



NSW Legislative Council Hansard

Road Transport (General) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 6 April 2005.

Second Reading

The Hon. MICHAEL COSTA (Minister for Roads, Minister for Economic Reform, Minister for Ports, and Minister for the Hunter) [3.31 p.m.]: I move:

That this bill be now read a second time.

The purpose of this bill is to improve compliance with and enforcement of road transport laws, particularly as they apply to heavy vehicles, to improve road safety and infrastructure protection outcomes for the community. The bill brings together a range of related provisions covering heavy vehicle enforcement. The bill incorporates model provisions from the Road Transport Reform (Compliance and Enforcement) Bill, approved by the Australian Transport Council in November 2003, as well as most existing provisions from the Road Transport (General) Act 1999. The bill generally adopts the model provisions, except in some limited areas, which I will outline. These laws have been developed to achieve a number of outcomes to extend accountability to parties in the road transport chain other than the driver and transport operator, who may bear significant responsibility for the occurrence of an offence and to strengthen enforcement powers and sanctions in relation to chain of responsibility investigations attached to the road laws.

The bill is also designed to encourage parties to the road transport task to adopt active risk management strategies to prevent breaches of applicable road laws. The new compliance and enforcement provisions in the Road Transport (General) Bill will also promote a level playing field for road transport and provide a safer industry for drivers and operators. The main focus of the bill is to improve compliance with loading, mass and dimension requirements as well as compliance with fatigue and driving hours obligations. Improved compliance by parties to the road transport task will assist to minimise the impacts of road transport on roads, bridges and the environment. Chapter 1 of the bill contains the general definitions and regulation powers. Chapter 2 outlines the proposed scope of the Act. Chapter 3 deals with mass, dimension and load restraint requirements for heavy vehicles.

The model bill was drafted to apply to situations in which a load is or may be a factor in a breach. The scope of the bill has been expanded to ensure that the mass, dimension and load restraint provisions apply regardless of whether the load of the vehicle is a factor in the breach. A key feature of the bill is the introduction of a risk-based categorisation of mass, dimension and load restraint offences. These offences will now be assessed according to the risk they pose into minor, substantial or severe categories. This 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 introduced in bill. 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 the 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 be liable to substantial penalties. In practical terms, this means that it is essential that all parties to the chain of responsibility—consignors, packers, loaders, operators, drivers and in some cases consignees—need to be aware of the requirements of road transport law particularly relating to mass, dimension and load restraint. They also need to have active systems in place to manage these risks to minimise the chance of road transport laws being breached.

This bill 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 to transport the container. These provisions are designed to ensure that drivers and road operators receive the correct information to enable the selection of the appropriate vehicle to transport the container within the relevant legal mass limits.

The bill sets out the liability provisions for registered operators and owners and the defence provisions in proceedings for offences for mass, loading and dimension requirements. Liability for a mass, dimension and load restraint offence will apply in relevant circumstances unless a defendant can establish that he 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 may not have been physically involved in the breach. This will apply both inside and outside road transport companies. Within the company, 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 that 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. The 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 provisions in New South Wales, and it encourages drivers, owners and operators to take specific and active steps to prevent a breach of mass requirements. The bill sets out the range of sanctions available for heavy vehicle offences. 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 in the past have been willing to break road transport laws for unfair commercial gain.

In addition, a five times corporate multiplier will apply to offences in the case of a corporation. Penalties will be both administrative and court imposed. Examples of administrative penalties that the Roads and Traffic Authority [RTA] may issue include improvement notices that identify improvements a business can make to its systems to ensure compliance. The bill also makes provision for the issue of formal warnings that may be applied in certain circumstances where a minor breach, for example, of a load restraint requirement, has unintentionally occurred. Infringement notices and court-imposed penalties for specific offences will also apply. Courts will also have the ability to impose a range of additional sanctions including supervisory intervention orders, licensing and registration sanctions, prohibition orders and, in appropriate cases, commercial benefits penalties.

The national model provisions adopted in the bill will also allow the recognition and effective enforcement of court and administrative sanctions imposed in other Australian jurisdictions in New South Wales, 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. An employer who dismisses an employee or contractor, injures or alters an employee's position because of assistance that person has provided with respect to a breach of an Australian applicable road law is guilty of a serious offence, punishable in the case of a corporation by a fine of up to 500 penalty units.

Chapter 4 of the bill sets out the investigation powers relating to road transport legislation. These powers apply to applicable road laws as defined in the bill and, in addition to those laws envisaged in the model bill, have been extended to cover the Road Transport (Safety and Traffic Management) (Driver Fatigue) Regulation 1999. Heavy vehicle driver fatigue is a major road safety issue in Australia and the extension of these powers to investigate these offences will allow better enforcement of existing provisions. Under the new provisions greater enforcement powers may be granted to authorised officers to gather evidence to investigate or pursue those relevant parties to mass, loading, dimension and fatigue offences. These enhanced powers will be made available to specially trained officers in the Roads and Traffic Authority.

In certain circumstances authorised officers will 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 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 involving 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. Authorised officers will also be empowered to direct responsible persons to produce records, transport documentation or information about a vehicle, combination or load, and require reasonable assistance in performing their duties.

The model bill allowed, but did not mandate for, jurisdictions to register industry codes of practice. This bill does not pick up that provision. Whilst the Government encourages industry to develop codes of practice that will encourage compliance with road transport law, it does not see it as the role of government to endorse or register such codes. Chapter 5 of the bill also covers liability provisions for multiple offences, double jeopardy and liability provisions for corporations, partnerships and associations. I have heard from stakeholders in the grain industry regarding the provisions in this bill relating to compliance with mass obligations by their industry.

I have asked the Roads and Traffic Authority to set up a working group with key industry players in order to establish a set of protocols around grain haulage during the harvest season. I understand there may be unique circumstances with grain haulage around harvest conditions. Importantly, these protocols will be established within the legislative framework provided by this bill. Since I became Minister for Roads in January I have had a number of meetings with transport associations and transport operators and unions. I am aware that the transport industry, transport workers and the community have a broad range of safety, productivity and operational issues relating to the road transport industry in New South Wales.

I believe that the road transport industry has a key role to play in delivering on the growing freight task and contributing to the economic growth of New South Wales. That is why I will be convening mid-year a Heavy Vehicles Summit to bring together heavy vehicle users and other stakeholders to examine these issues, to agree on priorities and to put in place plans to progress these issues. The provisions in this bill will give enforcement agencies in New South Wales the tools to move to a more systematic and strategic approach to enforcement of road transport laws, particularly where those non-compliant parties are gaining a commercial advantage over compliant parties. Those parties in the chain of responsibility other than drivers and operators will now be required to take an active approach to ensure that the road freight task is undertaken in compliance with relevant law. That 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.