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ROAD TRANSPORT AMENDMENT (MANDATORY ALCOHOL INTERLOCK PROGRAM) BILL 2014

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Bill introduced on motion by Mr Ray Williams, on behalf of Ms Gladys Berejiklian, read a first time and printed.

Second Reading

Mr RAY WILLIAMS (Hawkesbury—Parliamentary Secretary) [5.13 p.m.], on behalf of Ms Gladys Berejiklian: I move:

That this bill be now read a second time.

The main purpose of this bill is to improve road safety by introducing a mandatory alcohol interlock program for offenders convicted of repeat and serious drink-driving offences. The bill also enables additional licensing requirements to be applied to licence holders who repeatedly exceed their demerit point threshold and repeat drink-drive offenders. This legislation, which I will outline in detail, represents the next step in combating drink-driving and repeat traffic offenders in New South Wales, and has been developed following extensive road safety research and consultation with key agencies including the NSW Police Force, the Department of Police and Justice, and NSW Health.

The measures proposed today were outlined in the Government's 10-year Road Safety Strategy, which was released in March 2013. They have the support of NRMA Motoring and Services, and are consistent with the spirit of the NRMA's "3 Point Plan to Tackle Bad Drivers". This bill proposes very significant changes to the way New South Wales addresses drink-driving, and it is important to understand the context for the proposed amendments. New South Wales currently has a range of coordinated measures in place to deter and address drink-driving, including intensive police random breath test enforcement, with more than five million tests conducted each year. This enforcement action is supported by public education and awareness campaigns by the New South Wales Government, such as Plan B and Paranoia, and is reinforced by tough penalties including fines and licence disqualification periods, as well as imprisonment for serious offences.

Since the introduction more than 30 years ago of random breath testing in New South Wales, these measures have, collectively, contributed to a massive reduction in alcohol-related trauma on New South Wales roads. Importantly, the community now understands, and no longer accepts, the risk that drink-driving behaviour poses to other road users. However, well over 20,000 drivers are still charged each year with a drink-driving offence, and alcohol remains a factor in around 20 per cent of fatalities on New South Wales roads. In the past five years more than 340 people have been killed and more than 5,700 people have been injured in alcohol-related crashes. Most offenders charged by police each year face court, accept the consequences of their actions and do not re-offend. But we also know that some offenders are not heeding the road safety message or are not deterred from re-offending by traditional penalties or risk of detection. Analysis shows that one in six offenders in New South Wales will be convicted of a further drink-driving offence within five years.

Additionally, around 18 per cent of all drink-drive offenders annually are convicted of a high range first offence, where the blood alcohol detected is 0.15 or above, or for refusing to submit to a police test. A driver with a blood alcohol reading of 0.15 is 25 times more likely to be involved in a crash than is a sober driver. These repeat and high-risk drink-driving offenders are the target group for this proposed alcohol interlock initiative. This type of behaviour must be tackled and deterred if New South Wales is to achieve reductions in alcohol-related trauma. Alcohol interlocks are devices that are connected to the ignition of an offender's vehicle; they prevent the engine from starting if a breath sample provided by the driver is above a set limit. Drivers who participate in interlock programs are restricted to driving only vehicles with these devices installed.

Interlock programs help offenders to learn how to separate their drinking from their driving, while enabling them to continue to access employment and essential services for their families. By providing a strictly monitored way back into licensing, interlock programs reduce the chance that offenders will drive unlicensed, and potentially under the influence, while disqualified. This is particularly important for rural and remote offenders, who have a strong reliance upon their licence. The expansion of alcohol interlock programs to more offenders is a key action of the National Road Safety Strategy. All jurisdictions in Australia have now taken action to develop or expand offender alcohol interlock programs.

The introduction of a mandatory alcohol interlock program in New South Wales will work alongside existing drink-driving countermeasures to further reduce alcohol-related offences and trauma on New South Wales roads. Under the Road Transport Act 2013 the court can make an order enabling an offender convicted of certain drink-driving offences to participate in a New South Wales interlock program, but participation is currently voluntary. The offender has a choice to enter the program, which is administered by Roads and Maritime Services, or serve a lengthy licence disqualification period. This voluntary program has been in place since 2003. While the program has helped many individuals to address their drink-driving, participation in the program has been limited to fewer than 5 per cent of high risk offenders.

The low participation rate has limited the ability of the program to achieve broader road safety benefits. This bill will make it mandatory for the court to issue interlock orders to all repeat and serious offenders convicted of an eligible alcohol-related major offence. Eligible offences include any high range prescribed concentration of alcohol [PCA] or refuse to submit to a breath analysis offence that is a first offence, and any PCA, including novice, low, mid or high range offence or refuse to submit to a breath analysis offence that is a second or subsequent alcohol-related offence within a five-year period.

The bill also allows, but does not require, the court to issue interlock orders to persons convicted of dangerous driving offences under section 52A of the Crimes Act. The issue of interlock orders in these circumstances is left to the discretion of the court, as offences under section 52A do not necessarily involve alcohol. The court is in the best position to consider the circumstances of these serious offences and issue an interlock order only if it is relevant and appropriate. All interlock orders will require the offender to serve an initial licence disqualification period where no licence will be available, and then complete a period of interlock participation. The initial licence

disqualification period, where the offender cannot apply for any type of licence, will be shorter than current automatic disqualification periods outlined in the Act.

However, when the initial disqualification and interlock periods are combined, the total period is comparable to, and in most cases longer than, the current licence disqualification period under the Act. Shorter upfront disqualification periods are a key feature of best practice interlock programs internationally, as offenders are enrolled in an interlock program as soon as possible after an offence. These offenders are then prevented from any further offending or unauthorised driving, and there is a timely connection between their offence and the learning process to separate drinking and driving. An offender who is subject to an interlock order may, after completing their initial disqualification, be issued an interlock licence by Roads and Maritime Services. Interlock licence holders may only drive a vehicle with an interlock device installed and are subject to strict interlock program requirements.

Interlock periods outlined in the bill increase in accordance with the severity of the drink-driving offence. Minimum interlock periods prescribed in the bill range from 12 months for low range and novice range repeat offences to 48 months for serious repeat high range offences. A 12-month minimum period is required to ensure all offenders have time to learn how to change their drinking and driving behaviour, which may be entrenched. They must demonstrate this change over a sustained period before moving to a standard licence without the interlock requirement.

The court will have the discretion to order a longer interlock period than the prescribed minimum if warranted by the circumstances of the case. If an offender, following their initial licence disqualification, does not enrol in the interlock program and complete the interlock period ordered by the court they will remain disqualified from holding a licence other than an interlock licence until five years has passed from their conviction. This underlying five-year disqualification is in place to encourage the largest number of offenders to participate in the interlock program and ensure the maximum road safety benefits are achieved for the community.

The bill allows offenders convicted of eligible offences to be exempted from participation in the interlock program in two limited circumstances only. The onus is on the offender to prove to the court's satisfaction at the time of sentencing that an exemption is required. The first circumstance is where the offender has a serious medical condition that means they cannot provide a sufficient breath sample to operate the device and it is not reasonably practicable to alter the device to accommodate use by the offender. Due to the flexible nature of interlock breath test technology, which can operate with very small breath samples, and the experience of other jurisdictions in administering mandatory interlock programs, it is anticipated that very few offenders will have a medical condition severe enough to warrant exemption by the court on medical grounds.

The second circumstance is where the offender does not own or have access to a vehicle in which to install the device. The wording of this provision is important. To seek this exemption an offender should demonstrate not only that they do not own a vehicle but also that they do not have regular access to a shared, family or work vehicle in which the device may be installed. As most offenders have access to the vehicle in which they committed their offence, and analysis by Roads and Maritime Services shows that around two-thirds of licensed offenders have a vehicle registered in

their name at the time of their offence, the number of offenders that are granted this exemption is expected to be comparatively low.

These exemptions are not in place to introduce a way out for offenders, but are intended to allow the court to issue an alternative order in the limited circumstances where it would be clearly and manifestly unfair to order an interlock period. The bill provides that no offender is to be exempted solely because they would find it difficult to pay for interlock services, would be prevented from driving in the course of their employment if the order is made, or the registered operator of the vehicle that the offender has access to objects to the installation of the device. Offenders that are exempted will be subject to the existing, lengthy licence disqualification periods under the Act for their offence, in addition to any other penalty the court may impose.

Additionally, Roads and Maritime Services will require any offender that is exempted and does not demonstrate their separation of drinking and driving through participation in the interlock program to complete a drink driving awareness and rehabilitation course such as the Sober Driver Program. The bill also enables offenders who are initially exempted from the interlock program, but are subsequently able to participate due to a change in circumstances, to apply to Roads and Maritime Services to enter the interlock program. This is intended to ensure the benefits of the program are extended to the greatest possible number of offenders and road safety benefits are maximised under this program.

In these circumstances, Roads and Maritime Services has the authority to convert the disqualification period into the interlock period that the bill imposes for the offence. The provisions have been structured in such a way that no offender will receive advantage in terms of the interlock period required if they enter the interlock program through this avenue. They will be, at best, in the same position as they would have been if they received an interlock order at court. I understand that there may be some concern in the community that offenders who would formerly have been disqualified from holding any licence for a lengthy period will now be able to hold an interlock licence and be back on the road comparatively soon after their offence. This is not about being soft on drink drivers.

I stress that any driver who holds an interlock licence will be monitored by Roads and Maritime Services for the duration of their interlock program. All attempts to start the vehicle and any attempts to interfere with the proper operation of the device are logged by the interlock device, and that data will be monitored by Roads and Maritime Services. Warning letters and referrals for health interventions will be sent to drivers who frequently try to start their vehicle while under the influence. The vehicle itself will not start if alcohol is present. Interlock licence holders will, like novice drivers, be subject to a zero blood alcohol requirement to ensure the complete separation of drinking and driving.

The bill includes amendments to the definition of novice driver to include drivers who hold an interlock drivers licence. In most circumstances the interlock device will prevent drink-driving. However these changes mean that any interlock licence holder who foolishly attempts to drive a vehicle with any alcohol in their system will be charged with a PCA offence and sent straight back to court. Statutory rule-making powers within the Act that were established to implement the

voluntary interlock program and relate to the installation and maintenance of interlock devices, interlock licence conditions, data provision and program requirements, vehicle inspection by the authority and NSW Police, as well as offences related to unauthorised use or tampering with devices, are largely unaffected by the bill.

These provisions will remain in place to enable the development of detailed statutory rules around the mandatory interlock program. Regulatory amendments will be made later in 2014, prior to anticipated commencement of the provisions in February 2015. In addition to ongoing monitoring and strict program requirements, offenders will not automatically qualify for an unrestricted or provisional licence without the interlock condition at the end of their interlock period if they have not demonstrated compliance with program requirements. The bill expressly allows Roads and Maritime Services to refer a driver for a fitness-to-drive assessment at the end of their court-ordered interlock period if the driver has failed to demonstrate the sustained behaviour of separating drinking and driving during the interlock period.

Based on the fitness-to-drive assessment conducted by a medical practitioner, Roads and Maritime Services may decide that it is appropriate for the interlock condition to remain on the driver's licence until such time as any underlying health conditions, such as alcohol dependency, are addressed. This provision is in place to ensure those drivers who are unable to separate drinking and driving, even after a long interlock program, and who may pose a risk to the community are allowed to drive only with the safeguard of an interlock device. Frankly, the community needs to be protected from the trauma and loss caused by drink-driving.

The mandatory interlock program will, like the voluntary program, operate on a user-pays basis and be delivered by third party service providers. The bill enables Roads and Maritime Services to enter into agreements with third party providers to deliver interlock services, including the installation, maintenance and removal of devices. While it is important that offenders are held responsible for any costs arising as a result of their interlock period and their offence, the costs of maintaining a device could be significant, particularly for low-income offenders.

It is important that no offender is excluded from the behavioural change benefit of an interlock program purely because of cost, particularly as the alternative to participation is a lengthy five-year disqualification. For this reason, the Act will continue to include provision for a financial assistance scheme to support program participants who have difficulty paying for interlock services. Financial assistance will include both concession rate fees for eligible card holders and additional limited duration fee subsidy for offenders in severe financial hardship.

As outlined, all Australian jurisdictions have been taking action to introduce or enhance their interlock programs to tackle drink-driving. While these schemes have been developed independently and with considerable variation, it is important that any offender who is subject to an interlock requirement in another State remains subject to that requirement if they move to New South Wales and seek a New South Wales driving licence. The bill enables Roads and Maritime Services to transfer interstate interlock licence holders to the New South Wales mandatory program and to set an appropriate interlock period based on the time ordered and already served in their original home jurisdiction. This is intended to ensure drink-drivers from other jurisdictions are managed strictly but

treated fairly if they move to New South Wales, and to enable Roads and Maritime Services to manage effectively the expected increase in interlock licence transfers as programs grow nationally.

The other provisions of this bill relate to repeat traffic offenders. The Government has heard the call from NRMA Motoring and Services on behalf of its members and all motorists to implement tougher penalties for bad drivers. Persistent risky driving is not acceptable on New South Wales roads and will result in tough penalties. Any unrestricted licence holder who receives a licence suspension under the legislation because they have exceeded their demerit point threshold twice in five years will be required to complete a driver knowledge test before their licence suspension will be lifted. These offenders will also be required to complete a driving awareness course to improve their understanding of traffic law and the road safety implications of their behaviour. It is anticipated that this course will be delivered by not-for-profit community organisations approved by the Department of Police and Justice to deliver the Traffic Offender Intervention Program.

Traffic offender intervention programs have demonstrated their value in reducing re-offending, and are regularly ordered by courts across New South Wales in pre-sentencing for traffic offenders. The cost of the course and testing requirements will be borne by offenders. The measures proposed target offenders who refuse to acknowledge the dangers of drink-driving and other traffic offences to the community. This bill sends a clear road safety message that dangerous driving behaviour is not tolerated on this State's roads. Any drink driver convicted of a high-risk offence must demonstrate that they are capable of separating drinking and driving through an interlock or rehabilitation program before they will be trusted with a standard New South Wales licence. Similarly, repeat traffic offenders must demonstrate knowledge of the road rules before they will be permitted back on the road. I trust that members will lend their support to the bill and I commend it to the House.

Debate adjourned on motion by Ms Anna Watson and set down as an order of the day for a future day.