



Legislative Council

Road Transport (General) Amendment (Operator Onus Offences) Bill Hansard - Extract

09/04/2002

Second Reading

The Hon. EDDIE OBEID (Minister for Mineral Resources, and Minister for Fisheries) [9.44 p.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate my second reading speech in *Hansard*.

Leave granted.

The Road Transport (General) Act 1999 was introduced to provide for the administration and enforcement of road transport legislation and includes provisions imposing liability on the registered owner or operator of a vehicle at the time it is involved in a traffic offence.

These are generally referred to as operator onus offences as there is an onus on the registered owner or operator of a vehicle to establish by statutory declaration that he or she was not driving the vehicle at the time the vehicle was involved in a traffic offence.

Operator onus provisions are generally activated in relation to parking offences, camera-detected traffic light offences and camera-recorded speed offences. In these cases, the Penalty Notice is not issued to a driver by the Police Officer but is attached to the vehicle or posted to the registered operator.

If the registered owner of a vehicle involved in a traffic offence was not in control of the vehicle at the time of the offence, the Act requires the owner to finally notify the Infringement Processing Bureau (IPB) of this within 10 weeks from the date of the offence.

The Act also requires the registered owner or operator to nominate for the IPB the person driving the vehicle at the time of the offence, where that can be reasonably determined.

This process and 10 week timeframe is repeated for each nominated driver who subsequently claims to have not been in control of the vehicle at the time of the offence.

The Justices Act 1902 imposes a statutory limitation of 6 months on prosecution of traffic offences. With the current 10 week timeframes afforded to registered owners or operators to establish they were not driving the vehicle at the time of the offence, the 6 month limitation would expire if 3 people each waited their maximum 10 weeks before notifying the IPB.

The Infringement Processing Bureau deals with about 1.7 million infringement notices a year, with almost 99% being administered and prosecuted within the required 6 month period.

The NSW Police Service's Infringement Processing Bureau has advised the Government that between July 1999 and June 2000 about 17,500 or 1.06% of the total number of infringement notices were not prosecuted because the responsible driver could not be identified within the required 6 month period.

The NSW Police Service also reported that a significant number of motorists and vehicle operators were unscrupulously manipulating the existing process to evade prosecution of red light, speeding and parking offences until the 6 month limitation on prosecution had expired.

As a result, the Government established a departmental working group to examine the issue. The working group, made up of the Roads and Traffic Authority, NSW Police and the Attorney-General's Department, made a number of recommendations which have been adopted in the Bill.

The Government considers that it is appropriate to permit the registered owner or operator of a vehicle to certify by statutory declaration that he or she was not driving the vehicle at the time of the offence. This avoids circumstances of hardship and injustice.

The Government also considers that it is appropriate to permit the registered owner or operator to nominate the person who was driving the vehicle at the time of the offence, or certify by statutory declaration that, despite inquiries, he or she has been unable to identify who was driving.

However, it is also recognised that the manipulation of the existing system and unscrupulous delays in the identification of an offender often shields that person from fines and demerit points for which they are liable.

This is of special concern in relation to the enforcement of high range speed offences, such as speeding in excess of 30 km/h, or where the application of relevant demerit points would take the offender beyond his or her demerit point limit, normally leading to licence suspension or cancellation.

The purpose of the Bill before the House is to amend the Road Transport (General) Act 1999 to introduce measures that will reduce the opportunity for motorists and vehicle operators to evade prosecution for traffic offences for which they are liable.

This will support the enforcement of traffic offences, particularly serious speeding and red light camera offences, and thereby promote road safety for the whole community.

I shall now detail the key features of the Bill before the House.

Fundamentally, the Bill extends the time within which a prosecution may be commenced for speeding, red light and parking offences from 6 months to 12 months. To achieve this, the Bill specifies a 12 months time limit in these matters and removes the reliance on the limitation period of 6 months under the Justices Act 1902.

Extending the limitation period will reduce the ability for persons to dishonestly evade the identification of the responsible driver.

Typically, vehicle owners or operators may currently evade prosecution by providing the IPB with a statutory declaration that their inquiries have failed to identify who was driving the vehicle at the time of the offence. Alternatively they may provide a statutory declaration including a false name and address of a person they nominate as the driver of the vehicle.

A nominated driver may also provide a statutory declaration that he or she was not in control of the vehicle at the time of the offence and seek to identify a third person. As I have indicated, given the period of 10 weeks granted each person to finally inform the IPB, it only requires the involvement of the registered owner or operator and two other people to evade prosecution for 6 months.

Increasing the time from 6 months to 12 months during which proceedings may be taken will provide the IPB with additional time to identify the responsible driver, and reduces the opportunity for the current process to be manipulated by unscrupulous operators and drivers.

To support this new time limit for prosecution, the Bill also streamlines procedures for registered owners and operators to nominate other persons as drivers of the vehicle at the time of offence. There are two elements proposed to accomplish this.

Firstly, the Bill amends section 43 of the Road Transport (General) Act 1999 to clarify that a penalty notice is served 7 days after it is posted, unless the recipient can prove the contrary.

Deeming that a penalty notice is served 7 days after it is posted provides certainty in relation to the required time in which a statutory declaration must be submitted.

Currently a statutory declaration nominating another driver of the vehicle involved in an offence must be submitted to IPB within 21 days of the receipt of the penalty notice. However, because the existing legislation does not deem when the notice is served, the date of service can be disputed, making the final lodgment date for the statutory declaration unclear.

By clarifying the date on which the penalty notice is served, the Government is aiming to reduce disputes about and resultant delays in the timely submission of statutory declarations.

Deeming that a penalty notice is served 7 days after it is posted does not reduce the period of 21 days in which a person may lodge a statutory declaration. Instead it provides 28 days in which a person may pay the fine or nominate another person as the responsible driver.

To support the enforcement of this amendment, the Bill also introduces a provision for the admissibility in evidence of a certificate as to when the penalty notice was posted.

A similar approach is adopted in section 29 of the Fines Act 1996.

Deeming that a penalty notice is served 7 days after it is posted is unlikely to have any major adverse effect on people in regional or rural NSW who receive an infringement notice. Australia Post advises that its service obligations require it to deliver a minimum of 91% of all post within 4 days in any part of NSW, including regional and rural areas.

Nevertheless, as a safeguard for people who receive an infringement notice, section 43 (4A) of the Bill provides persons with the ability to establish that they did not receive the notice within the 7 day period. Where this is proved, the 21 day period in which the person is required to pay the fine or nominate the responsible driver would commence from the appropriate alternative date.

Secondly, the Bill amends section 43 of the Road Transport (General) Act 1999 to require more detailed information in statutory declarations. The Government seeks this amendment to assist the IPB determine whether the responsible person has exercised due diligence in declaring that they cannot identify the driver of a vehicle or nominating someone else as the driver.

The amendment imposes an explicit obligation on the registered owner or operator to include information that the IPB can use effectively to determine whether the explanation provided is satisfactory and true.

Where it is proved that a person's statutory declaration is false, the person would be guilty of an offence. This is no different from the current situation at law.

The additional matters to be included in statutory declarations would be prescribed by regulations to be introduced following the passage of the Bill. The matters would include the steps taken by the responsible person to ascertain the name and address of the person they have nominated as the driver of the vehicle at the time it was involved in the offence.

The need for additional information in statutory declarations will not apply to penalty notices or summons for parking offences that do not attract demerit points.

I would emphasise that, consistent with the objectives of the Bill, the amendments to section 43 of the Road Transport (General) Act 1999 will only apply to streamline procedures for dealing with camera-detected speeding, red light camera, and parking offences.

The Bill also increases the penalties for a corporation that has falsely or failed to nominate the driver of the vehicle at the time of the offence. The Bill increases the maximum penalty in the case of corporations from \$1,100 to \$2,200. This is aimed at making it uneconomical for corporations to shield offending drivers.

Currently, the failure to nominate a driver is an offence that must be dealt with in a Court. This will remain the case.

Overall the Bill proposes amendments which restrict the ability of traffic offenders to evade prosecution and promote important road safety outcomes consistent with the Government's commitment to improving road safety.

The amendments are targeted to better police those motorists who flaunt the law and their liabilities and promoting a safer road environment for the community as a whole.

The operation of the legislation will be reviewed after 12 months to ensure that it is effective in achieving its objectives.

I commend the bill to the House.