

Legislative Council Hansard – 18 October 2017 – Proof

ROAD TRANSPORT AND RELATED LEGISLATION AMENDMENT BILL 2017*First Reading*

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Ben Franklin, on behalf of the Hon. Niall Blair.

Second Reading

The Hon. BEN FRANKLIN (22:11): On behalf of the Hon. Niall Blair: I move:

That this bill be now read a second time.

I am pleased to introduce the Road Transport and Related Legislation Amendment Bill 2017. The purpose of the bill is to amend the road transport and related legislation to provide for some important road safety initiatives, improvements on existing policies and administrative amendments. The outcomes of the legislative changes will deliver positive road safety outcomes and contribute to the effective and reliable delivery of transport and freight services for the people of New South Wales. The bill provides for amendments to the Road Transport Act 2013 to allow for the creation of the New South Wales written-off heavy vehicles register which will allow camera technology to be used for the enforcement of vehicle dimension offences and increase the maximum penalty that a court may impose for road transport offences under the statutory rules.

The bill seeks to modernise the Driving Instructors Act 1992 by mandating Working With Children Check clearances and introducing good repute requirements for driving instructors. The Roads and Maritime Services will be given broader powers to caution or to suspend or cancel a driving instructor's licence if the instructor no longer displays competence or suitability for the licence. The bill also amends the Point to Point Transport (Taxi and Hire Vehicles) Act 2016 to align certain provisions with those of work health and safety legislation, including enhancing the powers of the Point to Point Transport Commissioner who will be able to, among other things, compel a person to provide information, produce documents, or appear to give evidence. Other amendments are generally related to removing the reporting and administrative burdens on taxi licence holders, providers of a taxi service and providers of a booking service.

Members may be aware that New South Wales has been active for some years in advocating for the establishment of a written-off heavy vehicles register. At the 2014 meeting of the Ministerial Transport and Infrastructure Council, New South Wales raised the issue of profit-motivated theft of heavy vehicles and the quality of heavy vehicle repairs.

The proposal to establish a national register to address these problems was supported by the Commonwealth and most jurisdictions. In May this year, New South Wales again raised this issue at the Transport and Infrastructure Council meeting, where the council agreed to progress the development of the register and announced that New South Wales would lead the project.

All Australian States and Territories have registers for written-off light vehicles to ensure crashed vehicles that are structurally unsafe are not re-registered and driven on public roads. Originally introduced as a measure to remedy the rebirthing of stolen vehicles using the identifiers of written-off vehicles, the registers are now a nationally effective mechanism for ensuring the ongoing integrity of vehicles that have been damaged. The registers enhance consumer protection by informing prospective buyers about whether a vehicle has at some stage been written off. The purpose of the amendments in this bill is to extend these safeguards to the management of written-off heavy vehicles in New South Wales.

Heavy vehicle roadworthiness and integrity are critical for road safety but also are important for the protection of road infrastructure. Owing to a law of physics which explains that momentum is the product of mass and speed, heavy vehicles that collide with light vehicles and other objects bring considerable crash forces. As a result, these crashes are highly likely to result in driver and passenger fatalities and serious injuries. Statistics from Transport for NSW's Centre for Road Safety suggest that although representing less than 3 per cent of all registered motor vehicles in New South Wales, heavy vehicles are involved in 16 per cent of fatalities.

In 2016, the Roads and Maritime Services inspected more than half a million heavy vehicle units in New South Wales. Of the vehicles inspected, 17 per cent were identified with a defect, with 2 per cent identifying as a "major" or "major grounded". As a result of the amount of infrastructure build occurring in New South Wales, increasing numbers of heavy vehicles are often required at short notice to remove landfill and other material from these sites. It is essential that these and all heavy vehicles operating on our roads are roadworthy.

The incidence of heavy vehicle theft is also an issue for the development of a register. The National Motor Vehicle Theft Reduction Council reported that in the 12 months to March 2017 some 1,200 heavy vehicles were stolen across Australia, accounting for about 3 per cent of all vehicle thefts. The council commented that "costs to individuals and businesses impacted by this type of theft will generally be much higher than for other vehicles in terms of temporary replacement costs, lost productivity and increased insurance premiums". The customisation of prime movers and the interchangeability of components, for example, mean that stolen parts are currently hard to identify.

I am sure that honourable members will agree that any reform which improves the safety, security and integrity of heavy vehicles on our roads is to be supported. Accordingly, the proposed amendments to the Road Transport Act will create a New South Wales written-off heavy vehicles register which applies to vehicles over 4.5 tonnes. This will be separate from the existing register, which will be renamed the New South Wales written-off light vehicles register. Many of the provisions of the written-off heavy vehicles register mirror those of the existing light vehicle register, such as the provisions relating to the requirement for written-off vehicles to be recorded in the register, for damage assessment to be undertaken, for the maintenance of records relating to assessments, and so on. The amendments will provide for "statutory written-off heavy vehicles" which cannot be safely re-registered as well as "repairable written-off heavy vehicles".

There is no upper age limit for a written-off heavy vehicle to be recorded on the register as there is for a written-off light vehicle. This reflects the fact that heavy vehicles tend to be older than light vehicles and are more valuable. Allowing a written-off heavy vehicle to be repaired, which is not possible for a light vehicle, acknowledges the high cost of these vehicles and the fact that there are interchangeable components that could comprise a heavy vehicle combination. The category of "repairable written-off heavy vehicle" will allow an eligible heavy vehicle to be re-registered following repair if the application for registration is accompanied by a certificate of compliance issued by a licensed motor vehicle repairer. Unlike the requirement for light vehicles, the certificate must confirm that the vehicle has been repaired by a licensed repairer.

The New South Wales Government is committed to working with the National Heavy Vehicle Regulator, other jurisdictions and the heavy vehicle industry to develop a secure system to register written-off heavy vehicles and to ensure common damage assessment criteria. To that end, New South Wales, on behalf of Austroads and the National Motor Vehicle Theft Reduction Council, is leading a project to develop a national framework for the assessment and classification of written-off heavy vehicles. An expert reference group has been established to develop this framework, harnessing the technical knowledge of the National Heavy Vehicle Repairers Association, the Insurance Council of Australia and other key stakeholders.

I am pleased to be able to report that a technical guide for national crash damage assessment criteria is expected from the expert reference group in November 2017. This will inform the development of regulations in New South Wales to support the written-off heavy vehicles register in the first instance. I believe that other jurisdictions will follow our lead and provide for the inclusion of heavy vehicles in their written-off vehicle legislation and ultimately for the formation of a national written-off heavy vehicles register. In future, written-off heavy vehicles will be reported to the National Exchange of Vehicle and Driver Information System database which will allow the information to be shared across jurisdictions.

I now turn to the amendment which allows for camera enforcement of dimension offences. Members will be aware of the chaos caused when an over-height vehicle ignores warning signs and crashes at the entrance to a tunnel: the M5 tunnel, the Sydney Harbour tunnel and a number of other of rail bridges and overpasses come to mind. Since 2014, Roads and Maritime inspectors have attended numerous over-height vehicle incidents in major Sydney tunnels. On 5 October 2017, a Queensland registered vehicle ignored the sign and got stuck in the Marrickville overpass. The northbound lane was blocked for approximately 90 minutes whilst damage to the bridge was assessed before the vehicle was removed. A fine of \$2,270 was issued by police for disobeying a low clearance sign. Repair costs associated with these incidents can range from around \$10,000 when an over-height vehicle hits a steel overhead beam, to more than \$1 million, which was the cost to repair the M5 East tunnel after an incident in May 2010.

The problem is not confined to vehicle height. In 2013, before penalties were increased significantly, 12 over-length vehicles were charged after failing to negotiate the tight bends of Galston Gorge in Sydney's north-west. Then traffic and highway patrol commander, Assistant Commissioner John Hartley, has been reported as saying that unauthorised vehicles entering a designated restricted route pose a significant risk to other road users. "Despite significant signage warnings, measuring bays at either side of the gorge, and camera systems, we are still seeing numerous truck drivers taking the risk on the gorge", Assistant Commissioner Hartley said in February 2016. Moreover, these events are occurring despite increased penalties. Assistant Police Commissioner Michael Corboy was also interviewed recently on radio regarding the continued use of the gorge by drivers of over-length vehicles. The Assistant Commissioner advised that police and RMS will ramp up their efforts to deter this unlawful practice.

In June 2015 maximum court-imposed fines for dimension offences were increased from \$2,200 to \$3,740. In addition, RMS was given the ability to suspend or cancel a person's driver licence for up to three months. These significant penalties were in addition to suspension or cancellation of a vehicle's registration which had been introduced two years earlier for dimension offences. In early September 2017, a rigid vehicle carrying steel material ignored the sign and got stuck in Galston Gorge. As a result, the road had to be closed at Hornsby Heights for four hours. The camera systems Assistant Commissioner Hartley referred to have been deployed to alert police to contraventions of the law in Galston Gorge. Roads and Maritime has developed a combination of devices to remedy this problem.

The technology uses multiple laser systems to determine the dimensions of a vehicle as it travels. In addition, a camera will take photographs of the vehicle. These will include the length of the vehicle and the location of the incident. While vehicle dimension measurement systems are used internationally, Roads and Maritime Services believes that this is the first time that evidence from devices of this type, in conjunction with cameras to record incident location, have been proposed for use in enforcement. Once again, New South Wales is at the forefront of the application of technology for road safety and Roads and Maritime is to be commended for its initiative in this regard.

The current use of the technology requires police to intercept the vehicle, for Roads and Maritime to inspect the vehicle and measure its length and for the driver to be charged. In order to recognise this technology, the bill amends the Road Transport Act to provide for camera enforcement of dimension offences by motor vehicles. A "dimension offence" is defined in the bill to mean an offence that involves "driving a vehicle in contravention of a maximum dimension requirement applicable to the driver on a length of road". For example, signs indicate that vehicles over 7.5 metres long are prohibited from using the road in Galston Gorge.

Traffic enforcement devices approved for use currently include speed and red light cameras. Photographs from these cameras are used as prima facie evidence in proceedings. Accordingly, it is proposed to include new traffic enforcement devices which are designed to measure the dimensions and photograph a vehicle driven in contravention of a maximum dimension requirement. Camera measurements and photographs will be used to provide prima facie evidence in proceedings for a dimension offence, which will be a new "detectable traffic offence".

Operator onus liability will be extended for these offences—that is, the registered operator of the vehicle recorded by the devices will be considered liable unless he or she nominates the driver, where the registered operator was not driving at the time of the offence. Penalties for dimension offences include substantial fines including a maximum court fine of \$10,000 for a severe risk breach under the Heavy Vehicle National Law, and fines, licence or registration suspension or cancellation under the Road Transport Act.

It is proposed to initially deploy the technology at Galston Gorge, where sanctions will apply to heavy vehicles with a combined length of more than 7.5 metres. In addition to placing no fewer than 13 signs in and around the gorge, Roads and Maritime has been undertaking community consultation in anticipation of the commencement of the proposed legislation. No-one will be able to say that they were not warned.

The use of dimension technology should discourage drivers from ignoring diversionary signs and restricted routes designed to protect fragile and valuable infrastructure. It is intended to reduce, in particular, the numbers of over-dimension heavy vehicles causing damage and blockages which inflict delays, inconvenience and the cost of repairs on the public of New South Wales. In a further amendment to road transport legislation, the bill addresses an inconsistency involving the maximum penalty a court may impose for offences created under the statutory rules.

Penalty notice fine amounts are subject to annual increases in line with movements in the consumer price index [CPI]. However, court penalties are not subject to such increases. This has created problems when penalty notice fine amounts for certain serious speeding offences, for example, could increase above the maximum court fine following CPI adjustment. The law provides that the penalty notice fine amount for an offence created under the statutory rules should not exceed the maximum fine a court may impose for the same offence. Accordingly, a cap has been placed on certain serious penalty notice fine amounts. For example, the fine for a heavy vehicle detected travelling at 45 kilometres per hour above the speed limit in a school zone has been limited to \$3,740. This is less than it should be relative to other speeding offences. The proposed amendment will set a new cap at 50 penalty units—or \$5,500—so that penalty notice fine amounts under the regulations can increase and not exceed those which a court may impose under the Act.

The next set of amendments involves the Driving Instructors Act 1992, a statute that is in need of modernisation and alignment with aspects of passenger transport legislation. Roads and Maritime is the authority under the Act, and has a range of regulatory functions with respect to all instructors and driving schools to ensure that driving instructors are appropriately licensed and are persons of good repute and good character. There is a need to modernise the Act to remove prescriptive and outdated provisions for driving instructor licence sanctions. The amendments to the bill will give Roads and Maritime greater ability to deal with allegations of malpractice, bribery, fraud, and incompetence of driving instructors.

To support Roads and Maritime to effectively regulate driving instructors, the definition of a driving instructor needs to be expanded to include instructors in testing and assessment roles. The proposed amendments will provide formal regulation of instructors, particularly those who provide assessment in the heavy vehicle competency based assessment scheme or motorcycle rider training scheme. Despite the Act requiring that the holder of a driving instructor's licence must be of good character, courts from time to time have overturned Roads and Maritime decisions to cancel or suspend a licence because they have had little guidance as to what does or does not constitute good character in the context of driving instruction.

In April 2016, the NSW Ombudsman reported to Transport for New South Wales on ways in which the Transport cluster could better respond to child protection issues following incidents with taxi and bus drivers and driving instructors. One of the recommendations was for the review of current policies and, in particular, the development and implementation of mechanisms for ensuring compliance by driving instructors with the Child Protection (Working with Children) Act 2012. The current Working With Children Check, which involves a national criminal history check and a review of findings of workplace misconduct, is an obligation on an employer. As most driving instructors are self-employed, this has been difficult to enforce.

Following consultation between the NSW Ombudsman, Roads and Maritime and the NSW Office of the Children's Guardian, the bill provides for a Working With Children Check clearance or a current application to be a prerequisite for a driving instructor's licence.

In addition, the authority may suspend or cancel a driving instructor's licence on the grounds that the holder has no clearance or current application. This will ensure that self-employed instructors in particular hold a clearance. While Roads and Maritime imposes Working With Children Check clearances as policy, and most instructors have complied, the bill will give that policy the force of law. This requirement will not be imposed on heavy vehicle driving instructors who have a licence condition preventing them from instructing for class C or car licences, as they do not instruct persons under the age of 18. I am sure honourable members will agree that these precautions are crucial for this kind of occupational licensing, which often involves working one-on-one with juveniles.

The bill incorporates the Ombudsman's recommendation for an amendment, which allows the authority to be assured that a person is considered to be of "good repute" in addition to good character as a prerequisite for issuing a licence. The requirement that the authority—Roads and Maritime Services—attests that a person is considered to be of good repute is an existing condition for the issuing of a bus driver authority in the Passenger Transport Act 1990. Good repute concerns a person's good name in the community rather than the intrinsic nature of good character. Importantly, the driver authority or licence is meant to be a guarantee to the public that the holder is a person to be trusted. The aim is to protect the community—only persons of good reputation are considered suitable to be bus drivers. The inclusion of "good repute" for driver instructor licensing will allow established case law in the NSW Civil Administrative Tribunal to better inform court decisions in these cases, and the review of the decision-making grounds in the Act will better inform appeal courts about what is expected of participants in the scheme.

The addition of the "good repute" requirement, and other amendments to powers to refuse or suspend a licence, will allow the authority to take action on the grounds that charges have been laid against an applicant or licence holder. The bill extends the ability to suspend or cancel a licence on the grounds of having been found guilty of an offence against the Act or regulations, where a finding of guilt is made for any offence within New South Wales or elsewhere and for offences involving motor vehicles, including penalty notice offences. Importantly, the bill provides that, having regard to the objects of the Act, the authority may suspend or cancel a licence because it is "of the opinion that the holder of the licence no longer displays the competencies, or is no longer suitable, to act as a driving instructor".

Turning to other matters, the bill strengthens the importance of an instructor's competence by amending the objects of the Act to emphasise performance. The bill will expand the definitions of a "driving instructor" and "driving school" to include testing and assessment roles. A regulation-making power will allow the statutory rules to create different driving instructor licence types. The bill will bring us a step closer to ensuring that only those of excellent personal qualities and skills will be considered appropriate for the issuing of a driving instructor's licence. I am pleased to say that the industry supports these amendments.

The final set of amendments in the bill concern the Point to Point Transport (Taxis and Hire Vehicles) Act, which was passed by both houses in June 2016. Since then, the supporting regulation has been developed and the Point to Point Transport Commissioner—the new regulator—has been engaging with industry and working to educate existing service providers to ensure compliance with the rules, requirements and systems of the new regulatory regime. The new Act and regulation will commence on 1 November 2017, with the exception of the Passenger Service Levy, which will take effect on 1 February 2018. Certain changes are now considered necessary to fine-tune the regulatory regime. It is worth recalling that the new point-to-point transport legislation, in which New South Wales is a national leader, will create a risk-based regulatory scheme for the taxi, hire car and rideshare industries, with clear accountabilities based on work health and safety legislation.

Taxi and booking service providers will be responsible for ensuring that their services are safe. Safety duties and safety standards are clearly defined for industry participants and there is a graduated penalty regime for non-compliance. Firstly, the bill provides authority for persons assisting authorised officers of the Point to Point Transport Commission to lawfully enter premises. This is similar to a power in the Work Health and Safety Act 2011. It will allow the commission to draw on the skills of interpreters, auditors, mechanical engineers, safety experts and information technology specialists during inspections, audits and investigations. Secondly, similar again to the Work Health and Safety regulator, the commissioner will be given the authority to compel a person to provide information, produce documents or appear and give evidence. The commissioner must have reasonable grounds for believing that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of the legislation.

Moreover, a person will not be required to appear and answer questions unless the commissioner has taken all reasonable steps to obtain the information or documents and they have not been provided. The person will be given written notice of the requirement and information about entitlement to legal privilege and other matters. The amendment will strengthen the commissioner's ability to enforce compliance with the legislation. The third amendment changes when proceedings for offences under the Act or regulation may be commenced from two years from the date on which the offence was committed to two years from the date when the offence first comes to the notice of the commissioner. The intention is to allow a matter to be thoroughly investigated so that a sound case can be brought against the offender. It is a standard provision in many compliance regimes.

Other amendments are designed to reduce the regulatory burden on industry participants. The requirement in the Act for the reporting of "notifiable occurrences" has been modified following feedback from industry participants. Accordingly, the provision has been changed to ensure that only serious incidents relevant to the safety of the industry are reported to the Point to Point Transport Commissioner. This amendment would mean the reportable occurrences align more closely with what bus operators must currently report. In addition, taxi licence holders will no longer be required to notify the commissioner of a change in lease arrangements. The taxi licence holder must notify the taxi service provider of any change and this will allow the provider to comply with safety standards under the legislation including consultation with the holder of a taxi licence. Taxi service providers and booking service providers will, following an amendment in the bill, no longer be required to return their authorisations to the commissioner in the event of a cancellation or suspension.

This amendment recognises that authorisations will be in an electronic format so physical return is unnecessary. Further, a minor amendment provides that taxi number plates must be returned to Roads and Maritime Services rather than the Point to Point Transport Commissioner or the Commissioner of Police as originally proposed in the legislation. The amendments in this bill cover a wide range of road transport and related issues, from the management of written-off heavy vehicles, recognition of new technology for the enforcement of over-dimension vehicles, to improvements in driving instructor regulation through to point to point transport reform. Each reform again demonstrates that New South Wales is at the forefront of road transport initiatives that will deliver positive road safety outcomes and facilitate better passenger transport services for the people of this State. I commend the bill to the House.

Debate adjourned.