

Standing Committee on Law and Justice

Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018

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Terms of reference

1. That the Standing Committee on Law and Justice inquire into and report on the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018.
2. That the committee report by 25 September 2018.

The terms of reference were referred to the committee by the Legislative Council 19 September 2018 on recommendation of the Selection of Bills Committee.¹

¹ *Minutes*, NSW Legislative Council, 18 September 2018, p 2917 and 19 September 2018, p 2927.

Committee details

Committee members

| | | |
|-----------------------------------|------------------------|---------------------|
| The Hon Natalie Ward MLC | Liberal Party | <i>Chair</i> |
| The Hon Lynda Voltz MLC | Australian Labor Party | <i>Deputy Chair</i> |
| The Hon David Clarke MLC | Liberal Party | |
| The Hon Trevor Khan MLC | The Nationals | |
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Chair's foreword

The Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 is the second bill to be referred from the Legislative Council's trial Selection of Bills Committee.

This bill amends the *Road Transport Act 2013*, *Roads Act 1993* and other road transport legislation to reflect the New South Wales Government's Road Safety Plan 2021. The amendments include:

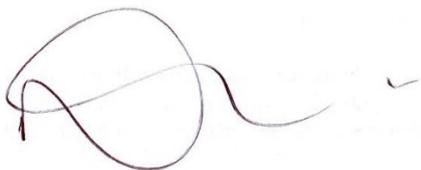
- introducing licence suspension and penalty notices for low range alcohol and drug driving first offences;
- expanding the mandatory alcohol interlock program to include more offences;
- providing for the imposition of vehicle sanctions for certain repeat drink-driving offences; and
- provisions requiring drink and drug driving offenders to complete an education course.

During the short inquiry, the committee considered a number of concerns that were raised by stakeholders relating to these reforms. The committee acknowledges stakeholder concerns raised in this inquiry and notes that there were differing views of inquiry participants on a number of the provisions of the bill.

The committee recommended that the Legislative Council proceed to consider the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 and consider amendments in the committee stage that address stakeholder concerns raised in this inquiry.

On behalf of the committee, I would like to thank all who participated in the inquiry, and who provided submissions and attended the public hearing at such short notice. I would also like to thank the secretariat for their assistance, including Rebecca Main, Sarah Dunn and Lauren Evans, in particularly such time constrained circumstances, the efficiency of team in managing this inquiry has been greatly appreciated.

Finally, I commend the government for its ongoing commitment to improving the safety of our roads by addressing drink and drug driving across New South Wales.



Hon Natalie Ward MLC
Committee Chair

Recommendation

Recommendation 1

17

That the Legislative Council proceed to consider the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 and consider amendments in the committee stage that address stakeholder concerns raised in this inquiry.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 19 September 2018, on recommendation from the Selection of Bills Committee.

The committee received 3 submissions.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions and the hearing transcript.

Chapter 1 Overview

This chapter provides an overview of the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018.

Reference

- 1.1 The Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 was introduced into the Legislative Assembly on 8 August 2018 by the Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight.
- 1.2 The Legislative Council Selection of Bills Committee recommended on 18 September 2018 that the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 be referred to the Standing Committee on Law and Justice for inquiry and report upon the conclusion of the second reading debate but before the question is put; and that the committee report by 25 September 2018.²
- 1.3 On 19 September 2018, the Legislative Council referred the bill to the Standing Committee on Law and Justice on the motion of the Hon Natasha Maclaren-Jones MLC, Chair of the Selection of Bills Committee, of 18 September 2018.³

Background and purpose of the bill

- 1.4 This bill amends the *Road Transport Act 2013*, *Roads Act 1993* and other road transport legislation to reflect the New South Wales Government's Road Safety Plan 2021. The amendments include:
 - introducing licence suspension and penalty notices for low level range alcohol offences and drug presence first offences;
 - expanding the mandatory alcohol interlock program to include more offences;
 - providing for the imposition of vehicle sanctions for certain repeat drink-driving offences; and
 - provisions requiring drink and drug driving offenders to complete an education course.⁴
- 1.5 The Minister for Roads, Maritime and Freight noted in her second reading speech to the Legislative Assembly that the main purpose of the bill is to amend road transport legislation in order to address drink and drug driving behaviour by strengthening penalties and sanctions and enhancing enforcement.⁵

² Selection of Bills Committee, NSW Legislative Council, *Report No. 12 – 18 September 2018* (2018), p 2.

³ *Hansard*, NSW Legislative Council, 19 September 2018, p 33 and 18 September 2018, p11.

⁴ Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018.

⁵ The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, pp 1-2.

- 1.6 The Minister stated that the reforms relate to the *Road Transport Legislation Amendment (Road Safety Act) 2018*, which commenced on 1 July 2018 and introduced tougher penalties for driving under the influence offences, provided new police powers to deal with suspected drug-affected drivers and included cocaine in our roadside drug testing regime. The reforms have their origins in the New South Wales Government's Road Safety Plan 2021, released in February 2018. The plan features targeted initiatives to address key trends, trauma risks and the types of crashes occurring on New South Wales roads, including drink and drug driving.⁶
- 1.7 In the second reading speech the Minister indicated that:
- One of the objectives is to ensure penalties, including licence suspension and fines, are consistently and swiftly applied to low level prescribed of concentration of alcohol, or PCA, and drug presence first offences through licence suspension, coupled with penalty notices. In addition, the bill expands the mandatory alcohol interlock program to include more offences and provides for the imposition of vehicle sanctions for certain repeat drink-driving offences. Lastly, the bill provides that drink-driving and drug-driving offenders may be required to complete an education course.⁷
- 1.8 The Minister also commented that the bill 'takes what we know from experience across Australia and internationally, and enhances our penalty framework with the goal of increasing deterrence and reducing trauma on our roads'.⁸

Overview of the bill's provisions

- 1.9 The objects of the bill, as set out in the explanatory note, are:
- a) to allow for the issue of penalty notices in respect of certain alcohol and other drug related driving offences, while maintaining other relevant sanctions (including licence suspensions) in respect of those offences, and
 - b) to ensure that certain offences that are dealt with by way of penalty notice are included for the purposes of determining whether a new offence is a second or subsequent offence, and
 - c) to increase the maximum penalties for certain alcohol and other drug related driving offences, and
 - d) to permit Roads and Maritime Services (RMS) to require persons convicted of certain alcohol and other drug related driving offences to undertake education

⁶ The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, pp 1-2.

⁷ The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, pp 1-2.

⁸ The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, pp 1-2.

programs and to suspend or cancel any licence held by an offender until the offender has completed the program, and

- e) to expand the definition of drug to include substances that can impair, or deprive a person of, normal mental or physical faculties, and
- f) to create an offence for conduct that results in damage, disruption or obstruction and certain other conduct on the Sydney Harbour Bridge and other major bridges and tunnels.⁹

1.10 Schedule 1 amends the *Road Transport Act 2013* to allow for the issue of penalty notices and licence suspension for certain alcohol and other drug related driving offences, defines 'alcohol or other drug related driving offence' and expands the definition of 'drug' to include substances that can impair, or deprive a person of, normal mental or physical faculties.¹⁰

1.11 The amendments in Schedule 1 also:

- clarify that an offence is, for the purposes of the *Road Transport Act 2013*, taken to have been dealt with by way of penalty notice if the whole or any part of the amount specified in the notice has been paid or the time within which the accused person may elect to have the matter dealt with by the court has lapsed;
- ensures that alcohol and other drug related driving offences that are dealt with by way of penalty notice are considered when determining whether a new conviction is for a second or subsequent offence;
- allow RMS to cancel or suspend, for up to 3 months, the driver licence of a person who has committed an alcohol or other drug related driving offence that was dealt with by way of penalty notice;
- increases the monetary penalties for novice range, special range and low range prescribed concentration of alcohol offences and offences relating to the presence of a drug (other than alcohol) in a person's oral fluid, blood or urine;
- provides that the disqualification period applicable to a person convicted of a major offence is the period specified for a second or subsequent offence if, in the period of 5 years before the conviction, the person committed a major offence and that was dealt with by way of penalty notice;
- extends the mandatory alcohol interlock program to include all middle range prescribed concentration of alcohol offences and offences for the use or attempted use of a vehicle under the influence of alcohol or any other drug (currently, only second or subsequent offences are covered by that program);
- permits RMS to require persons convicted of certain alcohol and other drug related driving offences to undertake education programs and to suspend or cancel any licence held by an offender until the offender has completed the program;

⁹ Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, Explanatory Note, p 1.

¹⁰ Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, Explanatory Note, p 2.

- allows for the issue of immediate licence suspension notices by police officers where a driver has committed an offence relating to novice range, special range or low range prescribed concentration of alcohol; and
- allows for the imposition of sanctions in relation to a vehicle used in the commission of a middle range or high range prescribed concentration of alcohol offence or an offence of refusing to submit to a test or provide a sample if the person has, in the 5 years before the offence, been convicted of an alcohol-related major offence.¹¹

1.12 Schedule 2 amends other legislation including the *Point to Point Transport (Taxi and Hire Vehicles) Regulation 2017*, the *Road Transport (Driver Licensing) Regulation 2017*, and the *Road Transport (General) Regulation 2013* to reflect changes in the *Road Transport Act 2013*. Schedule 2 also amends the *Roads Act 1993* through the inclusion of an offence for trespassing on the Sydney Harbour Bridge and other major bridges and tunnels.¹²

¹¹ Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, Explanatory Note, p 2.

¹² Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018.

Chapter 2 Key issues

This chapter outlines the key issues raised by inquiry participants in relation to the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, namely creating a penalty notice offence and licence suspension for low range alcohol and drug driving and the impact of these changes on recidivism, expanding the mandatory interlock for middle range drink driving offences, broadening the definition of 'drug' and driver education programs.

Penalty notice and licence suspension for low range alcohol and drug driving

- 2.1** Currently, when a driver's roadside breath test indicates a low, novice or special range prescribed range of alcohol (PCA) offence, he or she is arrested for the purposes of breath analysis. If a person then fails a breath analysis test, police issue a court attendance notice for a specified date in the future. Offenders retain their licences and are able to drive until their matter is determined by a court.¹³
- 2.2** The bill introduces a penalty notice (\$561) and a three-month licence suspension for low range, novice range and special range PCA offences and drug presence for first time offences. This means the police can issue a penalty notice and licence suspension at the roadside or at the police station. Also, Roads and Maritime Services (RMS) can subsequently suspend a driver licence if the suspension cannot be imposed by the police for example when awaiting laboratory results for drug presence.¹⁴

Stakeholders views

- 2.3** Armstrong Legal and the Law Society of New South Wales were concerned that the use of penalty notice and suspension for this offence rather than the court would decrease deterrence and potentially increase recidivism rates for drink and drug driving.¹⁵ Armstrong Legal argued that the bill removed the prime catalyst for changing drivers' behaviour:

... attendance at court with the threat of a criminal record, the humiliation and embarrassment of having to collect references and admit criminal conduct; culminating in the experience of appearing before judicial office, is what is necessary to cause offenders to modify their behaviour.¹⁶

- 2.4** Mr John Sutton, Managing Partner, Armstrong Legal was asked to indicate if he was aware of any formal studies that supported this argument:

¹³ The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, p 2. Low range prescribed range of alcohol is from 0.05 up to 0.079 (Submission 3, NSW Government, p 4).

¹⁴ The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, pp 2-3. See Schedule 1, items 3 -7 and 15 – 17 of the bill.

¹⁵ Submission 1, Armstrong Legal, p 1 and Submission 2, The Law Society of New South Wales, p 1.

¹⁶ Submission 1, Armstrong Legal, p 2.

I cannot offer any research at all but, anecdotally, I would refer to the experience in the early 1990s as a prosecutor, and seeing the growth of traffic records from reoffending where people do not change—it is a qualitative-type statement—whereas when people get close to actually losing their licence and they have to appear in court, that is when you see a genuine change.¹⁷

- 2.5** Mr Richard Wilson, Deputy Senior Public Defender and Member of the NSW Bar Association Criminal Law Committee, advised that the legal panel could provide qualitative experience to this effect:

We can give hundreds of years of collective experience, qualitative experience, of people being made to go to court and get the references from their family and employers, stand up and plead guilty in a public court of law. Shame is a huge factor. It is particularly effective for what I would call otherwise functional and law-abiding people, but it is also significant for people in difficulties who may say simply getting a fine and a ticket has a much less serious outcome.¹⁸

- 2.6** Also, Mr Eric Howard, Principal, Strategic Road Safety Advisory Consultancy, Whiting Moyne, was not aware of any such studies and advised that immediate licence suspension was an effective deterrent according to research he was aware of:

The international research, the Australian research, such as it is, is very clear that an immediate roadside suspension of a licence in a system that provides for certainty, consistency, and a penalty that people would not want to experience, the latter point is particularly relevant for specific deterrence. But the other elements—certainty, consistency, celerity—have been shown to have a big impact on general deterrence, such that they affect people who have never been involved in drink-driving offences.¹⁹

- 2.7** The Law Society of New South Wales contended that the automatic licence suspension of three months for this offence 'effectively undermines the court's discretion, because it is likely that if a person court-elects on a penalty notice they will have already served their suspension period by the time the matter is listed in court.' The Law Society stated that the effect of court election should be to stay the process of immediate suspension.²⁰

- 2.8** Armstrong Legal was of a similar view, suggesting '[t]he person will have served their disqualification before a hearing date has occurred and likely served more than 50% if an election is dealt with quickly at Court.' Armstrong Legal continued:

The effect is to substitute a decision of a judicial officer, who brings to bear all their experience and knowledge, for a decision of a police officer, likely acting in accordance with a mandated policy of senior police officers. In circumstances where this offence could be committed as morning after type offences the punishment caused is disproportionate to the offence.²¹

¹⁷ Evidence, Mr John Sutton, Managing Partner, Armstrong Legal, 24 September 2018, uncorrected transcript, p 7.

¹⁸ Evidence, Mr Richard Wilson, Deputy Senior Public Defender and Member of the NSW Bar Association Criminal Law Committee, 24 September 2018, uncorrected transcript, p 6.

¹⁹ Evidence, Mr Eric Howard, Principal, Strategic Road Safety Advisory Consultancy, Whiting Moyne, 24 September 2018, uncorrected transcript, pp 16, 19-20.

²⁰ Submission 2, The Law Society of New South Wales, p 1.

²¹ Submission 1, Armstrong Legal, p 6.

- 2.9** Mr Stephen Lasker, Solicitor in Charge, Parramatta Office, Legal Aid NSW, proposed that the bill be amended so that the licence suspension only commences on payment of the fine, or after the court election period concludes:

It can be alleviated if, rather than the suspension commence immediately, like with a person who pays a fine for an "exceed speed by 30 kilometres an hour", on payment of the penalty the suspension starts. The RMS writes to the person and says, "You are suspended for three months". Or, on the expiration of the period where the person can court elect then the RMS writes to the person and says, "You are suspended for three months." It works for "over 30 kilometre" speed matters. I do not see why it could not work for this. It would alleviate the immediate suspension and the issues of people not having procedural fairness and take the matter to court and argue their individual case.²²

- 2.10** Both Armstrong Legal and the Law Society of New South Wales raised the issue of the high threshold a successful appeal against the suspension would need to meet.²³ Armstrong Legal indicated:

The test for immediate licence suspension is "exceptional circumstances" which is not defined in the legislation but is in case law. The bar is very high. Work reasons are not exceptional in and of themselves. The new legislation imposes the same test and burden for someone who produces a reading of 0.051, no priors, clean traffic record and has a very high need for a licence as it does for a repeat offender who gets caught for a second and subsequent high range or an aggravated dangerous drive GBH [grievous bodily harm].²⁴

- 2.11** The Law Society of New South Wales also proposed that contrary to the NSW Government's view that creating a penalty notice and immediate suspension for this offence will reduce the pressure on courts, '[i]t is likely that that there will be a significant increase in urgent applications for appeals against the licence suspension, resulting in two hearings rather than one.'²⁵

- 2.12** Stakeholders, such as the Mr Doug Humphreys OAM, President, The Law Society of New South Wales, were concerned that licence suspension for this offence will particularly impact on regional and rural areas that lack public transport options and where court is on a part-time basis.²⁶

- 2.13** Ms Nadine Miles, Principal Legal Officer of the Aboriginal Legal Service, also contended that these reforms will disproportionately impact on Aboriginal people, as the top offence for Aboriginal women and third top offence for Aboriginal men relates to traffic and regulation offences respectively, and recommended that the offence remain one that goes to court:

There are ways in which this legislation, and the regime in which it is addressing, will ultimately, I say, have an impact on driving up those figures and will do nothing to reduce them.

²² Evidence, Mr Stephen Lasker, Solicitor in Charge, Parramatta Office, Legal Aid NSW, 24 September 2018, uncorrected transcript, p 13.

²³ Submission 1, Armstrong Legal, p 6 and Submission 2, The Law Society of New South Wales, p 1.

²⁴ Submission 1, Armstrong Legal, p 6.

²⁵ Submission 2, The Law Society of New South Wales, p 2.

²⁶ Submission 2, The Law Society of New South Wales, p 2 and Evidence, Mr Doug Humphreys OAM, President, The Law Society of New South Wales, 24 September 2018, uncorrected transcript, p 4

There are complex ways in which that will be achieved but clearly taking away the ability of the court to engage with an offender and to set an appropriate penalty, based on a person's subjective features and the reasons as to why they have offended, is a significant matter and one which I would urge the Parliament to reconsider.²⁷

2.14 There was debate amongst inquiry participants regarding statistics on recidivism rates in New South Wales and Victoria for low range PCA, quoted in evidence to the committee.²⁸ It was established that there were issues comparing the 29 per cent recidivism rate quoted for Victoria and the 8.1 per cent recidivism rate quoted for New South Wales as the studies involved different penalty frameworks, different periods of time and different measures.²⁹

2.15 The NSW Government provided statistics from a NSW Bureau of Crime Statistics and Research (BOCSAR) study '*Drink-driving and recidivism in NSW*', from 2009. The research identified the proportion and characteristics of offenders who re-offended in the five years following an initial ('index') PCA offence. The relevant statistics in this study are:

The proportion of drink driving offenders who committed a further PCA offence in the five years following their 'index' PCA offence (i.e. the offence that occurred in 2002) was, overall 15.5%.

Offenders with an 'index offence' in low range PCA range were slightly less likely, 15%, compared to the overall 15.5%. However, PCA range, in this study, was not a predictor of reconviction for a further PCA offence.³⁰

Government response

2.16 The NSW Government advised that:

The certainty and swiftness of licence sanction – alongside, greater certainty of being caught, which the NSW Government is delivering through enhanced enforcement by NSW Police – are designed to deter all drivers from taking the risk, and in turn change behaviour and reduce trauma.³¹

2.17 It was indicated by the NSW Government that studies have shown immediate licence suspension to be a more effective deterrent of drink driving than suspensions that are applied later. For example:

Beirness & Beasley showed that immediate roadside suspensions combined with other measures to enhance the certainty and perceived severity of drink-driving sanctions were associated with a substantial reduction in the prevalence of drink-driving. The decreases in drinking and driving were not restricted to specific sub-groups of drivers but were universal across age groups, sex, and communities. This provides the most

²⁷ Evidence, Ms Nadine Miles, Principal Legal Officer, Aboriginal Legal Service, 24 September 2018, uncorrected transcript, p 4.

²⁸ Submission 1, Armstrong Legal, p 1, Mr John Sutton, Managing Partner, Armstrong Legal, 24 September 2018, uncorrected transcript, p 3.

²⁹ Mr Bernard Carlon, Executive Director, Centre for Road Safety, Transport for NSW, Evidence, 24 September 2018, uncorrected transcript, pp 22-23.

³⁰ NSW Government, additional information provided, 24 September 2018, p 1.

³¹ Submission 3, NSW Government, p 9.

compelling evidence for the road safety benefits of immediate licence suspensions, given the finding of a general deterrence effect among drivers, rather than only for specific drivers caught for drink driving.³²

- 2.18** When asked about the expected reduction in crash rate or injury rate if the bill was passed, Mr Bernard Carlon, Executive Director, Centre for Road Safety, Transport for NSW, advised:

From the evidence that we have seen in the research that is available there is a range of impacts. Our circumstances in New South Wales clearly are different. It is a combination. This particular initiative within the Road Safety Plan is combined with the increases that are being proposed and implemented in the plan around increased detection and deterrence by police enforcement. We do not have specific numbers associated with the reductions, but what we can see is the deterrent effect that the licence suspension immediately at the roadside has had from the research around the world and also...³³

- 2.19** Mr Carlon further advised that:

No, but we do have a specific target for the Road Safety Plan of a 30 per cent reduction by 2021.

...

We do not have the specific numbers. We have a general target for the reduction of trauma on our roads.³⁴

- 2.20** In terms of appealing a police decision for this offence, the NSW Government advised that an alleged offender can appeal the police decision and that processes to support court election and appeals are already in place:

Under current provisions, if an appeal is lodged against an immediate suspension (or the primary offence itself is Court elected), the suspension remains in place until the appeal is determined or decision stayed by the Local Court, or the primary offence that was Court elected is determined.³⁵

- 2.21** In relation to stakeholder issues regarding the delay or length of time to get to court, the NSW Government indicated by way of example that '[i]n 2017, 775 appeals were lodged in Local Courts against a Police decision to issue an immediate roadside suspension. The median time it took from lodgement to finalisation was 14 days (average time 23 days).'³⁶

- 2.22** In response to the issue of the impact the proposed reform will have on court matters, the NSW Government advised that the 'primary purpose of the Bill is to reduce fatalities and serious

³² Submission 3, NSW Government, pp 9- 10 (also see Appendix A for synopsis of relevant reviews).

³³ Evidence, Mr Bernard Carlon, Executive Director, Centre for Road Safety, Transport for NSW, 24 September 2018, uncorrected transcript, p 27.

³⁴ Evidence, Mr Bernard Carlon, Executive Director, Centre for Road Safety, Transport for NSW, 24 September 2018, uncorrected transcript, p 27.

³⁵ Submission 3, NSW Government, p 9.

³⁶ Submission 3, NSW Government, p 9.

injuries and deliver enhanced road safety outcomes' where a secondary outcome is the potential effect on Court matters.³⁷

2.23 The NSW Government indicated that it is estimated that lower range drink and drug drive first time offenders currently number more than 13,000 annually, with over 330,000 matters in the Local Court in 2017. It also advised that the number of drug presence first offences is expected to grow over the next three years due to increased enforcement.³⁸

2.24 Mr Paul McKnight, Executive Director, Policy and Reform, Department of Justice, indicted that:

We have assessed the impact on the courts. In the context of the road safety plan overall there are a number of impacts on the courts. Some aspects of the plan, including increased enforcement, will mean more matters come to court, including mid-range and high-range PCA will come to court in a greater number. The penalty notice provisions will take matters out of court. But, there will be a rate of contested matters. On balance, we assess that as reducing the number of matters that will come to court net.³⁹

2.25 When asked to provide further information on the impact on the number of court cases likely to occur due to appealing penalty notices and licence suspension under the new scheme, the NSW Government advised:

As outlined in the NSW Government Submission to the Inquiry, it is estimated that lower range drink and drug drive first time offenders currently number more than 13,000 annually. This represents the pool of offenders who may receive a penalty notice and licence suspension, in lieu of court attendance for the offence.

The actual impact on the number of Court matters will depend on offender response to the reform and the resulting rate and numbers of offenders who elect to have their matter determined in Court or appeal a suspension.

The effect of the reforms will be monitored, including Court outcomes and road safety impacts (see NSW Government Submission, pp. 22-23).⁴⁰

2.26 In addition, the NSW Government highlighted that over the three year period ending June 2017, 56 per cent of low range drink driving first offenders received a non-conviction order in court (section 10). Similarly, 36 per cent of first offences for driving with the presence of an illicit drug resulted in non-conviction.⁴¹

2.27 The NSW Government indicated that the key effect of non-conviction on the application of penalties under the *Road Transport Act 2013* is that a licence sanction (disqualification), which is a proven strategy to address impaired driving, does not apply, and that:

³⁷ Submission 3, NSW Government, p 14.

³⁸ Submission 3, NSW Government, p 14.

³⁹ Evidence, Mr Paul McKnight, Executive Director, Policy and Reform, Department of Justice, 24 September 2018, uncorrected transcript, p 29.

⁴⁰ NSW Government, additional information provided, 24 September 2018, p 4.

⁴¹ Submission 3, NSW Government, p 12. Section 10 of the *Crimes (Sentencing Procedure) Act 1999* enables a court, upon a plea or finding of guilt, to order the dismissal of charges without proceeding to record a conviction. The order can be made with or without conditions.

To deliver ongoing improvements in the penalty framework and consistent with maximising deterrence, the Bill seeks to increase the certainty of a proven road safety countermeasure [licence suspension] as part of a holistic package of reform. This is coupled with increased enforcement.⁴²

2.28 In response to concerns of a high threshold for a successful appeal against the licence suspension, the NSW Government indicated that other offences that lead to licence suspension also require the need to demonstrate 'exceptional circumstances'. Mr Carlon, r, Centre for Road Safety, advised: "That is what this bill provides as well—it does not take away any of those appeal rights in terms of the proposal that has been put forward by the Government."⁴³

2.29 When asked to comment on the NSW Government's consideration of how the bill will impact on Aboriginal communities in particular, Mr Carlon said:

We would hope that this has an impact on the trauma associated with Aboriginal communities as well. In terms of balance, 2.9 per cent of our population is Aboriginal and 4.7 per cent are subject to serious casualty crashes in terms of road trauma. Aboriginal casualties in alcohol-related crashes alone, there were 97 casualty crashes over the last five years. The Aboriginal community clearly are being impacted and over represented in our trauma figures and this is actually aimed specifically at reducing the trauma across the whole of the community but particularly where communities over represent.⁴⁴

Mandatory interlock program for middle range drink driving offences

2.30 Under the current provisions of the *Road Transport Act 1993*, the mandatory alcohol interlock⁴⁵ program applies to offenders who have been convicted of high-range or repeat drink driving offences. The bill amends the Act to include middle range PCA first offences as a mandatory interlock offence. It also amends the Act to include driving under the influence [DUI] first offences where the offence involves alcohol and a motor vehicle.⁴⁶

Stakeholders views

2.31 Armstrong Legal argued that '[t]he new provision is excessive and also does not give any consideration to the nuances in each case (morning after/traffic record, etc)'. They called for the interlock to be at the discretion of the judicial officer and not mandatory. They also

⁴² Submission 3, NSW Government, p 12.

⁴³ Mr Bernard Carlon, Executive Director, Centre for Road Safety, Transport for NSW, Evidence, 24 September 2018, uncorrected transcript, p 24.

⁴⁴ Mr Bernard Carlon, Executive Director, Centre for Road Safety, Transport for NSW, Evidence, 24 September 2018, uncorrected transcript, p 27.

⁴⁵ An interlock is an electronic breath testing device linked to the ignition system of the car, motorcycle or heavy vehicle the offender drives and only permits the vehicle to start if the driver passes a breath test.

⁴⁶ The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, p 4. See Schedule 1, items 10-13 of the bill.

highlighted the practical implications of the reform, including costs involved and access to an interlock service provider:

It costs approximately \$2,220 for installation and maintenance over two years. Furthermore, there are only a limited number of providers who are certified to install and maintain interlock devices. This becomes more of a problem in regional areas.⁴⁷

2.32 The Law Society of New South Wales recommended that as mandatory interlock periods tend to disproportionately impact disadvantaged communities and people who drive for a living, there should be an expansion of the situations where a court can make an interlock exemption order for middle range drink driving offences.⁴⁸

2.33 Mr Lasker of Legal Aid NSW was concerned that these reforms will have a disproportionate impact on vulnerable and disadvantaged people, including Aboriginal people:

In my experience, by far the most common reason that people do not fit an interlock device to their vehicle is the cost, which is about \$2,200 per year for the device. It is simply not sustainable for many vulnerable people in the community. Even if the 35 per cent discount for concession cardholders was distributed evenly across the year it comes down to about \$1,450 for the 12 months, which is 10 per cent of the weekly payment for a person on Newstart with no dependents. It is still somewhat out of reach for people on Newstart and disadvantaged people in the community.

The severe financial hardship assistance scheme can provide up to 100 per cent assistance, but for three months at a time, and the application process will disadvantage people from poor English backgrounds, disadvantaged backgrounds and those who have difficulty navigating the legal system. The mandatory interlock disqualification of five years unintentionally creates a two-tier penalty system—one for those who can afford the interlock device and one for those who cannot.⁴⁹

2.34 Further to this, Mr Lasker advised the committee that if offenders 'do not get the interlock device fitted, whether or not they drive, they then face the mandatory five-year disqualification period.'⁵⁰

Government response

2.35 The NSW Government indicated that expanding exemption provisions is not proposed in the bill. There are current provisions in the *Road Transport Act 2013* which allow the court to make an exemption order, rather than an interlock order if:

- an offender has a medical condition which prevents the offender from providing a breath sample to operate the device, or,

⁴⁷ Submission 1, Armstrong Legal, p 5.

⁴⁸ Submission 2, The Law Society of New South Wales, p 2.

⁴⁹ Evidence, Mr Stephen Lasker, Solicitor in Charge, Parramatta Office, Legal Aid NSW, 24 September 2018, uncorrected transcript, p 2.

⁵⁰ Evidence, Mr Stephen Lasker, Solicitor in Charge, Parramatta Office, Legal Aid NSW, 24 September 2018, uncorrected transcript, p 8.

- if an offender does not have access to a vehicle in which to install a device.⁵¹

2.36 In response to concerns about cost and access, the NSW Government advised that, in New South Wales, there are alternative measures in place to assist offenders to complete their court ordered interlock. Currently, the Act includes an express obligation on RMS to have a financial assistance scheme in place to support offenders to meet the costs of interlock services and accredited providers are required to provide services in country New South Wales.⁵²

2.37 Mr Carlon advised the committee that this proposal aims to reduce road trauma:

... in terms of drink and drug driving is we are currently, over the last three years in particular, seeing no decline in fatalities and serious injuries and the trauma that is impacting the community. As I said, this proposal is about taking another step forward in implementing a change, as we have since 1970, to make a difference to reduction of that trauma based on the evidence that is available.⁵³

2.38 The NSW Government further stated that:

It is also important to note that offenders who are exempted from the interlock program receive disqualification periods that are longer than the upfront off-the-road period if they receive an interlock order. Exempting offenders, for example, on work grounds, may have the perverse outcome of resulting in a person being unable to work for longer than if they returned to licensing with an interlock installed.⁵⁴

Definition of 'drug'

2.39 The bill also includes an amendment to the definition of 'drug' in the *Road Transport Act 1993*. The term 'drug' currently encompasses a broad range of illegal and pharmaceutical drugs and alcohol. The bill amends the definition of 'drug' to include, in addition to the current substances, any other substance that, when taken by an ordinary person, may deprive that person of, or may impair, his or her normal mental or physical faculties.⁵⁵

2.40 This change means that if a driver is detected driving while under the influence of a new type of illegal or pharmaceutical substance and the prosecution can establish that a substance meets this description it will be considered a drug. This change is intended to improve the ability to prosecute and deter impaired driving in the context of a constantly changing drug market. As is currently the case in a driving under the influence charge, evidence will still be required to prove

⁵¹ Submission 3, NSW Government, p 17.

⁵² Submission 3, NSW Government, p 18.

⁵³ Mr Bernard Carlon, Executive Director, Centre for Road Safety, Transport for NSW, Evidence, 24 September 2018, uncorrected transcript, p 25.

⁵⁴ Submission 3, NSW Government, p 18.

⁵⁵ The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, pp 5-6. See Schedule 1, item 2 of the bill.

to the satisfaction of the court that the person charged was under the influence of the substance.⁵⁶

Stakeholders views

- 2.41** Both Armstrong Legal and the Law Society of New South Wales argued that the new definition of drug is too broad.⁵⁷ The Law Society called for it to be deleted from the bill as it is 'broad, vague and imprecise' and 'it does not require any evidentiary connection between the drug test and any negative impact on the ability to drive.'⁵⁸
- 2.42** Armstrong Legal raised concerns that the definition in laws that provide criminal sanctions should be clear. Armstrong Legal argued that:

s.4(1) definition of "drug" is too broad. The word "may" means the conduct captured is so broad as to be meaningless and subject to abuse. A person attending a dentist who has tingling lips, a person who takes Codral, both may be impaired but not such that their driving is affected.

The problem is that any drug may deprive a person of normal mental faculties - indeed that is often the point. Is there a defence? Are physical faculties described?⁵⁹

- 2.43** Some members sought to have this issue addressed by the NSW Government in the hearing.⁶⁰

Government response

- 2.44** The NSW Government advised that it is an offence, under section 112 of the *Road Transport Act 2013*, to drive under the influence of a 'drug' and if a substance is not a listed 'drug' it affects the likelihood of a successful drug driving prosecution, even if the substance is known to impair physical or mental faculties and there are police observations that a person appeared affected when driving.⁶¹
- 2.45** Mr Carlon, Centre for Road Safety, explained that:

This particular reform is focused on having a definition that in fact captures those items, which are either new pharmaceutical drugs that have not been registered on the list at this point or new illicit drugs such as synthetic drugs that have not been previously identified and listed on the register. It means if they are present, having been arrested by a police officer for the purposes of a blood and urine sample, and those levels are put to the court by an expert witness as having been impairing the driver at that point in time, those drugs outside the existing system of the register that are listed would still

⁵⁶ The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, p 6.

⁵⁷ Submission 1, Armstrong Legal, p 4 and Submission 2, The Law Society of New South Wales, p 2.

⁵⁸ Submission 2, The Law Society of New South Wales, pp 2-3.

⁵⁹ Submission 1, Armstrong Legal, p 4.

⁶⁰ Evidence, 24 September 2018, uncorrected transcript, p 26.

⁶¹ Submission 3, NSW Government, p 20.

be able to be prosecuted for in those circumstances. That is a simple change and it is consistent with legislation that already exists in other jurisdictions like Queensland.⁶²

- 2.46** In early 2018, the NSW Government completed a review, with input from stakeholders, to identify appropriate restrictions to balance the need of people taking medication and the safety of the broader community on the road. The NSW Government indicated that:

The review identified an opportunity to enhance the current definition of ‘drug’ to address the risk of driving while affected by new pharmaceuticals, as well as substances that have no medicinal value regularly enter the drug market. With the current provision, drugs can only be added to the definition in the Road Transport Act 2013 by new legislation or regulation. This does not reflect the realities of the modern drug market.⁶³

- 2.47** The NSW Government also advised that the proposed broader definition is similar to broader definitions in road transport law of other jurisdictions, including Queensland, Victoria and Western Australia.⁶⁴

Driver education programs

- 2.48** The bill provides that RMS may require drink and drug driving offenders to complete an education course as prescribed by regulation. If the requirement is not met, RMS may suspend a person's driver licence or refuse to issue one if an application is made.⁶⁵
- 2.49** The bill provides the legislative framework to enhance education requirements for offenders. The Minister for Roads, Maritime and Freight advised that the provisions will commence once an education strategy is developed by Transport for NSW in consultation with the Departments of Health and Justice and that the program will also take into consideration how remote and regional delivery of the programs will be managed.⁶⁶

Stakeholders views

- 2.50** Armstrong Legal raised concern with the potential that administrative delays in either the process of notification for a compulsory driver education program or access to a program could lead to an automatic extension of a suspension of the licence as course completion is necessary before the suspension is lifted.⁶⁷

⁶² Mr Bernard Carlon, Executive Director, Centre for Road Safety, Transport for NSW, Evidence, 24 September 2018, uncorrected transcript, p 24.

⁶³ Submission 3, NSW Government, p 20.

⁶⁴ Submission 3, NSW Government, p 20.

⁶⁵ The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, p 5. See Schedule 1, item 14 of the bill.

⁶⁶ The Hon Melinda Pavey MP, Minister for Roads, Maritime and Freight, Second Reading Speech: Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018, 8 August 2018, p 5.

⁶⁷ Submission 1, Armstrong Legal, pp 2-3.

- 2.51** Mr Wilson of the NSW Bar Association raised the issue of availability of driver education courses:

Experience shows in other areas that often courses are not always available in certain areas—or at all—or you are on a waiting list and this could see a lot of people getting their licence suspension and disqualification periods extended through no fault of their own.⁶⁸

- 2.52** Mr Howard highlighted the positive impact of driver education programs:

...there is no doubt that well-targeted, motivating programs can have a good impact. I think it is very important that effort goes into those and does them well. Yes, I think there is a big place for it. There is evidence that these motivating programs work and we should turn our mind to doing it well.⁶⁹

Government response

- 2.53** The NSW Government advised that the inclusion of education as a component alongside penalties and other sanctions highlights its commitment to holistic reform that reduces reoffending and road trauma. The NSW Government indicated that the strategy to support this reform will aim to pair the right education course to more offenders to maximise the benefits that can be achieved through education.⁷⁰
- 2.54** Further to this, '[c]onsultation and development of the new education strategy will commence in the 2018/19 financial year. Pending finalisation of the strategy, it is expected that the provisions in the Bill will commence in 2019/20.'⁷¹

Committee comment

- 2.55** The committee acknowledges stakeholder concerns raised in this inquiry. The committee notes that there were differing views of inquiry participants on a number of the provisions of the bill as outlined in this chapter. In some instances it appears that more information is required on the potential impact particular changes may have on regional, rural and Aboriginal communities.
- 2.56** The committee notes the concerns raised by stakeholders that changes to driver licence laws and penalty notice regimes may have a disproportionate impact on the Aboriginal community and considers that this is a matter that should be closely monitored following the passage of the bill.
- 2.57** The committee notes the enhancement of the driver education program provisions in the bill and note that the NSW Government will consider stakeholder views in the development of the corresponding strategy.

⁶⁸ Evidence, Mr Richard Wilson, Deputy Senior Public Defender and Member of the NSW Bar Association Criminal Law Committee, 24 September 2018, uncorrected transcript, p 3.

⁶⁹ Evidence, Mr Eric Howard, Principal, Strategic Road Safety Advisory Consultancy, Whiting Moyne, 24 September 2018, uncorrected transcript, p 20.

⁷⁰ Submission 3, NSW Government, p 19.

⁷¹ Submission 3, NSW Government, p 19.

- 2.58** The committee recommends that the Legislative Council proceed to consider the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 and consider amendments in the committee stage that address stakeholder concerns raised in this inquiry.

Recommendation 1

That the Legislative Council proceed to consider the Road Transport Legislation Amendment (Penalties and Other Sanctions) Bill 2018 and consider amendments in the committee stage that address stakeholder concerns raised in this inquiry.

Appendix 1 Submissions

| No | Author |
|----|------------------------------------|
| 1 | Armstrong Legal |
| 2 | The Law Society of New South Wales |
| 3 | NSW Government |

Appendix 2 Witnesses at hearing

| | Name | Position and Organisation |
|---|-----------------------|--|
| 24 September 2018 Jubilee Room, Parliament House | Mr John Sutton | Managing Partner, Accredited Specialist, Criminal Law, Armstrong Legal |
| | Mr Stephen Lasker | Solicitor in charge, Parramatta Office, Legal Aid NSW |
| | Mr Doug Humphreys OAM | Law Society President, The Law Society of New South Wales |
| | Mr Thomas Spohr | Law Society Criminal Law Committee, The Law Society of New South Wales |
| | Mr Richard Wilson | Deputy Senior Public Defender and Member of the NSW Bar Association Criminal Law Committee |
| | Ms Nadine Miles | Principal Legal Officer, Aboriginal Legal Service |
| | Mr Eric Howard | Principal, Strategic Road Safety Advisory Consultancy, Whiting Moyne |
| | Mr Bernard Carlon | Executive Director, Centre for Road Safety, Transport for NSW |
| | Mr Paul McKnight | Executive Director, Policy and Reform, Department of Justice |

Appendix 3 Minutes

Minutes no. 30

19 September 2018

Standing Committee on Law and Justice

Members' Lounge, Parliament House, Sydney, 10.50 am

1. Members present

Ms Ward, Chair

Ms Voltz, Deputy Chair

Mr Clarke

Mr Khan

Mr Mookhey

Mr Shoebridge

2. Inquiry into the Road Transport Legislation Amendment (Penalties and other Sanctions) Bill 2018

2.1 Terms of reference

Committee noted the potential referral on 19 September 2018 of the following terms of reference:

That the Standing Committee on Law and Justice inquire into and report on the provisions of the Road Transport Legislation Amendment (Penalties and other Sanctions) Bill 2018.

2.2 Proposed timeline

Resolved, on the motion of Ms Voltz: That, on the House referring the bill to the committee, the committee commence this inquiry and adopt the following timeline for the administration of the inquiry:

- Monday 24 September 2018 – 2 hour hearing from 11.00am – 1.00pm
- Tuesday 25 September 2018 – Chair's report circulated to committee
- Tuesday 25 September 2018 – report deliberative at 12 noon
- Tuesday 25 September 2018 (afternoon) – table report in accordance with resolution of the House.

2.3 Closing date for submissions

2.4 Resolved, on the motion of Mr Shoebridge: That the closing date for submissions be 12.00 noon, Friday 21 September 2018.

2.5 Stakeholder and witness list

Resolved, on the motion of Mr Kahn: That the following list of stakeholders be invited to make a submission and be invited to appear as witnesses at the hearing on Monday 24 September 2018, and that members have until 4.00pm today to provide additional stakeholders:

- Australian Lawyers Alliance
- Attorney General, Department of Justice
- Aboriginal Legal Service
- Legal Aid NSW
- Law Society of NSW
- NSW Bar Association
- NSW Society of Labor Lawyers
- Transport for NSW (Centre for Road Safety)
- Dr Jeremy Davey, Professor, QUT, has researched the proposed reforms
- Mr Eric Howard, Principal Whiting Moyne, Former head of VicRoads and international road safety consultant

- Professor Barry Watson, Centre for Accident Research and Road Safety (CARRS-Q), QUT
- Mr John Sutton, Armstrong Legal.

Mr Shoebridge tabled correspondence from the Law Society of NSW, dated 13 August 2018, providing the organisation's submission on the bill.

Resolved, on the motion of Mr Shoebridge: That the correspondence from the Law Society of NSW be accepted and published.

2.6 Advertising

The committee noted that the inquiry will be advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

2.7 Conduct of the inquiry

The committee noted the short time frame of the inquiry.

Resolved, on the motion of Mr Shoebridge: That there be no questions on notice taken at the public hearing to be held on 24 September 2018 or supplementary questions from members.

The committee noted that it is proposed that due to the short time frame of the inquiry, the report consist of a couple of pages of analysis and comment, and include the transcript of evidence as an appendix.

3. Adjournment

The committee adjourned at 10.59 am until 11.00am Monday, 24 September 2018.

Rebecca Main
Committee Clerk

Minutes no. 31

24 September 2018

Standing Committee on Law and Justice

Jubilee Room, Parliament House, Sydney, 11.00 am

1. Members present

Ms Ward, *Chair*
Mr Khan
Mr Mookhey
Mr Shoebridge

2. Apologies

Mr Clarke
Ms Voltz

3. Inquiry into the Road Transport Legislation Amendment (Penalties and other Sanctions) Bill 2018

3.1 3.1 Public hearing

Witnesses, the public and media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr John Sutton, Managing Partner, Accredited Specialist – Criminal Law, Armstrong Legal
- Mr Stephen Lasker, Solicitor in Charge, Parramatta Office, Legal Aid NSW
- Mr Doug Humphreys OAM, Law Society President, The Law Society of New South Wales
- Mr Thomas Spohr, Law Society Criminal Law Committee, The Law Society of New South Wales

- Mr Richard Wilson, Deputy Senior Public Defender and Member of the NSW Bar Association Criminal Law Committee
- Ms Nadine Miles, Principal Legal Officer, Aboriginal Legal Service.

Mr Lasker tendered the following document:

- Fact sheet titled "The prevalence of Mandatory Interlock Orders and those serving 5 year disqualification periods", 24 September 2018.

Mr Humphreys tendered the following document:

- S.110(3)(a) – drive with low range PCA – first offence statistics, NSW Local Courts – as at August 2018, Judicial Information Research System.

The evidence concluded and the witnesses withdrew.

Resolved, on the motion of Mr Khan: That the committee accept and publish the following documents tendered during the public hearing:

- Fact sheet titled "The prevalence of Mandatory Interlock Orders and those serving 5 year disqualification periods", 24 September 2018 tendered by Mr Stephen Lasker, Solicitor in Charge, Parramatta Office, Legal Aid NSW
- S.110(3)(a) – drive with low range PCA – first offence statistics, NSW Local Courts – as at August 2018, Judicial Information Research System, tendered by Mr Doug Humphreys OAM, Law Society President, The Law Society of New South Wales.

The following witness was sworn and examined:

- Mr Eric Howard, Principal, Strategic Road Safety Advisory Consultancy, Whiting Moyne.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Bernard Carlon, Executive Director, Centre for Road Safety, Transport for NSW
- Mr Paul McKnight, Executive Director, Policy and Reform, Department of Justice.

Mr McKnight tendered the following document:

- 2014-2017 statistics of average appeal application and completion times, NSW Local Courts.

The evidence concluded and the witness withdrew.

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following document tendered during the public hearing:

- 2014-2017 statistics of average appeal application and completion times, NSW Local Courts, tendered by Mr Paul McKnight, Executive Director, Policy and Reform, Department of Justice.

The public and media withdrew.

The hearing concluded at 1.04 pm.

3.2 3.2 Submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-3.

4. Minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes nos 29 and 30 be confirmed.

5. Correspondence

The committee noted the following items of correspondence:

Sent

- ***

Received:

- ***
- ***
- 19 September 2018 – Email from Mr Lewis Hamilton, President, New South Wales Society of Labor Lawyers, to secretariat, advising that they will not be making a submission to the inquiry
- 20 September 2018 – Email from Professor Barry Watson, Centre for Accident Research and Road Safety, Queensland University of Technology, to secretariat, declining the invitation to attend the public hearing
- 21 September 2018 – Email from Mr Lewis Hamilton, President, New South Wales Society of Labor Lawyers, to secretariat, declining the invitation to attend the public hearing
- 21 September 2018 – Email from Mr Andrew Stone, Australian lawyers Alliance, to secretariat, declining the invitation to provide a submission and attend the public hearing as it's not their area of expertise.

6. Adjournment

The committee adjourned at 1.15 pm, until 12.00 pm, Tuesday 25 September 2018, Members' Lounge, Parliament House (*report deliberative*).

Rebecca Main
Committee Clerk

Draft minutes no. 32

Tuesday 25 September 2018

Standing Committee on Law and Justice

Members' Lounge, Parliament House, Sydney, 12.00 pm

1. Members present

Ms Ward, Chair

Ms Voltz, Deputy Chair

Mr Clarke

Mr Khan

Mr Mookhey

Mr Shoebridge

2. Draft minutes

Resolved, on the motion of Mr Khan: That draft minutes no. 31 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 24 September 2018 – Email from Mr Eric Howard, Principal, Strategic Road Safety Advisory Consultancy, Whiting Moyne, to secretariat, providing additional information to the committee

- 24 September 2018 – Email from Ms Rachel Simpson, Principal Manager, Parliamentary Services, Transport for NSW, to secretariat, providing a response to questions asked during the public hearing on 24 September 2018.

Resolved, on the motion of Mr Khan: That the committee authorise the publication of correspondence from Ms Rachel Simpson, Principal Manager, Parliamentary Services, Transport for NSW, providing a response to questions asked during the public hearing on 24 September 2018.

4. Inquiry into the Road Transport Legislation Amendment (Penalties and other Sanctions) Bill 2018

4.1 Consideration of Chair's draft report

The Chair submitted her draft report entitled *Inquiry into the Road Transport Legislation Amendment (Penalties and other Sanctions) Bill 2018*, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Mookhey: That the following paragraphs be inserted after paragraph 2.17:

'When asked about the expected reduction in crash rate or injury rate if the bill was passed, Mr Bernard Carlon, Executive Director, Centre for Road Safety, Transport for NSW, advised:

From the evidence that we have seen in the research that is available there is a range of impacts. Our circumstances in New South Wales clearly are different. It is a combination. This particular initiative within the Road Safety Plan is combined with the increases that are being proposed and implemented in the plan around increased detection and deterrence by police enforcement. We do not have specific numbers associated with the reductions, but what we can see is the deterrent effect that the licence suspension immediately at the roadside has had from the research around the world and also...

Mr Carlon further advised that:

No, but we do have a specific target for the Road Safety Plan of a 30 per cent reduction by 2021.

...

We do not have the specific numbers. We have a general target for the reduction of trauma on our roads.

[Footnote: Evidence, Mr Bernard Carlon, Executive Director, Centre for Road Safety, Transport for NSW, 24 September 2018, uncorrected transcript, p 27.]'

Resolved, on the motion of Mr Shoebridge: That the following paragraphs be inserted after paragraph 2.40:

'Armstrong Legal raised concerns that the definition in laws that provide criminal sanctions should be clear. Armstrong Legal argued that:

s.4(1) definition of "drug" is too broad. The word "may" means the conduct captured is so broad as to be meaningless and subject to abuse. A person attending a dentist who has tingling lips, a person who takes Codral, both may be impaired but not such that their driving is affected.

The problem is that any drug may deprive a person of normal mental faculties - indeed that is often the point. Is there a defence? Are physical faculties described?

[Footnote: Submission 1, Armstrong Legal, p 4.]

Some members sought to have this issue addressed by the NSW Government in the hearing.

[Footnote: Evidence, 24 September 2018, uncorrected transcript, p 26.]'

Resolved, on the motion of Mr Shoebridge: That the following paragraph be inserted after paragraph 2.51:

'The committee notes the concerns raised by stakeholders that changes to driver licence laws and penalty notice regimes may have a disproportionate impact on the Aboriginal community and considers that this is a matter that should be closely monitored following the passage of the bill.'

Resolved, on the motion of Mr Mookhey: That the paragraph 2.52 be amended by omitting the word 'welcomes' and inserting the word 'notes' instead.

Resolved, on the motion of Mr Khan: That:

- a) The draft report [as amended] be the report of the committee and that the committee present the report to the House;
- b) The transcripts of evidence, submissions, tabled documents, and correspondence relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- e) Dissenting statements be provided to the secretariat by 2pm today;
- f) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- g) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- h) That the report be tabled today (Tuesday 25 September 2018).

4.2 Government response

Resolved, on the motion of Mr Clarke: That the government not provide a response to the committee's report entitled Inquiry into the Road Transport Legislation Amendment (Penalties and other Sanctions) Bill 2018.

5. Adjournment

The committee adjourned at 12.32 pm, until Tuesday 2 October 2018 – 9.20 am Jubilee Room.

Rebecca Main
Committee Clerk