

ROAD TRANSPORT LEGISLATION AMENDMENT BILL 2008

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Bill introduced on motion by Mr Michael Daley, on behalf of Ms Reba Meagher.**Agreement in Principle****Mr MICHAEL DALEY** (Maroubra—Parliamentary Secretary) [12.26 p.m.]: I move:

That this bill be now agreed to in principle.

The main purposes of the Road Transport Legislation Amendment Bill are to introduce a new penalty regime for novice drivers who commit certain driving offences, to improve the enforcement processes when drivers fail to pay a toll when using a motorway, and to introduce a nationally agreed regime to manage heavy vehicle driver fatigue and speeding compliance. The measures in the bill will further improve the safety of young drivers by building on those already implemented by this Government. I add that the Government is very proud of its record in reducing road fatalities, particularly those involving young people. The provisions in the bill will also improve the enforcement of tolling by extending the period to commence a toll offence prosecution to make it consistent with time limitations in other road transport offences detected by cameras, allowing non-contentious evidence to be tendered into court by a certificate, and to make it easier for a toll operator using camera technology to determine whether a vehicle is driven in contravention of the requirement to pay a toll at the time the vehicle passes the toll collection point.

The Government has consulted widely with the Roads and Traffic Authority, New South Wales Police Force, the Motor Accidents Authority, the New South Wales Parliament's Stay safe committee, the Commission for Children and Young People, the New South Wales Youth Advisory Council, the NRMA and the community on the safety of young drivers. As a consequence of that wide consultation, the Government has done much work and has made the tough decisions needed to improve the safety of novice drivers. The decisions include limitations on the use of certain high-powered vehicles, passenger restrictions, the way P-plate signs are to be displayed and the banning of the use of any form of mobile phone by novice drivers. In addition, on 1 July 2007, following a suggestion from the NRMA, the Government adopted a zero tolerance approach to speeding by P1 drivers.

A P1 driver now faces a minimum three-month licence suspension for any form of speeding. Also forecast were further changes that will see on-the-spot licence suspension and confiscation for speeding in excess of 30 kilometres per hour over the limit. This followed evidence that one in ten P1 drivers between July 2005 and June 2006 were caught speeding in their first year of driving. This is an unacceptable figure, which the zero tolerance approach clearly addresses. The message to young drivers is clear: slow down or lose your licence. Preliminary crash data for 2007 has shown that the initiative is already delivering road safety benefits. Fatal crash involvements of P1 drivers in 2007 declined by 35 per cent compared with 2006.

I turn now to the details in the bill that relate to novice drivers. One of the key elements of the bill is to extend the current licence suspension powers of the police to include certain novice driver offences. Currently, any driver speeding in excess of 45 kilometres per hour above the limit runs the risk of having his or her licence suspended and confiscated by the police at the roadside. The bill sees this power extended to learner or provisional drivers speeding in excess of 30 kilometres per hour above the limit. There can be little argument put forward by a learner or provisional driver that committing this type offence was an unintended mistake. A new and inexperienced driver travelling at this speed is a recipe for disaster.

The bill also extends the police power to include the offence of a learner driver driving unaccompanied by a supervising driver. In New South Wales, as in all other jurisdictions, learner drivers are required by law to drive with a supervising driver who holds a full Australian licence. This is obviously a sensible measure, as it recognises that learners do not have the necessary skills to drive a vehicle on their own—that goes without saying. Learners who drive unaccompanied not only put themselves in danger but also pose a serious threat to all other road users. In fact, it can be argued that a learner who drives unaccompanied should be deemed as driving unlicensed, which can incur penalties of up to \$3,300 and 18 months imprisonment. Unfortunately, the number of learners who were detected driving unaccompanied has increased sharply in recent years, with 5,178 offences recorded over the past year. That is an unacceptable and intolerable number, given that these drivers are supposed to be learning how to drive. In the circumstances, it is appropriate that harsh measures be taken to deter learner drivers from this unacceptable behaviour.

Immediate roadside licence suspension has proven to be an effective contributor to road safety outcomes in New

South Wales. This type of suspension action has a dual effect in that it instantly removes irresponsible and dangerous drivers from our roads, while also creating the incentive for drivers to comply with the road rules to avoid the loss of a licence. The suspension remains in place until the matter is heard in court or the charge is withdrawn. Where the police issue a penalty notice, the suspension remains in place for three months.

To reinforce the danger associated with a learner driver driving unsupervised, the bill proposes that the offence no longer attract demerit points. Instead, an automatic disqualification period of three months will apply with the court being able to disqualify for any other period up to a maximum of 12 months. The court may take into account for the purposes of applying a disqualification period any period already served under the roadside police suspension. Licence holders will still retain the right to appeal the roadside suspension or the court conviction. Adoption of this proposal will fulfil one of the initiatives in the Government's State Plan, which is to combat antisocial behaviour through encouraging responsible driving. The measures are sensible policies that will help to further reduce the road toll and, as importantly, better equip young and novice drivers on our roads.

I turn now to the amendments in the bill relating to tolling. The bill will make minor amendments to the Roads Act. The amendments address the needs of motorway operators for the efficient administration of toll enforcement and prosecution and the need to ensure legislation reflects the nature of technology used for that enforcement in a free-flow electronic toll collection environment. Currently, an "approved toll camera" is defined in the Act as being designed to take a photograph of a vehicle that is "driven in contravention of a requirement to pay a toll". However, in a free-flow toll traffic environment using electronic and automated collection it may be difficult for a toll operator to determine whether a vehicle is driven in contravention of the requirement to pay a toll at the time the vehicle passes the toll collection point.

If a toll operator allows the toll to be paid in another manner, as allowed for by the regulations, there is further delay while the toll operator determines whether the toll has been paid in that manner. In reality, it may only be possible to determine whether a vehicle has failed to pay the toll once the registration details of the vehicle have been matched to e-tag or pass accounts held by the toll operator or an e-tag issuer. If the toll operator determines that a vehicle has been driven in contravention of paying a toll, the photograph of the vehicle is important and reliable evidence. It is therefore proposed to amend the definition so that an approved toll camera is a camera that takes a photograph of a vehicle as it is driven past a toll point. This definition will better align the terms of the definition with the practical demands upon toll operators in a free-flow electronic toll collection environment. The amendments preserve the privacy protection over use and disclosure of information acquired for the purpose of toll collection using an approved toll camera.

The bill will also amend the Roads Act 1993 to extend the period in which criminal proceedings for a toll offence may be commenced from six months to 12 months and to extend the certificate evidence provisions of the Act to provide for certificate evidence of non-contentious matters in toll offence prosecutions. In a free-flow electronic toll collection environment, motorway users may have various options for paying the relevant toll. Some users have the amount deducted from their e-tag or may pay the toll by some other manner permitted by the toll operator. The usual practice of the tollway operator is to send a notice requiring payment for a vehicle that has been detected by a toll camera as having not paid the required toll. Operators may also write a second reminder notice offering time to pay the toll. If there is no response or payment, a penalty notice may be issued.

Giving motorists the opportunity and time to pay a toll ensures that legitimate errors can be rectified, for example, the motorist's e-tag may not have been working. Toll operators permit these methods of payment to support the smooth flow of traffic and overall network efficiency. The toll offence provisions of the Roads (General) Regulation provide that the driver of the vehicle passing the toll collection point is liable for failure to pay a toll. However, unless the actual driver is nominated, the regulation provides that the owner of the vehicle is deemed to be the person responsible. In some cases, for example, commercial passenger and goods vehicles, several nominations may be made because many people regularly drive the vehicle. Each time a different driver is nominated there is a time delay. Extending the time to prosecute from six months to 12 months reduces the opportunity for toll evaders to avoid prosecution by taking advantage of delaying the processing of penalty notices until the time limit to commence proceedings has passed.

The change will also make the time to commence a prosecution of a toll offence consistent with other camera-detected road transport offences. To prosecute a toll offence, a prosecutor must prove such facts as the relevant toll, the tollway and identity of the tollway operator, registered operator of a vehicle and matters that appear in or can be calculated from records relating to vehicles using the tollway. This information is not controversial, but must be tendered in court for the prosecutor to discharge the burden of proof. This results in significantly increased costs and unnecessary complexity in what should be a routine court process.

The introduction of certificate evidence provisions in the Act for toll prosecutions will enable the more efficient conduct of proceedings by providing for certificate evidence of noncontentious matters to be tendered in routine court proceedings for those offences. The provisions allow for such evidence to be prima facie evidence of the matters that are certified, and hence leave open that a defendant may seek to challenge these matters in a prosecution, if they wish. Other changes to the Roads Act 1993 include adding the definition of "toll point" to the Act instead of the current term "toll collection point" that is used in the regulations. As many motorways are now operating with a free-flow traffic environment, use of the term "collection" may cause drivers on these motorways

to pose a road safety risk by slowing down at a collection point, or even stopping.

I turn now to the amendments in the bill relating to heavy vehicle driver fatigue and speeding compliance. The main purpose is to allow regulations to be made to implement national model legislation in New South Wales, which extends the chain of responsibility concept to all parties in the heavy vehicle industry in relation to these important matters. Members will be aware that since the very early 1990s, New South Wales has participated in the national road transport reform process, which is delivered through the National Transport Commission [NTC]. The Government is committed to improving transport productivity, efficiency and safety in a uniform and nationally consistent manner. The National Transport Commission estimates heavy vehicle fatigue-related crashes cost Australia a staggering \$300 million a year. Heavy vehicle speeding is a related problem.

Roadside enforcement provides an essential immediate response but does not target systemic issues where contracts encourage or coerce drivers to break the speed limit. National Transport Commission research indicates that if all heavy vehicles complied with speed limits, a 29 per cent reduction in heavy vehicle crashes could be expected. Because trucks cross State borders, it goes without saying that a national approach to problems such as heavy vehicle driver fatigue and speeding is essential, especially for New South Wales. Some 80 per cent of Australia's long-distance freight travels on New South Wales roads for at least part of its journey. Strong national solutions to problems, such as driver fatigue and speeding, are critical.

The bill will apply the chain of responsibility provisions, which form part of compliance and enforcement amendments introduced in 2005, to all parties in the heavy vehicle industry to manage fatigue. It also adopts concepts from occupational health and safety legislation, such as general and specific duties. Off-road parties in the transport chain must take reasonable steps to prevent the occurrence of an offence. The legislation will provide for shorter standard working hours than currently exist, with longer and more frequent rest breaks for restorative sleep. Longer working hours and greater flexibility also are permitted under the national model legislation, but they are accompanied by accreditation requirements, safety management systems and increased accountability for the operator and other parties in the chain.

The model heavy vehicle driver fatigue legislation is underpinned by a scientific understanding of fatigue with restrictions on the working of night hours and measures to prevent the accumulation of a sleep deficit. Importantly, it also promotes a rigorous systems-based approach to the management of fatigue-based risk. Penalties imposed under the regulations will adopt a risk-based approach to the categorisation of driver fatigue offences. The bill also allows regulations to be made to ensure that certain off-road parties, such as employers and schedulers, take responsibility for ensuring that a driver is not encouraged, or required, to speed.

The bill makes clear the application of occupational health and safety legislation. The provisions of driver fatigue and speed compliance legislation do not affect the operation of occupational health and safety legislation. In addition, when complying with road law would cause a person to contravene an occupational health and safety law, the person is not required to comply with that road law. The bill also provides that where an act or commission is an offence under road law and occupational health and safety legislation, the offender is not liable to be punished twice, which means that there is no double jeopardy. I trust members will lend their unreserved support to the Government's proposals set out in the legislation. I commend the bill to the House.