



NSW Legislative Assembly Hansard

Road Transport (General) Bill

Extract from NSW Legislative Assembly Hansard and Papers Wednesday 8 December 2004.

Second Reading

Mr TONY STEWART (Bankstown—Parliamentary Secretary) [10.54 a.m.], on behalf of Mr Carl Scully: I move:

That this bill be now read a second time.

The Road Transport (General) Bill seeks to improve compliance within the heavy industry with load restraint, mass and dimension requirements for heavy vehicles as well as with fatigue and driving hours obligations. The bill extends liability for breaches of these requirements from truck drivers and/or operators to consignors, loaders, packers and owners, thereby establishing a so-called chain of responsibility throughout the road transport supply chain. The bill also provides the Roads and Traffic Authority with additional powers to search business premises with a warrant or by consent and to search trucks. To date, only truck drivers and/or operators have been held responsible for breaches of road transport laws. The National Transport Commission, however, recommended that uniform legislation be introduced by all States and Territories that would enable other parties in the supply chain to be held liable for breaches of road transport laws. This was approved by Australian transport and roads Ministers in November 2003.

This legislation has been developed to achieve a number of outcomes: to extend accountability to parties in the road transport supply chain other than the driver and transport operator who may bear significant responsibility for the occurrence of an offence; to strengthen enforcement powers and sanctions in relation to chain of responsibility investigations attached to the road laws; and to encourage parties to the road transport task to adopt active risk-management strategies to prevent breaches of applicable road laws. The main focus of the bill is to improve compliance with loading, mass and dimensions requirements as well as compliance with fatigue and driving hours obligations. However, the bill recognises that not all offences pose the same degree of risk to safety, infrastructure or the environment and therefore penalties need to be applied accordingly. An important concept in the new provisions is the extensive chain of responsibility requirements. Under the chain of responsibility, prescribed parties including consignors, packers, loaders or consignees of goods, drivers and operators of vehicles who had control over a step in the process of distributing goods by road may in relevant circumstances be legally liable for breaches of road transport laws.

These provisions recognise that to date drivers and operators have generally been the focus of enforcement action for breaches of road transport law. Under this new regulatory framework, those other parties in the transport chain who by their actions, inactions or demands put drivers and other road users at risk and gain unfair commercial advantages may also be committing an offence and liable to substantial penalties. In practical terms, this means it is essential that all parties in the supply chain need to be aware of the requirements of road transport law and have active systems in place to manage these risks to minimise the chance of road transport laws being breached. This legislation also mandates special requirements for the transport of containers by road. Accurate container weight declarations must be provided by the person defined as the responsible entity, namely, the person in Australia who consigns the container for transport or otherwise arranges its transport by road. Without a container weight declaration, a driver is not permitted to transport the container.

These provisions are designed to ensure that drivers and road transport operators receive the correct information to enable the selection of the appropriate vehicle to transport the container within the relevant legal mass limits. Liability for a mass, dimension and load restraint offence will apply in relevant circumstances unless a defendant can establish that he or she did not know and could not reasonably be expected to know of the contravention and had taken all reasonable steps to avoid a breach, even though he or she may not have been physically involved in the breach. This will apply both inside and outside road transport companies. Within the company those people identified with control over transport operations could be personally responsible and subject to large fines. Outside a company this may apply to any party who places unreasonable demands on others in the transport chain. This includes directors, senior management, employees and/or sub-contractors. In a departure from the national scheme, the bill provides a reasonable-steps defence for mass offences for drivers, operators and owners. The model bill provided this defence only for minor risk breaches.

This bill extends the available defence to substantial and severe risk breaches, but in limited circumstances where the load had been weighed or the defendant was in possession of sufficient and reliable evidence from which that weight was calculated. This is consistent with existing New South Wales provisions and encourages drivers, owners and operators to take specific active steps to prevent a breach of relevant mass requirements. In an effort to foster a culture of compliance within the heavy vehicle industry, these reforms include a range of new and innovative penalties that have been tailored to address specific types of offences. For example, the bill distinguishes between first-time offenders and systemic offenders with more serious sanctions for those who persistently break the law.

The new penalty regime is anticipated to act as a better deterrent to those who have been willing to break road transport rules for unfair commercial gain. Penalties will be both administrative and court-imposed. Examples of administrative penalties the RTA may issue include improvement notices, which identify improvements a business can make to its systems to ensure compliance. The bill also makes provision for the issue of formal warnings which may be applied in certain circumstances where a minor breach—for example, a load restraint requirement—has unintentionally occurred. Infringement notices and court-imposed penalties for specific offences will also apply.

Courts will have the ability to impose a range of additional sanctions, including intervention orders, licensing and registration sanctions, prohibition orders, and, in appropriate cases, commercial benefits penalties. The model national provisions adopted in the bill will also allow recognition and effective enforcement in New South Wales of court-imposed and administrative sanctions imposed in other Australian jurisdictions, and vice versa. Importantly, whistleblower protection for people who assist with investigations or report breaches will also be in place as part of this new regulatory framework.

Heavy-vehicle driver fatigue is a major road safety issue in Australia. The extension of powers under this bill to investigate these offences will allow better enforcement of the existing provisions. Under the new provisions, greater enforcement powers may be granted to authorised officers to gather evidence and investigate or pursue relevant parties to offences relating to mass, loading, dimension and fatigue. These enhanced powers will be made available to specially trained officers of the Roads and Traffic Authority. In certain circumstances authorised officers will also be able to stop, direct, or move a heavy vehicle. They will also be empowered to inspect or search heavy vehicles for compliance purposes, and to inspect business premises for compliance purposes.

The bill also allows authorised officers to search premises, with the consent of the occupier or under the authority of a search warrant, if the officer believes on reasonable grounds that evidence of an offence is present, or if a vehicle connected with the premises has been involved in an accident causing death or personal injury or damage to property. The inspection and search powers do not apply to unattended or residential premises without consent or a warrant. For the first time, officers will be able to search heavy vehicle cabins on the roadside without a warrant if a breach of road transport legislation is suspected. Authorised officers will also be empowered to direct responsible persons to produce records, transport documentation, or information about a vehicle, combination, or load, and to require reasonable assistance in performing their duties.

The bill will give enforcement agencies in New South Wales the tools to move to a more systematic and strategic approach to enforcing road transport laws, particularly where non-compliant parties are gaining a commercial advantage over compliant parties. Parties in the supply chain other than drivers and operators will now be required to take an active approach to ensuring that the road freight task is undertaken in compliance with relevant road rules. This will ultimately lead to safer roads, protect our infrastructure, and provide a level playing field for the delivery of the growing freight task in New South Wales. I commend the bill to the House.