



Road Transport (General) Amendment (Private Car Parks) Bill 2012

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Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Duncan Gay.

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [10.39 a.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Road Transport (General) Amendment (Private Car Parks) Bill 2012. The bill seeks to prevent Roads and Maritime Services from being required by any preliminary discovery process to disclose personal information where discovery is for the purpose of the recovery of private car park fees. The bill is the result of extensive consultation between Transport for NSW, the Department of Attorney General and Justice, Roads and Maritime Services and NSW Fair Trading. I thank these departments for their invaluable assistance. It is common practice for shopping centres to use commercial car park operators to manage their car parking facilities.

In cases where a boom gate operates and a ticket is issued upon entry, the free parking arrangements, along with any fee for additional time parked, generally work well, as users are informed of the conditions of use of the car park. However, some car park operators choose not to use boom gates but instead may operate a pay-and-display arrangement. In these cases, drivers are required to obtain a ticket from a machine and display the ticket on the dashboard of their vehicle—even if parking is free for an initial period of time, for example, two hours. If the driver does not comply with this requirement, or parks longer than the allowed free parking period, the driver may be issued a demand for payment of a fee for breaching the terms of use of the car park.

The demand for payment will usually be left under the vehicle's windscreen wiper and appears in a physical form that is similar to official penalty notices that are issued by certain government agencies. The fees that are levied can be large and not proportional to the costs of parking. For example, in some cases the initial levy stated will be set at \$88 but will be reduced to \$66 if early payment is received by the car park operator. Where customers do not pay the amount specified in the demand for payment, car park operators are relying on what is known as preliminary discovery provisions through the courts to obtain orders directing Roads and Maritime Services to release the names and addresses of registered operators from its registers. This information is then used by the car park operator to send reminder notices requesting payment of the original unpaid amount, and an additional late payment fee.

These practices have raised significant public concerns. Firstly, the obvious privacy concern relates to the release of personal information from the registers maintained by Roads and Maritime Services and, secondly, the potentially misleading conduct by some car park operators in issuing demands for payment that are similar in appearance to official penalty notices issued by authorised government agencies. I will speak firstly about the privacy concerns that have arisen in regard to the release of personal information through the use of the rules of preliminary discovery. The rules of preliminary discovery as set out in part 5 of the Uniform Civil Procedure Rules 2005 allow applicants to seek information to assist in identifying a person against whom they wish to commence legal proceedings. However, some private car park operators are using the preliminary discovery process not as a preliminary to a potential court prosecution but instead to support a business model of posting mass demands to customers and relying on a proportion of them paying.

The Hon. Dr Peter Phelps: Shame.

The Hon. DUNCAN GAY: It is shameful. Roads and Maritime Services has opposed the release of information from its registers in the circumstances I have just described by appealing to the New South Wales Court of Appeal. However, the Court of Appeal has held that as a matter of interpretation of law, as it currently stands, Roads and Maritime Services is required to release the information. As of mid-September 2012, the court has ordered the release of more than 150,000 names from Roads and Maritime Services registers. In one case a

court order was in relation to a single application that contained more than 40,000 names. While some civil prosecution actions have been taken against repeated non-payers, it is rarely used for individual breaches. From the evidence in legal proceedings commenced to date, it appears that this occurs in less than 1 per cent of cases at most. Road transport laws require Roads and Maritime Services to maintain the registers that contain a customer's personal information so that it may carry out key functions, such as issuing driver licences and photo cards, and registering vehicles for use on New South Wales roads.

It is a reasonable expectation that when a customer provides personal information to Roads and Maritime Services in the course of conducting driver licensing, registration, or other business with that agency, the information will remain confidential and only be released in accordance with strict privacy protocols—that is a fair ask. While New South Wales motorists would accept that their personal details may be released to other government agencies, such as the New South Wales State Debt Recovery Office for statutory fine enforcement purposes, they would not accept their details being released to private companies where there are no real safeguards as to how the information will be stored. There is little obligation placed on a car park operator to demonstrate to the court that the vehicle alleged to have been used in the contravention of the contractual arrangements of the car park was actually involved, nor that the registered operator was the person who actually parked the vehicle.

Equally concerning is that there have already been incidents of incorrect vehicle information being supplied in applications to Roads and Maritime Services, which has led to the release of details of persons not involved in the alleged breach. While there is a legal requirement on an applicant that no copy of a document or any information from a document can be used other than for the purpose for which it was obtained, no adequate safeguards are in place to ensure private car park operators are compliant with this requirement. Roads and Maritime Services is bound by strict privacy protocols when allowing access to its data. Such access has not been provided without the concurrence of the Privacy Commissioner to the terms of the access provided and audit processes are in place to ensure compliance is adhered to. Only in limited circumstances will Roads and Maritime Services release customer details to third parties. For example, third party insurance companies are, with the consent of their customers, provided with information from the demerit point register maintained by Roads and Maritime Services, and legislative amendments were made to allow this practice.

The uncontrolled release of information under preliminary discovery could undermine the community's confidence in the ability of government to protect their personal information. It also has the potential to impact on the integrity and accuracy of data held by government agencies because customers may become reluctant to update their records knowing that it may be released to private companies. This Government is determined to take the necessary steps to ensure New South Wales motorists' personal information remains confidential and is only released in accordance with existing laws.

The amendments in the bill to road transport legislation rather than the Civil Procedure Act emphasise that these changes are only intended to protect the confidentiality and use of personal information held by Roads and Maritime Services for statutory purposes and not a broader precedent in relation to preliminary discovery. I will turn now to the details of the bill. It is proposed to amend the Road Transport (General) Act 2005 by inserting a new section 244B that will provide that Roads and Maritime Services cannot be required by preliminary discovery to disclose any personal information from its registers if the preliminary discovery application is for the purpose of the recovery of private car park fees.

Proposed new section 244B will also define private car park fees as meaning any amount payable under the terms and conditions of a contract, arrangement or understanding in relation to the use of a car park such as an amount payable for the use of the car park and including an amount payable for breaching any such terms or conditions. However, the definition will not include an amount alleged to be payable under the terms and conditions of a contract that is in writing and signed by all relevant parties. While the information being sought by private car parks generally relates to the details of a registered operator from the register of registered vehicles maintained in accordance with the Road Transport (Vehicle Registration) Act 1997, the bill has been drafted to refer to all registers maintained by Roads and Maritime Services.

This means that personal information held in the driver licence and demerit point registers under the Road Transport (Driver Licensing) Act 1998 and the photo card register under the Photo Card Act 2005 must also not be released for the purpose of the recovery of private car park fees under preliminary discovery reasons. Inclusion of these registers means that Roads and Maritime Services cannot be required to release further information, including stored photo images of the customers whose name and address details have already been supplied to car park operators, under preliminary discovery applications. The bill also contains transitional provisions that will provide that the new laws will only have effect in respect of the preliminary discovery orders made on or after the date of commencement. I should point out that the bill does not impose a blanket restriction on the release of a registered operator's personal information to a private car park operator. Private car park operators will still be able to obtain the details of a registered operator in relation to a claim for other reasons such as damage to car park property.

I will now briefly return to the secondary issue which I spoke about earlier concerning the potentially misleading conduct of private car park operators issuing a demand for payment that appears similar in appearance to an

official penalty notice issued by authorised officers of government agencies. It is worth noting that a recent Victorian judgement found the use by private car park operators in that State of notices similar in appearance to official penalty notices had the likely effect of misleading or deceiving the public about the operator's authority to issue them. The Government will consider whether any additional steps are required to protect the New South Wales public from private notices that resemble an official penalty notice and we will be watching the Victorian situation. I trust members will lend their unreserved support to the Government's proposals in this area. I commend the bill to the House.