



Speech by

**Hon. Paul Lucas**

**MEMBER FOR LYTTON**

Hansard Thursday, 13 May 2004

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## **TRANSPORT AND OTHER LEGISLATION AMENDMENT BILL**

**Hon. P.T. LUCAS** (Lytton—ALP) (Minister for Transport and Main Roads) (5.50 p.m.), in reply: Before I commence my summing up in relation to the contributions that everybody has made I will first of all table an amended explanatory notes and I will also speak in some detail, for the purposes of the record, with respect to the amendments because they are quite lengthy.

Can I record my thanks to the shadow minister for her cooperation in relation to this matter. It has been much appreciated. Some of the amendments that I will be introducing in committee are minor, including the commencement of the TransLink provisions to coordinate with other regulatory changes. However, there are two sets of amendments in particular that I wish to draw to the attention of the House. One amendment that will go before the committee seeks to simplify the procedure for setting marine speed limits for ships using Queensland waters. This includes validating enforcement action taken against vessel operators who have exceeded speed limits.

There are over 180,000 registered recreational vessels and 5,600 registered commercial vessels in the state. For Queenslanders and visitors to our state it is vital that our waterways are clean and safe. General speed limits for ships in Queensland waters are prescribed in the Transport Operations (Marine Safety) Regulation 1995. The marine environment is an ever-changing one and it is monitored by Maritime Safety Queensland through its regional offices across the state. As conditions change it becomes important to specify speed restrictions for particular areas in a timely fashion. Prior to November 1996 speed limits were set by regulation made by the Governor in Council. This procedure for a permanent or even a temporary alteration of a speed limit proved itself to be too cumbersome to respond swiftly to emergent marine safety issues. Whilst the fundamental purpose for setting of speed limits in the marine environment is very similar to those set for roads, the means for doing so are different. Obviously you cannot place speed restriction signs everywhere a speed limit applies in the water. They need to be set in some other transparent way and that is why they are noted in a public document, the *Government Gazette*, and then published on Maritime Safety Queensland's web site. That is why there is a different rule for roads, rivers, creeks and water. Variations to speed limits are often also advised in notices to mariners.

In November 1996 an amendment was made by the Borbidge government to the Transport Operations (Marine Safety) Act by inserting section 206A to enable speed limits to be set by gazette notice rather than regulation. The Borbidge government clearly made this amendment to streamline the process for making speed limits by vesting power to do so in the chief executive. I doubt that it was intended that these notices be subjected to onerous requirements but by deeming them to be subordinate legislation that was the result.

As subordinate legislation, there is a requirement for each gazettal notice to be drafted by the Office of Parliamentary Counsel and then tabled before this House. Generally gazette notices under the Transport Operations (Marine Safety) Act are not subordinate legislation. This has resulted in an administrative oversight with the procedure for tabling these notices; the result being, with the exception of the two gazette notices I tabled in the House today, the speed limits as gazetted since November 1996 arguably have ceased to have effect. In the interests of marine safety and the environment it is important that these speed limits be validated as a matter of urgency.

A check of departmental records shows that since November 2000 there have been about 1,449 infringement notices issued to people found to be exceeding these posted speed limits. That is not to say, of course, the general rule for speed limits would not have applied in relation to their circumstances either. We do not have that level of data. But there is no doubt that these people were doing the wrong thing and compromising marine safety and the environment. Jeopardising marine safety and the environment cannot be tolerated and the validity of these infringement notices, notwithstanding an administrative oversight, must be affirmed.

It is clear that the setting of speed limits is an administrative function and is best left to the chief executive and general manager of Maritime Safety Queensland to respond to those emergent safety issues. It is obvious that the amendment in November 1996 was meant to expedite the setting of speed limits and the characterisation of these notices as subordinate legislation was unnecessary. The amendment being introduced in committee will validate all speed limits established by gazette notice since November 1996 and will remove subsection 2 of section 206A which makes these notices subordinate legislation.

When I became aware of this problem I immediately sought Crown Law advice as to the most appropriate means of addressing this issue. The amendments before the committee reflect the advice of Crown Law. I thank all honourable members, knowing that they will support any law that is about protecting safety and the environment. This is the intention of the amendment I am about to introduce in committee. It is about making sure safety is paramount and ensuring that people using our waterways are protected from dangerous, irresponsible behaviour.

Although retrospective in effect, the law does not override the rights of any individual. It is important to remember that where infringement notices have been issued the people to whom they were issued were operating in excess of the published speed limits. These limits were determined on the basis of what was safe for that area. All honourable members will agree with me that these amendments are about safety and once the government was advised of this problem it responded quickly and responsibly to address a safety situation.

In particular I want to thank the Hon. Ken Hayward and members of the Scrutiny of Legislation Committee for bringing this matter to my attention. This brings me to the second key amendments I wish to speak in relation to and it involves the very important matter of protecting our children and other more vulnerable members of our community. These amendments encompass legislation controlling and strengthening the screening of public passenger transport drivers and other transport administration related arrangements. These amendments also introduce into the Transport Operations (Passenger Transport) Act the paramount principle of protection of children and other vulnerable members of the community.

The Beattie government is committed to the protection of our children and enhancing community safety. The amendments are the first transport amendments which fundamentally support this government's priority and demonstrate my commitment to this essential fundamental principle of society. The chief executive and appeal courts must observe this principle when making decisions about a person's suitability as a driver of a public passenger transport service. Since 1994 all Queensland public transport drivers have been subject to a number of personal history checks by Queensland Transport before they can drive public passenger services. The personal history checks include criminal, safe driving and medical fitness checks.

Every year Queensland Transport evaluates criminal histories of approximately 16,000 public transport drivers and operators applying for or renewing their driver authorisation or operator accreditation. The criminal history check is based on the disqualifying offences listed in the act. The type of offences screened for include burglary, stealing, drug related, fraud, weapons, assaults, homicides and sexual offences. A person's suitability is assessed according to the seriousness of the offence and the period of time since the offence was committed. Recently a magistrate overturned a decision of the chief executive of Queensland Transport not to grant a driver authorisation to a person who had two convictions for sexual offences against children. While QT was already working to tighten driver authorisation arrangements, the decision I just referred to clearly demonstrates the urgency to amend the legislation in order to reflect community expectations.

An enhanced screening process also complements the government's priority to improving the safety of children. I am seeking approval to amend the act to maximise public confidence in drivers of public passenger services. These amendments relate to a number of specific areas. The disqualifying offences have been restructured to provide a more rigorous screening capability. There will now be three specific categories for disqualifying offences introduced into the act. These are: Category A—these will have a lifetime ban and will not be subject to an appeal process. This category includes a number of serious sexual offences, including specific child related offences such as indecent treatment of children under the age of 16 and those offences of a predatory nature. It is important to note that the chief executive of Queensland Transport will no longer have any discretion in assessing a person's driver authorisation for category a offences; that is, people with these offences will have no right of appeal. While this measure

may appear extreme to some, it is considered that it strikes a balance between the rights of an individual and the public interest, especially the protection of our children and vulnerable members of our community.

These changes are important to maximise public confidence in the driver authorisation system. We cannot run the risk that paedophile behaviour, which is so often seen to be compulsive and continuing, could repeat itself. Recent events have shown that the community supports the exclusion of predatory child sex offenders guilty of heinous crimes from attaining employment in areas where they come into contact with children.

The proposed category A measures will ensure convicted sexual predators are unable to use the legal system to gain or obtain driver authorisation. It will ensure as far as possible that no person with a history of paedophilia or offences of a predatory nature will be permitted to drive any bus, taxi or other public passenger service. While Queensland Transport's existing provisions are very stringent, there are currently a small number of individuals who possess driver authorisations which will now be withdrawn. I make no apology for the toughness of these measures. They are very tough.

Screening for the category B offences replicates the process used by the Commissioner for Children and Young People—that is, the person is deemed to be unsuitable unless they can demonstrate that there are exceptional circumstances which support the issue of the driver authorisation. Offences in this category include those covered by the Commissioner for Children and Young People legislation and other serious offences relevant to Queensland Transport in its assessment process. While these offences are serious, it is not appropriate for people convicted of these offences to be automatically excluded from holding or obtaining driver authorisation.

For example, the offence of unlawful carnal knowledge may occur between a 17-year-old and a 15-year-old in the boyfriend and girlfriend relationship, and they in fact marry. Therefore, discretion is required to take into account the facts of the case when making an assessment of the person's suitability. People with category B offences who are refused driver authorisation or have their driver authorisation cancelled for these offences will have a current Queensland Transport right to review and also then the right to appeal to a Magistrates Court.

More importantly, provision will be made for the Commissioner for Children and Young People to actively play a part in advising my chief executive on whether or not she considers an exceptional case exists. The chief executive must take this advice into account. Furthermore, when the chief executive's decision is questioned by a person and then an appeal court, the commissioner may appear as a party.

Category C covers all remaining disqualifying offences in the act. People with these offences under this category will be assessed using the current Queensland Transport process. However, it should be noted that the guidelines covering these offences have been strengthened. It is not as though people will automatically get a licence. There are waiting periods that the guidelines cover.

The introduction of the new offence category will underpin Queensland Transport's ability to exclude unsuitable people from the passenger transport industry. This will also make it clear to potential drivers in the industry that the Beattie government is serious about establishing very high standards for the drivers within the passenger transport industry.

Members may like to note that while drink-driving offences are not covered in any of the three categories, Queensland Transport carefully scrutinises all driver authorisation applications and renewals for any serious drink-driving and other traffic offences. By strengthening the purpose of driver authorisation, it provides better direction for the decision maker. It will also allow for the delivery of consistent decisions not just by QT officers but others involved in the decision-making process.

In addition, the bill amends the Transport Planning and Coordination Act 1994. This will provide the opportunity for the Children's Commissioner to appear in the Magistrates Court upon an applicant's appeal against a decision not to grant driver authorisation. The commissioner would appear as a separate party to Queensland Transport to represent the children and young people of Queensland.

Another amendment includes the introduction of conditional driver authorisations. This will allow Queensland Transport officers the ability to place conditions on a driver authorisation if the circumstances are such that it is considered appropriate to do so. For example, where a person has been charged with a category B offence but has not yet been convicted, the restriction may require the driver to be supervised or, in the interests of the community, suspended.

As a message to potential drivers in the industry, the bill increases the penalty for driver authority holders who do not notify Queensland Transport of a disqualifying offence. The penalties will be similar to those imposed under the Commissioner for Children and Young People Act. While the amendments will improve QT's ability to exclude unsuitable drivers, Queensland Transport will continue to undertake regular data matching with Queensland police records to identify any person who has notified Queensland Transport of their offences.

The new amendments will provide stronger mechanisms to exclude these drivers. Although the safety of children and other members of the community is of paramount importance to these amendments,

the government is still respecting the right to privacy of drivers. Queensland Transport has a special web site that operators can access to verify whether its drivers have a current driver authority. It is regularly updated. The only information published on the site is the drivers' authority identification number. When an authority is cancelled or suspended the authority number is removed from the site and operators then know how to stop the affected person from driving the bus or taxi. Importantly, the operator has no information as to why the person's authority has been withdrawn, only that it has. In summary, all of these amendments aim to maximise public confidence in drivers of public passenger services.

I will briefly go through the materials raised by members in the debate. The shadow minister, the member for Maroochydore, raised a number of questions. I will deal with those. She asked about the timing of the new network plan. It is proposed to go to public consultation in the second half of this year. There is a 10-year strategic plan, but there will be a three-year rolling plan outlining services, infrastructure improvements and taking into account future growth areas. Linked to our planning documents are an Integrated Regional Transport Plan and Transport 2007. The regional framework for growth management will be developed in conjunction with local governments and operators. TransLink will not be offering concessions for the unemployed as government policy is that that is a matter for the Commonwealth government. It provides unemployment support and it should continue to do that.

The shadow minister asked who has consulted and what 'generally supported' means. Consultation within the industry was positive, though there were some issues with respect to the termination clause, as she would expect. If people have a contract they do not particularly want it terminated. The legislation allows for compensation in relation to that. We accept that that is the case. We hope we will be in a situation where all of the existing operators, if they want to come into the terms that we have in relation to the contract, will be satisfied.

If an operator's contract is terminated or if the operator does not enter into a TransLink contract, the operator may claim compensation. The amount is to be decided by agreement between the chief executive and the holder and, if there is no agreement, then by an arbitrator. The arbitrator may take into account matters prescribed by regulation. Those amendments are currently being drafted. The sort of things that they are likely to take into account are present value, future maintainable profits, future cash flows and relevant risk factors.

The member asked about the mechanism for operators to appeal if they are not offered a contract or if they are not happy with the compensation offered. If the operator is not happy with the compensation offered the chief executive and operator are to appoint an arbitrator. There are matters that will be prescribed in the legislation that the arbitrator may or may not take into account, as I mentioned before.

She asked what the implications are for services further down the track. There are many challenges facing south-east Queensland, including a rapidly growing population, a changing population and work force, the population's choice of mode and limited funding. The network plan will link a number of planning documents, which I indicated before, and will therefore play a key role in developing an integrated approach. The network plan will outline how the public transport network will support agreed patterns of regional development, outline TransLink's policy relating to service standards, outline the program of the infrastructure and service enhancement over the next three years and indicate how the public transport network is likely to develop over the next 10 years.

To provide a public passenger transport service in a TransLink area a person must either have a TransLink service contract or a written agreement with the chief executive or with the chief executive's approval a written agreement with the holder of a TransLink service contract. That would be a subcontractor situation, I presume. If they do interfere with TransLink services they will be penalised up to 160 penalty units.

The Brisbane transport contract is the same contract as private operators have. It may be shorter if the BCC wants a shorter contract. It might want to see how it performs under the new system. Our preferred length is 10 years to guarantee stability. There are some differences, though, because the Brisbane City Council, to give it credit, does contribute to the cost of provision of public transport services.

The member asked how it interfaces with the Rehabilitation of Offenders Act. It overrides the Rehabilitation of Offenders Act. It is simple as simple as that. However, not talking about category A offences, but obviously with the effluxion of time that is often a factor in deciding whether exceptional circumstances exist or, indeed, whether the chief executive officer's discretion would be exercised.

She also asked about overseas offences. To get driver authorisation one must have residency status. The Department of Immigration performs vigorous tests. That covers offences from their country of origin or places that they have lived for 12 months or more. They must have a current Queensland driver's licence. We essentially rely on the federal government for that checking process. They do not typically allow serious offenders into the country. From July 2004, through Crimtrac, a national criminal history check through QPS will be done automatically. It will not be done manually.

Mental health patients and referrals is a very good question to raise. It is significantly bigger than this issue. There is no automatic psyche assessment done on paedophile charges. They are done by the Department of Corrective Services. If someone has not been charged, we do not have a criminal history. The Children's Commissioner may not know, either. We can request a medical certificate at any time if we have any complaint or issue. We do have general powers so that if someone is unsuitable in their conduct we are able to not issue them with a driver's authorisation. I think that is an excellent point and something that we will need to address further.

Shared paths and some examples of conflict and how this clarification will fix the problem was also raised. Apparently, the Cairns council first raised it with us, but, as the member for Chermerside said, increasingly people go quickly on paths and they can hit a child and seriously injure them. I will not name the individual involved, but a certain individual in local government in Queensland thought they knew about children using bikes. I have four children who use bikes. They thought that it was not child friendly to ban bikes from central business districts of places such as Wynnum. I think that is totally appropriate because I have many complaints from elderly people getting knocked off their bikes by 13-year-old kids being silly. They should dismount their bike, as my children do, when in the central business district and either ride it on the road or wheel it on the footpath.

**Miss Simpson:** Do you ride better than the previous transport minister?

**Mr LUCAS:** He was very fit. I will not comment on my predecessor other than to say that he did a very good job.

The member for Gladstone raised the issue of how the new provisions deal with a pattern of behaviour rather than a situation where a conviction is recorded. I answered that a little earlier. If we have a series of charges, we can see these and the Children's Commissioner has access to that information as well.

She asked why we do not just adopt the blue card. The Premier indicated that, on a whole-of-government basis, we are looking at that, but in fact the legislation is tougher than it, even though in reality the Children's Commissioner would probably not issue a blue card for people in a situation where we have a mandatory prohibition. It is probably a practice that is as tough, but in law it is tougher. The difficulty is that when the Children's Commissioner looks at blue cards, she looks at child safety issues. We have to look broader than that. We look at road safety issues as well. One could be a horrific driver but be a wonderful parent or football coach. There would be no reason why they would necessarily be excluded from contact with children, but we would not want them to be driving anyone anywhere.

In relation to specific contributions by members, I thank the member for Maroochydore for her contribution. The integrated ticketing challenge is one that has been outstanding in Queensland for a while. However, I remind the honourable member that compared to, say, Sydney or Perth where the one operator owns buses, ferries and trains, we have many private sector operators and the council, so it is a fair bit more difficult to do here. I have mentioned the other issues that she raised.

The member for Mount Coot-tha spoke about encouraging the use of corridors for development and improved train stations, particularly the Milton train station. The member for Mount Ommaney spoke about the importance of public transport in her electorate. The member for Yeerongpilly spoke about the problems of out-of-Brisbane buses not being able to pick up passengers in the Brisbane area and rationalising revenue collection. I point out that our rail revenue protection officers will have general TransLink powers, and it will be well accepted by people on buses that the rail officers will now be TransLink officers and will be able to operate there as well.

The member for Thuringowa spoke about the importance of transport in north Queensland, and public transport in particular. He spoke about the federal government lack of funding for roads and the deregulation of regulated parking. The member for Gladstone spoke on the importance of the government dealing with the paedophilia issue and supported our foreshadowed amendments and the differing categories of behaviour.

The member for Kurwongbah spoke about integrated ticketing and convenience, and the particular issues for people in outer metropolitan areas who, in many respects, have the most to gain from TransLink. The member for Nudgee spoke about the challenge to improve patronage on public transport and the role of governments in getting value for money in the provision of public transport.

The member for Algester spoke about the Brisbane urban corridor and road issues, integrated ticketing and TransLink. If I had the time tonight, I would speak in a little more detail about the hypocrisy of the federal member for Moreton and the total dereliction of the federal government in funding roads in the recent budget, but I do not have the time to do that. Perhaps out of the \$450 million they have allocated to rail, they might allow her some money towards the interstate rail crossing in her electorate.

The member for Mirani spoke about road issues, the National Highway and flood proofing which, again, the federal government needs to fix. He spoke about fatigue areas and overtaking lanes on the National Highway and waiting for appointments for machinery inspections. We make no apology for

making people book only one at a time. Multiple bookings cost the taxpayer money and we cannot allow that.

The member for Springwood is a strong bus and public transport supporter and a supporter of TransLink. The member for Mundingburra indicated her disappointment with the lack of an eastern corridor, stage 2 port access in the road and flooding on the National Highway. She also spoke of a very interesting public transport initiative in Townsville. I remind her of the Smart Transport initiative that I referred to when I was in the Townsville Community Cabinet recently.

The member for Redlands spoke about national buses in his electorate not being able to pick up people in Brisbane when they are coming through, which is bad for people in Brisbane and is bad for business for National Transport as well. He spoke of the new advantages under TransLink and he spoke on the paedophile provisions as a former police officer.

In a very lengthy discourse, the member for Moggill spoke about local roads issues and rail freight. I remind the member that we have spent a lot of money in his electorate: \$600,000 to complete miscellaneous works on the Western Arterial Road by 2004-05; \$1.236 million to complete two projects in 2003-04 to install traffic management devices on the western Arterial between Miskin Street and the Ipswich Motorway; \$1.3 million towards duplicating Moggill Road from two to four lanes between Kilkivan Avenue and Pullenvale at an estimated cost of \$16.280 million; \$154,000 through 2003-04 to complete improvements on Moggill Road at the intersection of Brookfield and Kenmore roads; \$685,000 in 2003-04 to complete asphalt resurfacing on the Mount Crosby Road between Flaggy Creek and Moggill Road; and almost \$2.8 million to complete a \$9.6 million project to extend the Toowong bikeway by 2004-05. Therefore, he has done pretty well. We will continue to do a good job for him as with the rest of Queensland.

The member for Ferny Grove spoke about the rail line in his electorate and the Ferny Grove station, and his engagement with the community in terms of their attitude. I worked with him recently in relation to a number of Ferny Grove train station issues. The member for Woodridge spoke about issues in public transport, which is again a critical issue in Woodridge. It is an area not well served by public transport for people who might need to get to various parts of Brisbane.

**Mrs Desley Scott:** The Blue Dash shuttle.

**Mr LUCAS:** She spoke passionately about the Blue Dash shuttle, as she does.

The member for Hinchinbrook spoke about problems with flooding on the National Highway. I remind him that it is important that we remind the federal government that there is a road network outside south-east Australia. I will continue to do that.

For the benefit of the member for Moggill, I point out that the average state government spend on roads during the Borbidge years was \$951 million. Under the Beattie government it is \$1.048 billion, and wait for the budget. He has not seen anything yet.

The member for Pumicestone indicated the input of the federal member of parliament into the Ningi road situation. It is ironic that she did that, because he is more than happy to talk about every state issue but will not deliver any money for federal roads in that area. If he wants to help with Ningi, I would gladly accept some federal government money as well.

The member for Bundamba and the member for Ipswich spoke about the parlous state of the Ipswich Motorway. Despite Senator Campbell foreshadowing that he was going to do something about the roads a few weeks ago in the *Courier-Mail* there was no money in the budget to do it. The member for Ipswich said how all state MPs, both Labor and Liberal, the Ipswich council and the Brisbane City Council are in favour of the six-laning of the Ipswich Motorway, but Cameron Thompson is not. It must be intoxicating to think that one is right and everyone else is wrong.

The member for Charters Towers raised in good faith a number of road issues in his electorate. I will respond to him in more detail about that, but I should say that in 2003-04 we allowed \$520,000 to pave and seal two projects on the Kennedy developmental road between Hughenden and The Lynd at Dutton River. Next year we will provide \$257,000 to form a section on the Kennedy developmental road between The Lynd and Hughenden. I will respond in more detail to that.

The member for Toowoomba North raised a number of road issues in his electorate. He is a strong supporter of the second range crossing. For the federal member to suggest that we ought to pay for it is just a joke. A sum of \$580 million has been estimated for the second range crossing of Toowoomba and it is a very important project, but it is a federal government responsibility. We will work with them to do that. The only money that they actually allowed us in this budget was money we already knew was going to come and that was for some hardship acquisitions. It is about time that he did something about it. The member for Toowoomba North correctly identified that the Ipswich Motorway is a clear issue for people in Toowoomba, because they have to travel via the Ipswich Motorway to get to Toowoomba.

The member for Mansfield is the No. 1 bus ticket holder for the South East Busway. He is very excited about TransLink and also spoke about the Brisbane urban corridor. Despite a lot of talk about it, the federal member for Moreton has done nothing. He has a real chance to put up the issues and get the money for the Brisbane urban corridor and remove the toll from the Logan Motorway, but what have they done? Nothing! He has failed the people there.

The member for Chermside spoke about local government parking fees and the need for that to be set by resolution of local government. He also spoke about bicycles and shared pathways, and I raised that issue before. Finally, the member for Nanango spoke about the lack of public transport in her area. I think a real challenge for us in regional Queensland is to look at what we can do in smaller communities to assist them in better structuring public transport. A classic example is Mount Tamborine. Their bus service faltered because a school was built there and therefore it was no longer viable to bus people away. By working with the cab company, we have been able to pilot a shared cab service for people in the area. That might be the sort of future in public transport for people in smaller communities. She also spoke about overtaking lanes on the D'Aguillar Highway. I commend the bill to the House.