is considered that regulations should apply to a particular area or class of area in the long term, a declaration may be used to secure prompt application of relevant regulations while the need for legislative amendments is assessed and, if appropriate, progressed.

It should be noted, however, that a declaration may not provide that regulations apply to a private area that is not open to or used by the public. Section 41 of the Interpretation Act would require the declaration to be published and that the declaration would take effect upon publication in the *Government Gazette*.

Hon PADDY EMBRY: In my area a school bus travels on a private road to collect children who live several kilometres down the road. At that time other children are on the bus. The Department of Education agreed that the road could be used, provided it is inspected occasionally and meets standards with which the local authority is happy. Would something like that be affected by these regulations?

Ms Neilson: No.

Hon PADDY EMBRY: It is one of those outback situations.

Hon PETER FOSS: It is probably already a road under the Road Traffic Act.

Hon PADDY EMBRY: It is not a public road, but it is used by a contractor working for a government department.

Hon PETER FOSS: It is still a road.

Mr Maughan: It is a difficult issue because the definition of a road under the Road Traffic Act requires a factual assessment of what happens on the road, whether it is open to and used by the public. If it is open and not used by the public, presumably it is not a road. All sorts of matters come into play. If that was considered to be an issue the minister could declare that it is an area in which the regulations would apply. As Hon Peter Foss pointed out, it is a factual issue of whether it is a road, depending on the usage of that portion of land at a particular time.

Hon PETER FOSS: I thought I understood proposed section 103A before I heard Mr Maughan’s explanation. As I read it, 103A deals with places that do not fall within the definition; that is, areas we would not describe as a highway, a road or a street, including a carriageway, footway, reservation, median strip or traffic island. I thought it would be something not normally described as a road. Reference was made to the access into and out of the private port. If it looked like a road, it would be called a road. If the public had access to it or used it, it would be a road for the purposes of the Road Traffic Act.

For example, a vehicle may occasionally travel along the front of a wharf to offload goods, but that area would not usually be seen as a road. I think that would fit under proposed section 103A. However, the access would be a road under the Road Traffic Act if it were open to or used by the public. If an area were not open to or used by the public, it could not be declared under proposed

section 103A either. It must be open to or used by the public, otherwise the declaration could not be made.

The same factual inquiry applies under proposed section 103A.

Mr Maughan: I take your point. If a school bus and members of the public are invited to use a road, it could be considered to be a road.

Hon PETER FOSS: Under the Road Traffic Act, if it is open to or used by the public it is considered to be a road.

Mr Maughan: It is a matter of assessing that on a case-by-case factual basis.

Hon PETER FOSS: It is the same with proposed section 103A. The minister cannot declare a space in front of a wharf to be caught by the regulations, unless it is open to or used by the public.

Mr Maughan: It need not be a road.

Hon PETER FOSS: It could be an area of grass.

Mr Maughan: It could be a car park.

Hon PETER FOSS: That is a good example. People could be causing so many problems in the way they parked their cars at the Galleria shopping centre that the Galleria car park could be declared a road, although that might be caught by the extended definition here. I thought I understood section 103A, but I have some doubt about the explanation of solving the problem of whether it is a road. The factual inquiry must first be made. That is why some people are not too happy about it.

Hon PADDY EMBRY: The bus road is marked "Private Road". Does that legally absolve anyone?

Hon ADELE FARINA: It is not a road under the Road Traffic Act because it is not open to the public. If the public do not generally use it to get to somewhere else and it is used by the school bus to pick up children from their homes and drop them off, it is not a road under the Road Traffic Act.

Hon PADDY EMBRY: It is not as simple as that because the road joins two public roads where there is a sign saying "Public". Well mannered people telephone and ask if they can use it, but tourists do not use it.

Hon PETER FOSS: Hon Paddy Embry's example picks up the definition, which comprises two parts. It is open to or used by the public. If it is open to the public, whether they use it or not, it is a road. If they use it, it is a road. If the public customarily use that road, no matter how often "Private Road" is written at the front of it, it is a road. If it is used only for private purposes, it is not a road. It comes back to factual inquiry. If it is regularly used as a short cut by people around the place, it is a road and will be caught by the Road Traffic Act.

Mr Dombrose: The comment I made earlier about lack of clarity is already obvious from this discussion. One of the advantages of this legislation is that if there is some doubt, and the safety of the public must be protected, it will be possible for the minister to declare a piece of road that we are unsure is public, as one that can be treated as a public road for the purpose for which it is declared.

Hon PETER FOSS: That is the one thing section 103A will not do. The only thing the minister can declare under the Act is something that will be open to or used by the public. The query on this issue is whether the road is open to or used by the public. That will not be solved by a declaration.

Mr Dombrose: Is not the question about the meaning of "open"? If the road had a gate on it and it were open to let the bus through -

Hon PADDY EMBRY: It has a cattle grid at both ends and it is on private land.

Mr Dombrose: While the gate is open, it is open to the public.

Hon PETER FOSS: I thought I understood section 103A, until Mr Maughan explained it because of that very point. It will not do what Mr Maughan says it will do. If it is open to or used by the public it can be declared whatever it is used for, whether it is a road, a wharf, a grass patch or the manager's lawn. It still must qualify as being open to or used by the public, which is the problem Paddy Embry has with his road. The part that comes within the Road Traffic Act is clear; it is a road. The factual question is whether it is open to or used by the public. If it is used by the public; it is a road. If it is not; the minister can do nothing about it because unless it is open to or used by the public a declaration cannot be made.

The CHAIRMAN: Would that apply in a practical sense, for example, at Port Hedland where a mine and a road are next to a residential area and people complain about the noise of vehicles when they jake brake although the vehicles never leave the mine site? The minister cannot declare it a road under this proposed section can he?

Hon PETER FOSS: No.

Mr Maughan: It is not used by the public.

The CHAIRMAN: It is not used by the public so the Act has no jurisdiction over vehicles on that road. In Hon Paddy Embry's case the fact they have come off a road means the vehicles must comply with the regulations because they will be coming off a public road to get onto it.

Hon PADDY EMBRY: It is a private road that enables the landowners to reach their neighbours from a central part of one property. They travel 10 kilometres rather than 30 kilometres. The road was built with road-building equipment to a high standard. It was subsequently made available for the school bus, but the local residents put it in for their purposes only.

Hon PETER FOSS: I do not think it matters for the purpose of proposed section 103A. The Road Traffic Act is different from the Local Government Act, which is different from common law. For each classification a different result is possible. For the purpose of the Local Government Act, it is not a public road. For the purpose of civil law it would probably have to be locked a few times to stop it becoming a public right of way. For the purpose of the Road Traffic Act, from what Mr Dombrose said, it sounds as though it is a road. That means that children without a licence cannot drive on it, the speed limit is 100 kilometres an hour, drivers must keep to the left-hand side of it and vehicles travelling on it must be licensed.

Hon PADDY EMBRY: Are children unable to drive on that farm track?

Hon PETER FOSS: Hon Paddy Embry is changing the facts.

Hon W.N. STRETCH: Is there consistency between the Road Traffic Act and the Local Government Act? The difficulty of responsibility and maintenance may arise. I know what happens when shires are asked to grade roads used by school buses.

Mr Maughan: There is no consistency between the two. The Acts have different purposes. The main thrust of the Local Government Act is maintenance of road infrastructure. The Road Traffic Act is to ensure that persons who travel along roads obey certain road rules, hence when something is not strictly a local government declared public road, road rules are in place to ensure people are protected.

Hon W.N. STRETCH: Logging roads in the south west have particular relevance because of the movement of trucks carting chip logs. As you know, the roads that serve the Diamond mill are company-built roads. People are warned to travel on them at their own risk. I understand there are no speed or width limits on the roads because they were specifically built by the company for that purpose. What is the status of those roads? Will proposed section 103A interfere with them? Are they declared now? Will it mean they will be declared as roads? If so, will it affect other drivers? Obviously if a log truck is seen on there in summer by someone in a private vehicle, the person must take extreme caution or get off the road.

Mr Maughan: It is not a question of whether it is declared. It is a matter of fact and what happens on that piece of land. If a roadway is constructed and a sign says "Private property. Enter at your own risk" people are obviously being invited to use that road. If they use it and it is open to use by the public, irrespective of whether a sign is telling them to use it at their own risk, it is a road and the law applies.

Hon W.N. STRETCH: Does that mean truck drivers can be prosecuted for driving overloaded, overwidth or speeding trucks on that road?

Mr Maughan: The road laws would apply.

Hon W.N. STRETCH: Is it a nonsense to give concessions to a company to build it? Does this ability to provide an exemption cover companies?

Mr Maughan: It would depend on the status of the road and how it is maintained. If a gate or a barrier says "Strictly no entry" and somebody trespasses on it, it is not a road. If a sign says "Use this road at your own risk" and vehicles are allowed to use the road regularly, it is a road under the Road Traffic Act.

The CHAIRMAN: Would that apply if you had to get a permit from the company that owns the land? I am thinking of the rail access road between Karratha and Tom Price.

Hon PETER FOSS: That access way has reached the stage at which it is now a road. The permits are so freely given to the public it must be a road. The Diamond mill road is probably not a public road because the public is usually excluded from it.

Hon W.N. STRETCH: The intention is to exclude people.

Hon PETER FOSS: I do not think that is a problem; I have not seen anyone drive on it.

The CHAIRMAN: Is the sign in place for insurance purposes?

Hon PETER FOSS: The Karratha-Tom Price access way has all the appearances of a road. I think the company is trying to prevent it from becoming publicly declared so that it can close it if it wants to. I can think of at least three legal regimes relating to roads, the Road Traffic Act, the Local Government Act and common law relating to public thoroughfares. In each case a different rule applies.

Hon W.N. STRETCH: Will that make writing the exemptions difficult?

Mr Maughan: I do not believe so.

The CHAIRMAN: Further, is there any provision in the Road Traffic Act whereby minister's declarations are subject to disallowance from the Parliament?

Ms Neilson: No, as stated at subclause (3)(a) above, any declarations made will be of a specified duration. No provision is in the Act for a declaration, such as that contemplated at proposed section 103A, to be a disallowable instrument. As section 103A has been drafted, the declaration will not be a disallowable instrument.

The CHAIRMAN: Is there a natural specified duration, such as a default, or must it be declared?

Ms Neilson: Proposed section 103A(2) provides that the declaration has effect for a period specified unless revoked.

The CHAIRMAN: In clause 4 in relation to proposed section 103B, why is it necessary for the minister to be able to make declarations providing for exemptions of this sort? Please give examples of occasions when such a declaration would be necessary.

Ms Neilson: Proposed section 103B contains two different provisions for the making of exemptions. The first one deals with ministerial exemptions. Proposed section 103B(1) will only empower the regulations enabling the minister to grant exemptions specified in regulation by declaration, and within the parameters set by the regulations. At this stage it is proposed that the

regulations enable the minister to grant exemptions in the following circumstances: when complying with a vehicle standards requirement would prevent a vehicle from operating in the way in which, or for the purpose for which, the vehicle was built or modified; when the vehicle is an experimental vehicle, a prototype or another vehicle that could not reasonably be expected to comply with the vehicle standards requirement for which the exemption is requested; when the vehicle was registered, or otherwise authorised to be driven or towed on a road, by the director general or by a vehicle licensing authority in another jurisdiction before the specific vehicle standards provision commenced; and when that vehicle was not required to comply with a similar requirement before that. With John Dombrose's help, I will make that a little clearer.

The national model regulations on which we are basing our vehicle standards and heavy vehicle operating standards regulations include a provision similar to that which I have just read out. One of the chief reasons for requiring the power for the minister to grant an exemption was that when the new vehicle standards regime was introduced, one of the underpinning principles was that no person or vehicle would be disadvantaged by the introduction of the new standards. John will correct me if I am wrong.

Mr Dombrose: That is correct. The national road transport reform process had as an underpinning principle that if a vehicle was registered in the jurisdiction, it should not be deregistered because of the implementation of these reforms. That is one of the main reasons for that exemption.

Hon PETER FOSS: Why does that not apply to vehicle standards regulations? The regulations we are trying to pick up are driving on the left, stopping at stop signs, driving at the speed limit and drivers being licensed.

Mr Dombrose: These relate only to vehicle standards.

Hon PETER FOSS: Why do you need vehicle standards on something that is not a road?

Ms Neilson: We are now talking about proposed section 103B.

Hon PETER FOSS: I know, but proposed section 103B arises out of the need for 103A. Proposed section 103A does not apply to vehicle standards.

Ms Neilson: It is not connected to proposed section 103A.

Mr Maughan: Proposed section 103B is a stand-alone regulation.

Hon PETER FOSS: Proposed sections 103A and 103B are not related to vehicle standards.

Mr Maughan: Proposed section 103A relates to the ability to declare any area to which regulations apply. Proposed section 103B is a stand-alone provision, which would allow for the making of regulations that apply to vehicles generally.

Hon PETER FOSS: Is it a general Henry VIII clause, not intended to be used in conjunction with 103A?

Mr Maughan: That is right.

Hon W.N. STRETCH: Are agricultural implements covered?

Mr Maughan: The removal of agricultural implements is contained in the vehicle licensing Bill.

Hon PETER FOSS: How long is proposed section 103B intended to last? For how long do you intend to exempt people? Surely in 10 years it would cease to be relevant.

Mr Dombrose: With the passage of time the relevance will decline. Most of the vehicles that will not comply will probably be older vehicles. Their relevance will decline. Its need for experimental vehicles will continue.

Hon PETER FOSS: Could that not be done by regulation?

Mr Dombrose: That could be an alternative. When the National Road Transport Commission made these amendments to its Act, it looked at it on two levels: from the possibility that a minister may proactively grant exemptions from certain things, and that the director general should have the power to respond to applications for exemptions. This regulation has been fundamentally structured that way. The regulations for vehicle standards that we plan to adopt as a result of these proposed sections will mirror that view.

Hon PETER FOSS: The director general's power relates only to standards does it not? The minister's does not.

Ms Neilson: Yes.

Hon PETER FOSS: Theoretically, the minister could exempt Ms Neilson from regulations to allow her to drive at 150 kilometres an hour. Is that the intention of the regulation?

Mr Dombrose: The intention is to introduce the two regulations to which I referred.

Hon PETER FOSS: Is the minister's power not intended to be limited to just vehicle standards?

Mr Maughan: No. To take the 150 kilometres an hour scenario, road testing vehicles maintained by Main Roads are used to test the curvature of roads etc -

Hon PETER FOSS: Are you referring to Rally Australia, for example?

Mr Maughan: Yes, any of those examples.

The CHAIRMAN: Does that mean Lake Eyre could be classed as a road?

Hon PETER FOSS: We never know. Yes, when it is not flooded.

The CHAIRMAN: Also in clause 4 in relation to proposed section 103B, please explain why it is necessary to have regulations that enable the director general to grant exemptions for regulations prescribing vehicle standards. Please give examples of occasions when such an exemption would be necessary

Hon PETER FOSS: In the light of reference to Lake Eyre, proposed section 103A(1) could apply to a body of water.

Hon KATE DOUST: Do you mean for speed boats?

Hon PETER FOSS: Yes. The minister responsible for transport could take over the Swan River, although she already has that power.

Mr Maughan: No matter how wide the words are cast, the regulation is confined within the purpose for which the Road Traffic Act applies.

Hon PETER FOSS: It is pretty broad, if I remember rightly.

Mr Maughan: It is constrained by that.

Hon PETER FOSS: Do not worry about it; it is an observation.

Ms Neilson: As the committee requested, I have listed a number of the director general's existing exemption powers. The existing vehicle standards regulations empower the director general to grant exemptions from specified vehicle standards requirements. That is in the existing vehicle standards regulations. Proposed section 103B(2) will remove any doubt about the power to make regulations empowering the director general to grant exemptions. I will provide examples of circumstances in which the regulations may empower the director general to grant an exemption. Owing to the different performance requirements of these vehicles, tyres fitted to earthmoving vehicles or to farm tractors used for agricultural purposes are manufactured differently from those manufactured for ordinary road use. Those tyres are therefore unable to comply with tread pattern requirements and might therefore be exempted without any adverse impact on road safety.

Another example is the compliance plate requirement. Vehicles are required to be fitted with a compliance plate confirming that the vehicle complies with the applicable ADR. A compliance plate might be damaged in a car accident or may be unlawfully removed from a car. In those circumstances, an exemption from the requirement might be granted, providing it can be established that the loss was not unlawful. The granting of the exemption would ensure that the vehicle owner did not suffer an unreasonable loss in the vehicle's market value as a result of the absence of the compliance plate.

As a final example, although there are many others, a person with a disability that makes him roll forward and not sit upright in a vehicle may be exempted from the need to have a retractor-style seatbelt in favour of a non-standard fixed seatbelt, which would offer such a person a higher level of protection.

Hon KATE DOUST: What type of vehicle are we talking about - tractors or harvesters?

Ms Neilson: All manner of vehicles.

Mr Maughan: There are very mundane, day-to-day technical exemptions from the minor requirements of the vehicle standards regulations that the director general issues through the vehicle safety branch.

The CHAIRMAN: Are street rods an example?

Mr Dombrose: They are not exempted. The parameters they work to, by virtue of their age, are a little more liberal. They must still comply with the requirements.

Hon W.N. STRETCH: Do quad tracks and challenger-type rubber tyre vehicles have a normal tread pattern or do they need to be exempted?

Mr Maughan: They would be exempted.

Hon W.N. STRETCH: Their tread pattern is reasonably normal. Do they need an exemption?

Mr Dombrose: We would grant an exemption only when a police officer issues a work order for a piece of machinery because it does not appear to him to have a normal tread pattern. We would then take over the situation and grant an exemption if we thought the tyre was appropriate for the vehicle use. Road rollers have no tread pattern.

Hon PETER FOSS: What about racing bikes?

Mr Dombrose: A road racing bike tyre has no tread. However, we would not necessarily exempt that for road use.

Hon PETER FOSS: The bike owners take the view that the bikes have such narrow tyres that if a tread pattern were required there would be hardly any grip.

Mr Dombrose: They would have a problem when it was wet.

The CHAIRMAN: As I have found out on many occasions. These exemptions can be granted individually or for a type of vehicle. For example, a dealer who sells tractors would be given a blanket exemption.

Mr Dombrose: While the exemption would have been granted for a specific vehicle, it would have the effect of being a blanket exemption because, if someone else fitted such a tyre to that type of vehicle, it would be logical that that exemption would apply. We would prefer the minister to deal with exemptions of a class of vehicle.

The CHAIRMAN: If a farmer were to modify a trailer or appliance, he would need to apply.

Mr Dombrose: Yes. Each individual modification would be treated on its merits.

Ms Neilson: That would be an application to the director general.

The CHAIRMAN: How would that be done? Would the farmer go to the local road traffic authority?

Mr Dombrose: Depending on the level of modification, he could go to the vehicle examination centre or he could write to the department.

Ms Neilson: I stress that, if proposed section 103B is passed as it is currently drafted, it will enable only the making of regulations to give the minister and the director general powers of exemption. Those regulations would then be able to be scrutinised by the Parliament.

The CHAIRMAN: Does the present Road Traffic Act 1974 - or subordinate legislation made under it - refer to declarations or statements of any kind by the relevant minister or director general with regard to granting exemptions?

Ms Neilson: The current Road Traffic (Vehicle Standards) Regulations 1977 empower the director general to do a number of things -

- to approve of modifications of specific types to motor vehicles and trailers;
- to exempt vehicles from the requirement to be fitted with a compliance plate;
- to exempt vehicles from compliance with Australian Design Rules;
- to exempt certain vehicles or trailers from the requirement to be equipped with signal lights in certain circumstances;
- to exempt a motor vehicle or trailer from lamp and/or reflector requirements contained in the regulations;
- to exempt a trailer from the requirement to be fitted with a brake;
- to exempt a vehicle's tyres from minimum tread requirements contained in the regulations - that was the example of the earthmoving equipment and the tractor;
- to exempt a vehicle from the requirement to be fitted with an immobiliser; and
- to exempt a vehicle from the requirement to be fitted with a speed limiter device.

In addition, the road traffic licensing regulations also allow the director general to license a vehicle as a class-B or class-C vehicle in certain circumstances even though that vehicle may not comply in some respects with the road traffic vehicle standards regulations.

Mr Dombrose: That is a critical issue. Whenever we issue an exemption, the vehicle inevitably is licensed as B or C class and conditions are placed on the vehicle to maintain its safety with respect to whatever the modifications or exemptions happen to be.

Hon W.N. STRETCH: Are these the exemptions that the farm machinery dealers and people have been asking for, for farming equipment and farm fire trucks, or are they for manufactured vehicles only?

Mr Dombrose: It is more for manufactured vehicles.

Hon W.N. STRETCH: You know what I am getting at and you know where I will come from at the appropriate time. I am not sure when that will be. Do some of these exemptions apply to new farm machinery being imported?

Mr Dombrose: They can apply to new farm machinery.

Hon W.N. STRETCH: In other words, immobilisers and harvesters are relevant, even though they are not road vehicles. Has there been wide consultation with the machinery manufacturers, importers and Farm Machinery Dealers Association on the regulations relating to agricultural, medium industrial machinery?

Mr Dombrose: Once again, the NRTC is running a special project now on these special purpose vehicles to do with lighting and braking. We have dealt with the Western Australian Farmers

Federation. Together with Transport it has made a response to the NRTC on these issues. We almost made a joint submission so we are on the same wavelength about what we want from that review.

Hon W.N. STRETCH: Are you making any headway with the national body?

Mr Dombrose: I think so. Everybody is fairly comfortable at the moment.

Hon W.N. STRETCH: I am glad to hear that.

Mr Dombrose: That is all I can say at the moment.

The CHAIRMAN: In relation to clause 5 and proposed section 111(2)(daa), the corresponding explanatory memorandum refers to section 49A(1) of the commonwealth Acts Interpretation Act. Please explain to the committee why this subsection is necessary and point to any provisions in the WA Interpretations Act, or any other relevant Act or case law, which would otherwise prevent such an adoption.

Ms Neilson: The need for this amendment has been highlighted because it is desired to reference a document entitled the "Load Restraint Guide" in the proposed vehicle standards and heavy vehicle operating standards regulations. The guide was developed by the federal Office of Road Safety and the National Road Transport Commission following extensive consultation with jurisdictions, relevant agencies and stakeholders. The guide sets out guidelines for the safe loading of all vehicles. It is intended that the proposed regulations enable a person who is alleged to have committed a loading offence against the regulations to raise a defence by proving that he or she loaded the vehicle or trailer in accordance with the "Load Restraint Guide". No defence has previously been available and the fact that a load or part of it had fallen from a vehicle is evidence of an offence. It is intended to enable a defence for drivers who say they loaded their vehicles or trailers in accordance with the "Load Restraint Guide". As its name suggests, the guide contains guidelines for load restraint; it does not specify hard and fast standards against which compliance may be measured.

The Interpretation Act sets parameters for the making of subsidiary legislation in Western Australia, which parameters overarch the regulation-making powers contained in an Act. Subsection 43(8)(b)(i) provides that subsidiary legislation may be made so as to require a matter affected by the legislation to be in accordance with a specified standard. Similarly, subsection 111(2)(d) of the Road Traffic Act provides that regulations may be made prescribing the standards of vehicles. The standards to which those Acts would refer would be the Australian Design Rules or national standards. Although those provisions would permit the drafting of regulations requiring compliance with a standard such as the Australian Standards or Australian Design Rules, neither empowers the drafting of regulations that reference a document or instrument other than a standard. It should also be noted that the proposed subsection would empower the application, adoption or incorporation of an instrument but only as in force at the time the specific regulation is made and not as that instrument may be amended from time to time.

The CHAIRMAN: In clause 6 in relation to the proposed section 111A amendment, are the standards Australian Standards, rules codes or specifications relating to road traffic adopted and/or duplicated as regulations under any commonwealth legislation?

Ms Neilson: As Trevor mentioned earlier, the regulations we are seeking to create will make Western Australia consistent with standards that apply in other jurisdictions throughout Australia. I am not sure whether I understood this question clearly but we indicated that they were adopted or duplicated within the legislation of the Commonwealth and other jurisdictions in order to ensure uniformity of common vehicle standards throughout Australia.

The CHAIRMAN: Will the documents other than subsidiary legislation be publicly available at no cost or will they need to be purchased?

Ms Neilson: The documents referred to, such as the “Load Restraint Guide” - that is the only example I have at the moment - will be publicly available. The cost, if any, of the documents will vary on a publication by publication basis. Unfortunately it is not possible for Western Australia to control the charge for a publication, which charge is imposed by either the Australian Government Publishing Service or by Standards Australia, for example. However, I can report that increasingly these documents are being made available either free of charge on the Internet or in hard copy.

The CHAIRMAN: Is it the case that if subsidiary legislation, a standard, a rule, a code or a specification, set out in proposed section 111(1) is adopted from time to time in WA regulations, subsequent amendments to such documents would not be subject to WA parliamentary scrutiny?

Ms Neilson: Yes, that is correct. It should be noted, however, that this amendment will enable the drafting of regulations to adopt a standard rule code or specification either as in force on a particular date or as in force from time to time, whichever is appropriate. As Mr Maughan and Mr Dombrose said earlier, an example of when it would be appropriate to adopt something as in force from time to time would be the Australian Design Rules for the following reasons. The ADRs are the standards to which a vehicle is required to be designed and manufactured. It is intended that the proposed regulations will require vehicles to continue to comply with the standards that were applicable to them at the time of manufacture. The ADR will become in-service standards. They will be applicable as design and manufacture standards, but the regulations will refer to the ADR and provide that a vehicle manufactured to those standards must continue to comply throughout the time it is registered and used on Western Australian roads. The proposed regulations will not impose a requirement upon any vehicle with which it does not have to comply at the time of manufacture. It is therefore difficult to envisage a circumstance in which Western Australia would want to impose a standard different from that imposed at the time of manufacture. Without the ability to adopt the ADRs as imposed from time to time, the proposed vehicle standards regulations would require amendment each time an ADR was amended or a new ADR was developed. That is the case presently. During the period between the amendment to or introduction of an ADR, and the promulgation of a corresponding amendment to the Western Australian vehicle standards regulations, a vehicle manufactured to the standard of the new or amended ADR would be non-compliant in Western Australia.

The CHAIRMAN: I refer to clause 10 of the Road Traffic Amendment (Vehicle Licensing) Bill in relation to the proposed section 19(3) amendment. Please expand on the reasons given in the relevant explanatory memorandum removing the setting of fees/charges into the regulations, particularly in relation to Henry VIII clauses.

Mr Maughan: The expression “Henry VIII clause” refers to a power in an Act to make a regulation, the effect of which is to amend the provisions of the Act. The Road Traffic Act currently provides that fees payable for vehicle licences are contained in the second schedule of the Act. The Act then empowers the making of regulations to amend that schedule. The Joint Standing Committee on Delegated Legislation has been concerned about that for some time. It has indicated that it is an inappropriate mechanism and suggested that the regulations should set fees and that the fee structure should be referred to the regulations. We have complied with that request. The papers I tendered earlier include copies of correspondence from the committee and the response from the then Minister for Transport agreeing to that course of action. This amendment puts in place that approach.

The CHAIRMAN: I refer to part 3 - consequential amendments, clauses 30 and 34. Why are the definitions of “motor car” and “motorcycle” in the Control of Vehicles (Off-road Areas) Act 1978, and “eligible vehicle” and “specialised equipment” in the Stamp Act 1921 being given meaning by regulations?

Mr Maughan: The current Road Traffic Act requires all vehicles that are listed in the first schedule to the Act to be licensed, and it defines them in strict terms. The problem is that, as industry

develops different types of vehicles, it is often difficult to amend the schedule to the Act to encompass those developments. We have removed the description of vehicles that are required to be licensed to the regulations. The current provisions of the Control of Vehicles (Off-road Areas) Act and the Stamp Act refer back to the first schedule of the Road Traffic Act. That will be abolished by this Bill, so it needs to refer to the regulations. Parliamentary counsel has advised that it would be inappropriate for those statutes to refer to individual sets of regulations that may change title from time to time. Hence, it has been made a requirement that they simply refer to regulations made under the Road Traffic Act. Similarly, the definition of “eligible vehicles” and “specialised equipment” in the Stamp Act refers to various types of motor vehicle described in the first schedule of the Act. As I said, they will now be put in regulations.

Hon PETER FOSS: It should at least say that it is a vehicle.

Mr Maughan: It would still come within the definition of a vehicle.

Hon PETER FOSS: Should section 3 at least provide that a motor car is a vehicle, which has the meaning given by the regulations? This is intended to deal only with vehicles.

Mr Maughan: Yes. That expression could be used. However, as a motor car is described as one form in the regulations made under the Road Traffic Act, it is superfluous.

Hon PETER FOSS: Section 3 now provides that “motor car” has the meaning given in the regulations. It could be anything. It should at least state that it is a vehicle.

Mr Maughan: It provides that a “motor car” or a “motorcycle” means a motor car or motorcycle as defined in regulations made under the Road Traffic Act. We could include “a vehicle”, but I do not see that that takes us anywhere.

Hon PETER FOSS: It confines it to refer to vehicles. At the moment one could put in anything.

Mr Maughan: It can be included only if it is defined in those terms in the Road Traffic Act.

Hon PETER FOSS: It states that “motor car” has the meaning given by the regulations. It does not have to be a vehicle.

Mr Maughan: I do not have a complete copy of the Act here.

Hon PETER FOSS: I am looking at the amendment.

Mr Maughan: I would have to look at the following words to make sense of that.

Mr Stiles: I do not think there is any current definition in the Control of Vehicles (Off-road Areas) Act that relates to a motorcar. That has been included because there appeared to be an anomaly previously. There was a definition of a motorcycle.

Hon PETER FOSS: The only definition of a motorcar in the Road Traffic Act was a vehicle that was capable of being licensed. If it was not capable of being licensed, it was not a motorcar. It was a circular issue because once it became capable of being licensed, it had to be licensed to be driven on a road. There was some argument that if it was not capable of being licensed, it did not have to be licensed. I have not looked at that for about 20 years, but it was a sneaky little argument I had in my back pocket for some time that I did not have to use. It became important in respect of motor vehicle insurance regulations because that picked up the definition of a motorcar. There is a little bit of a problem here in the definition.

Mr Maughan: I will undertake to take Hon Peter Foss’s comments on board. I will make some inquiries and respond to the committee.

Hon PETER FOSS: You can see the problem. A motorcar could be anything.

Mr Maughan: I take your point.

Hon PETER FOSS: It should at least be a motor-driven vehicle as defined in the regulations.

Mr Maughan: I take that on board and will respond to the committee formally.

Hon PETER FOSS: A motorcar should be at least a motor-driven vehicle. I am not sure what a motorcycle is; it is usually a two or three-wheel vehicle under the definition of a motor vehicle.

Mr Maughan: This is one of the reasons we are amending the Act. The description in the act of a motorcycle reads -

Subject to the provisions of the description of a “motor carrier”, a motor vehicle designed to travel on 2 wheels -

That is a motorised wheelchair. It continues -

or with a sidecar attached 3 wheels, or a motor vehicle having 3 wheels arranged in such a way that the axis of rotation of the 2 wheels lies on the same straight line and each of those 2 wheels is equidistant from the 3rd and includes any such vehicle which is not equipped with a permanent cab and cab roof.

Hon PETER FOSS: I do not mind it being in the regulations but I do not like the terms of the regulations being so broad.

Mr Maughan: As I said, I take the point and will formally respond.

The CHAIRMAN: When will the remaining provisions of the Road Traffic Amendment Act 2000 come into operation?

Mr Maughan: The remaining provisions of the Road Traffic Amendment Act that have not yet been proclaimed relate to driver identification or what is commonly termed owner/onus provisions. The amendments made to the Act in the last Parliament required that an infringement notice carry a photograph of the offending vehicle at the time it was intercepted by a speed camera. That has presented us with some technical difficulties. At this stage we hope the Government will be in a position to proclaim those provisions early next year. The delays are due to the technical equipment required to be developed and purchased for putting the photograph on the infringement notice.

The CHAIRMAN: Why is reference made in the Road Traffic Amendment (Vehicle Licensing) Bill 2001 to the operation of the Road Traffic Amendment Act 2000, but not in the Road Traffic Amendment Bill 2001?

Mr Stiles: The Road Traffic Amendment (Vehicle Licensing) Bill will amend several provisions contained in the Road Traffic Amendment Act that are yet to be proclaimed. These include some of the licensing provisions of the Act. The Road Traffic Amendment Bill 2001 primarily contains stand-alone provisions that are not dependent upon the Road Traffic Amendment Act 2000.

The CHAIRMAN: Is there any intention of putting forward any proposed amendments to either of these Bills?

Mr Maughan: Not at this stage.

The CHAIRMAN: A number of committee members have some other questions.

The committee notes that the relevant intergovernmental agreements are schedules to the Commonwealth National Road Transport Commission Act 1991 and as such, according to section 13(2) of the commonwealth Acts Interpretation Act 1901, are deemed to form part of that Act. Does this result in the State of Western Australia being bound by law in any way to adhere to the clauses in these otherwise non-legal intergovernmental agreements?

Mr Maughan: I take that on notice and will get counsel to provide me with some advice so that I can respond to the committee.

The CHAIRMAN: We will provide you with a copy of that question. I refer to clause 4 of the Road Traffic Amendment Bill. How does the minister's and the director-general's powers to exempt relate to towed agricultural implements?

Mr Dombrose: The regulations that we are in the process of adopting cover a certain number of the towed agricultural implements, but not the entire number. Once the drafting of the regulations was completed, we intended to examine the towed agricultural implements and adjust them according to what was left over from the other regulations. It will then be a question of where we put them. I would like to see the exemptions covered so that those agricultural implements are covered by these exemptions so that we can handle them in the same manner.

Hon W.N. STRETCH: Will the minister's power to exempt be covered in that clause under the new Act?

Mr Dombrose: Depending on how we finally structure the regulations, it should be. We have not undertaken that process for agricultural implements, but we intend to head that way.

Hon W.N. STRETCH: Does the power exist for you to do that under this current legislation?

Mr Dombrose: Under the review of the regulations we will place them somewhere. I would like them to be placed so that the exemptions for the director general and the minister will apply.

Hon W.N. STRETCH: I think I understand that. Will the new legislation allow that to happen under the powers to exempt?

Mr Dombrose: Yes, it will allow it to happen now. It is under review and we must ensure that it happens.

Hon W.N. STRETCH: Many people will be very anxious to see that it happens. Is that a matter of consultation between the departments and industry?

Mr Dombrose: Yes, and the farming community.

Hon W.N. STRETCH: Is that ongoing?

Mr Dombrose: Yes; it is happening now.

Hon PADDY EMBRY: That obviously would be done without a time lag. In other words, there will not be a period during which agricultural implements will not be covered.

Mr Dombrose: The aim is that the regulations will stand for three months before taking effect. We intend to use that period to adjust the agricultural implement regulations.

Hon PADDY EMBRY: Would it be possible for there not to be sufficient time depending on what comes up?

Mr Dombrose: Hopefully we will be able to do it in that time frame - providing we do not have any legal hiccups -

Hon PADDY EMBRY: Or awkward questions!

Mr Dombrose: Yes, or awkward questions. That is the aim at the moment - to have them come into force together.

Hon PADDY EMBRY: Is there any reason to doubt that that will occur?

Mr Dombrose: No.

Hon W.N. STRETCH: Do the licensing provisions also cover the fire truck provisions that are a little messy?

Mr Maughan: The regulations will determine what comes within the exemption clauses for a towed agricultural implement. They are being developed at the moment. We were aware of the problem with fire trucks and trailers.

Hon W.N. STRETCH: Firefighting trucks are slightly different from firefighting trailers.

Mr Maughan: We are aware of the issue in respect of both.

The CHAIRMAN: I refer to question four and clause 4 of the Road Traffic Amendment Bill. How is the minister to be advised of a request for an exemption and how are such exemptions to be presented?

Mr Dombrose: The majority of these exemptions arise out of requests from the public, the industry or a user group. Once we get the request, we process it. About 99 per cent of them come to us that way.

The CHAIRMAN: Then does the minister's power to exempt extend to the Australian Defence Forces and are there any limitations to such exemptions? If the ADF can apply for an exemption, can anyone oppose such an exemption?

Mr Dombrose: Some complex agreements are happening at the moment with the ADF. If an emergency occurs, the ADF can do whatever they like. That is covered in the relevant Act. The ADF do not want vehicles that are used for non-emergency purposes to be treated differently. The ADF have agreed at a national level that they should, as far as possible, comply with a jurisdiction's laws and regulations. The ADF have gone a long way towards bringing their vehicles closer to complying with the national regulations. They have gone for compliance with the national regulations because, in theory, they should apply throughout Australia.

The CHAIRMAN: If the ADF conducted an exercise on the northern coast involving a number of military forces with different types of vehicles and an exemption were requested, could local authorities or other interested parties respond to that application?

Mr Maughan: I will take that question on notice. A number of federal statutes deal with foreign forces on Australian soil, including the Foreign Forces Act and the Defence Act. It is a complex area of law. We will need to respond formally after seeking advice from counsel.

Hon GIZ WATSON: This could relate to defence forces being used to deal with domestic circumstances. Could someone challenge the exemption in those circumstances? Reference was made to arrangements with foreign parties. I am interested in the domestic scenario. If defence forces were being used to break strikes, could someone challenge an exemption?

maug: I will take that question on notice. It is a complex area of constitutional law and it may take some time to obtain advice.

Hon PETER FOSS: This issue has been engaging the Federal Parliament for some time. That was the controversy with the new Act that appeared to go beyond the emergency power. If the Act is valid, the State cannot stop it.

Hon GIZ WATSON: It would be interesting to know.

The CHAIRMAN: Do you understand the question?

Mr Maughan: Yes. I must admit that when this provision was included, it was not intended to be aimed at the ADF. We will look at it and provide what advice we can, although I imagine that it is something on which the High Court will cogitate.

Hon W.N. STRETCH: I refer back to the previous question regarding how the minister provides those exemptions relating to agricultural-type machinery. The explanation was that the regulations must be time effective; in other words, one does not want to have to apply for an exemption when the fire is coming over the hill. We would not need individual exemptions, but sensible exemptions - although they should not be too wide. They must be practical, effective and work for a season. While there is an onus on the applicant to ensure he is not irresponsible, there is also a need for the departments to ensure that the exemptions are effective and that the reason for their granting is available when required.

Mr Dombrose: I understand the point.

The CHAIRMAN: How does the implementation of these two pieces of uniform legislation relate to the commonwealth grants for roads? How are such arrangements to be defined to apply to different areas throughout Australia?

Mr Maughan: They do not apply to grants for roads. The money received through the national competition system is an untied grant to the State. As I said, noncompliance could result in the Commonwealth's withdrawing funds or withholding certain funds. That is totally at the discretion of the Treasurer on the advice of the National Competition Council.

The CHAIRMAN: In the briefing notes attached to the Bill, reference was made to the fact that under the agreement for the scheme that there would be full recovery of infrastructure costs in, I think, reference to roads. Does that relate to the scheme?

Mr Maughan: It may well be but it is not an issue in respect of the passage of this legislation.

The CHAIRMAN: Thank you for attending this hearing and for your submissions and evidence. We will send you a list of the questions that are now on notice.

Mr Maughan: Thank you for the opportunity to answer your questions.

Committee adjourned at 12.31 pm