



Speech by

**Fiona Simpson**

**MEMBER FOR MAROOCHYDORE**

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

**Ms SIMPSON** (Maroochydore—LNP) (12.43 pm): In rising to speak to the Transport and Other Legislation Amendment Bill 2009, I acknowledge that this is an omnibus bill which will amend a number of provisions across various acts. The acts to be specifically amended include the Maritime Safety Queensland Act 2002, the Transport Infrastructure Act 1994, Transport Operations (Marine Safety) Act 1994, Transport Operations (Passenger Transport) Act 1994 and the regulation under that act, the Transport Operations (Road Use Management) Act, the Transport Planning and Coordination Act 1994, and the Transport Security (Counter-Terrorism) Act 2008 for particular purposes, as well as making other consequential and minor amendments in the schedule.

This omnibus bills includes diverse provisions. They seek to amend child related crime provisions for drivers of public passenger vehicles as well as protection of transport infrastructure for inappropriate development. The power to suspend or cancel taxi licences will be extended. It also expands transport inspectors' powers to high-occupancy vehicle lanes as well as giving power to direct masters of ships and port infrastructure in exceptional circumstances in the public interest.

The LNP will be supporting this bill, but we have some serious reservations about the impact of some of the provisions proposed by the government in this bill. In speaking to child related crimes specifically for public passenger vehicle drivers, I note that this section modifies the transport provisions preventing people convicted of particular crimes from receiving an authorisation to drive a public passenger vehicle. The proposed change will allow people who, when young, committed a child sex offence against a person of comparable age and who have not reoffended to apply for exceptional circumstances consideration by the chief executive to issue a public passenger vehicle licence. It is foreshadowed that such exceptional circumstances would apply to such cases as where a 17-year-old had a sexual relationship with an under-age person, for example, a 15-year-old girlfriend, and who has not reoffended since. In such cases it may be found that the applicant is not at risk of reoffending and exceptional circumstances can be found.

Under the rules as established by the bill before the House, the chief executive must take any advice of the Commissioner for Children and Young People and Child Guardian into account. It is the LNP's position that this is not strong enough. There is no obligation on the chief executive to consult the Commissioner for Children and Young People and Child Guardian and, if the commissioner recommends that exceptional circumstances should not be granted, there is no obligation on the chief executive to take this advice; only that this advice should be taken into account.

Having consulted with experts in child safety, the LNP believes the safeguards must be stronger. I will be moving amendments during consideration in detail to address our concerns. These amendments have two aims—firstly, they require that the chief executive must consult with the Commissioner for Children and Young People and Child Guardian on whether there is a case for exceptional circumstances and, secondly, if the commissioner's advice is that exceptional circumstances should not be granted, the chief executive must take the Commissioner for Children and Young People and Child Guardian's advice. If the commissioner does not provided advice on this matter or the advice is that there is a case for exceptional circumstances, the discretion for the decision remains with the chief executive.

As the government is advised that there is only an extremely small number of cases where exceptional circumstances may apply, this provision will not add unduly to the commissioner's workload. The commissioner has skills, knowledge and access to make an informed decision on such matters. It is vital we do not allow watering down of our requirements on this issue by default. Queensland currently has some of the strictest rules in Australia.

On a broader matter, I would ask that the minister give an absolute commitment that, in the moves underway towards a national licensing scheme, our strict rules will not be impacted. Other states have much less stringent rules providing public passenger driver licences to child sex offenders. Will the minister state unequivocally that the national process will not lessen the standards in Queensland?

In addressing the issue of transport infrastructure and inappropriate development, we note that the provisions of this legislation are seeking to provide recognition particularly of prior use and to ensure that transport infrastructure's uses are not compromised by inappropriate development in the vicinity. Transport infrastructure is critical for our society. I was advised during the government briefing on the bill that the reason for this amendment is unfortunately partly due to the removal of the concept of a social good under beneficial assets by the EPA. Public transport has been considered a social good under this rule. Obviously, that is no longer the case. This left public transport with no power to ensure inappropriate development did not occur.

In addition, a recent court case brought into question whether controls around airports were legitimate. Even more concerning, ports and rail freight infrastructure currently have no protection from inappropriate development. As a result, unsuspecting potential residents are not guaranteed their dwellings will be built in a way that is appropriate to the location.

The LNP welcomes the provisions in this bill forming the head of power for the transport department to impose requirements and restrictions on new developments near transport infrastructure, including ports, airports, rail freight and public transport activities, to protect the public interest. We recognise that, in many ways, this is only a step in the process. We also note that this legislation does not include roads which fall under the jurisdiction of Main Roads and that provisions already apply under its jurisdiction.

I seek from the minister clarification of what protections exist in this bill for truck freight facilities and similarly for rail freight facilities. Freight is vital. Without an efficient freight network that is flexible our society would grind to a halt. Both trucks and trains are critical in this network as are their freight terminals. It is an important role of government to minimise the impact of any nimby syndrome. Clarification of this matter would be appreciated.

The provisions in this bill are consistent with the principle of protecting prior use for the effectiveness of our transport assets. Importantly, the inclusion of ports can be seen as an admission that the LNP's position on the Townsville cruise terminal development and the need to protect prior use rights was correct. The Labor Party bagged us for raising concerns about the residential component of the proposed development being located so closely to the Townsville port and the potential to compromise the activities of that port which are so vital for the economic development of the region and Queensland. We saw the concerns about the lack of protection around that port even when the development had state government involvement. I welcome these provisions and certainly hope to see the provisions clearly outlined to provide protection for prior uses such as ports because we cannot allow them to be comprised due to inappropriate development beside them.

I also welcome the clearer statement of the ability to protect our flight paths leading into airports as essential to avoid the impacts of curfews on our airports while also protecting the standard of living of those residents in surrounding areas. While the LNP supports this provision we would also like to raise concerns that the resulting encumbrances should appear on land titles, not just in planning schemes. Increasingly, planning schemes are extremely complex. It is very difficult for someone who is even very skilled to be able to access detail as to where the potential footprints of these encumbrances may be. I understand that this legislation provides the head of power in that regard and that there will be further work done with the Department of Infrastructure and Planning as to how the guidelines will be rolled out. I would ask that the minister and her colleagues take on board the need for instruments with regard to title to be more transparent. I know that it has been a bit ad hoc in our state. Sometimes things will appear on rates notices but not on any of the search instruments.

I want to address the issue of the power to suspend or cancel taxi licences and the extension that is proposed in this bill. The LNP supports the ability of Queensland Transport to impose an appropriate taxi industry security levy on taxis using secure ranks. We understand this has wide support, has been done with consultation and is effective. The current levy is \$324. I believe that this is fixed to inflation.

Our concern with the provisions in this bill is that they are an unnecessarily draconian extension of power. There is the potential to cancel a licence if such a security levy is not paid. I have been advised in the briefing that very few operators have not paid the levy. Of the 2,900 licences, in the first year there were seven nonpayments and three still outstanding. Last year there were six nonpayments and four were still

outstanding. Around seven in 6,000 nonpayments totalling \$2,000 out of around \$2¼ million does not appear to be a major problem. There are mechanisms in place to pursue the recovery of those funds.

I understand that Queensland Transport is frustrated by delays in recovering this levy as are so many users of the debt recovery system. That system needs to be reformed rather than creating a head of power just for Queensland Transport to recover a levy from a few taxi operators. Seeking a change so that they cancel or suspend a taxi licence for nonpayment instead of pursuing the licence holder through the court system is the equivalent of using a sledgehammer on a peanut. Existing similar provisions allow the cancellation for not paying the taxi licence or committing a disqualifying offence which is much more serious. Cancelling a \$300,000 to \$400,000 licence for a \$300-plus levy payment is disproportionate. Thus we have serious reservations about this provision.

I want to move now to another provision in the legislation which has been quite contentious—that is, the extension of the powers of transport inspectors to high-occupancy vehicle lanes. The government is intending to trial the use of transport inspectors to police high-occupancy vehicle lanes next year. The amendments in this bill will allow transport inspectors to stop vehicles breaching Queensland road rules in relation to high-occupancy vehicle lanes and require the person to state their name and address and produce a driver's licence if they believe they have committed an offence.

Only South-East Queensland has high-occupancy vehicle lanes consisting of 70 lanes of varying lengths totalling 68 kilometres. This amendment will expire on 31 March 2011, with the ability to extend it to 31 March 2012 if the trial has not concluded. In addition, this extends the time transport officers can pull vehicles over to between 6 am and 7 pm on business days instead of the current dawn until dusk provision.

The LNP has strong reservations about these provisions on a number of grounds and we will be opposing them. We are concerned about the lack of appropriate resourcing for this trial. We are also concerned about the move to extend the brief of transport officers beyond that of road safety and into enforcement of a provision which could be seen by some as revenue raising and enforcement of congestion measures rather than road safety.

At a time when we should be really focusing on road safety I think that is a genuine concern. There are only around 170 transport inspectors in Queensland, 79 of whom are based in South-East Queensland. I understand from the briefing that there is no intention to expand the number of transport inspectors to cater for this trial. Transport inspectors fill a critical safety role but to ask officers to take on more work to manage the government's congestion failures with no more resources will necessarily impact on their wider safety duties. We are opposing this section due to the lack of appropriate resourcing for transport inspectors.

There is also a concern with regard to the time extension beyond dusk. The move to expand the dawn until dusk operations of transport officers to 6 am until 7 pm means transport operators will be operating in the dark and at the most dangerous part of the day—that is, soon after dusk—most if not all of the year. Under these provisions they will have the power to pull people over in high-occupancy vehicle lanes.

I am not convinced that this provision will appropriately support the safety outcome required. In addition, there have been strong concerns raised by people publicly about the stopping of drivers in uncertain light by non-police officers and how this will be perceived by people driving. Currently after dusk transport officers must be accompanied by police. I took this issue up in public forums and I also raised it in the public forum of Facebook to see what people's feedback was. I received quite extraordinary feedback. I will read some of those comments into *Hansard*. One man said—

Not on your life. I definitely would not be keen on my wife driving home to be pulled over. I doubt the ALP has thought this through.

Others were concerned about transport officers not being as easily recognised as police officers for having these powers. One woman commented—

No way. Surely they have not thought this through. What about the safety of women and children. There is no way that I would stop and what would they do if someone doesn't stop?

Sitting suspended from 1.00 pm to 2.30 pm.

**Ms SIMPSON:** I want to put on the record more comments and feedback I have received from members of the public with regard to concerns about people who are not police officers pulling them over, particularly at night. The current law provides that transport officers have to have police with them to pull people over at night. The provisions in the legislation before the House extend the powers of transport officers in that they are able to pull people over in high-occupancy vehicle lanes after sunset. This has caused concern for some motorists, as many people do not necessarily know the difference between vehicles that might have flashing lights but which are not police vehicles and whether they truly are who they are supposed to be. This was a concern when the legislation was originally introduced into the

parliament for transport officers, but the provision for having police present with them at night continued to be on the statute books.

A comment from one gentleman was that he did not mind under certain conditions so long as transport inspectors—

... continue to wear their uniform of ID and drive marked vehicles with the distinct flashing lights then I have no problem, but I thought the enforcement of the traffic act was the jurisdiction of the police. Transport are there to ensure the transport laws are enforced—load limits, public transport et cetera, including taxis.

Another woman commented—

I read in an email where people are putting flashing lights on their cars and pulling in behind lone females and then pretending they were police. Once they pulled you over, bam! There you were another missing person. No way! Is it true that you're allowed to keep driving until you reach a service station or a police station or somewhere safe before you pull over? If it truly is the police, would they frown on you for doing that?

Another comment was—

I would certainly hesitate before pulling over if they were not the police.

This is obviously a matter of concern to a number of members of the public as to people who have the power to pull them over who are not the police, but I think this issue is exacerbated at night-time when people may not be as aware of transport officers and their powers and being able to see who is actually performing those particular functions.

I also want to read into the record of the House the concerns of the RACQ, which was concerned about transport officers being called away from their core duties which are predominantly for safety issues. The RACQ's press release states—

Transport inspectors should concentrate on vehicle safety. The RACQ wants to see more transport inspectors enforcing motor vehicle safety standards rather than policing transit lanes.

The state's peak motoring body says—

Enforcing minimal vehicle occupancy numbers in transit lanes should not compromise helping to ensure that cars and trucks are safe enough to be on the road in the first place.

The RACQ's general manager for external relations, Gary Fites, said—

The state government's thin gray line of transport inspectors was already struggling to conduct sufficient roadside roadworthiness checks to deter those motorists who did not maintain their vehicles to basic safety standards.

He continued—

An RACQ online poll earlier this year revealing 76 per cent of respondents had not seen a roadside safety check in the past year is a fairly fair reflection of the lack of frequency and profile of such operations. While vehicle defects are seldom a major cause of crashes, their combination with driver error or poor road safety conditions can certainly influence the degree and severity of crashes.

There were also concerns expressed from some in the union movement once again about the lack of transport officers and the fact that this provision in this bill is going to be pulling them away from their primary duties. We know that transport officers have duties particularly with regard to heavy vehicles and enforcement of these provisions. Heavy vehicle provisions with regard to fatigue management are extremely critical, as are the loads that people carry on their vehicles and ensuring that they are safe and operating within the law. Transport officers have a range of these duties, and they should be predominantly about ensuring the safety of vehicles and road safety issues rather than having their very thin numbers spread further in duties which are not predominantly associated with road safety issues. That is the reason we will not be supporting these provisions in this bill, because it is pulling these officers who are already underresourced away from those primary duties which should be focused on road safety issues.

I want to address another aspect of this legislation which allows for the power to direct masters of ships and port infrastructure in exceptional circumstances. This bill gives the general manager of Maritime Safety Queensland the power to direct the master of a ship to operate the ship in a certain way and to require the owner-operator of infrastructure to accept a ship. It is understood that these amendments stem from the *Pacific Dawn* incident involving a case of H1N1, swine flu. During this episode it was determined that no power existed to direct masters of ships to dock or otherwise act as directed in the public interest. Likewise, there was no power for a port to be directed to accept and accommodate the *Pacific Dawn*. I note that this power is only to be used in exceptional circumstances and in the public interest. Examples given are a contagious disease shipboard and a natural disaster whereby facilitating the off-loading of equipment or materials from a ship would assist the community. I seek clarification from the minister. Firstly, will the minister undertake that the interpretation of 'exceptional circumstances' and 'in the public interest' will be construed narrowly?

**Madam DEPUTY SPEAKER** (Ms Farmer): I think we can leave those questions until we consider the bill in detail.

**Ms SIMPSON:** This is an omnibus bill and there are sundry issues raised in this bill, and one of the issues is how broad or how narrow the definitions are going to be. Concerns have been raised that these terms could be interpreted broadly and inappropriately used. Secondly, this bill contains no provisions for compensation for ships or ports. The department advised in its briefing that ships are covered by international insurance provisions. I would ask the minister what provisions exist for ports that incur costs or loss as a result of such a direction from the general manager of Maritime Safety Queensland.

Furthermore, these provisions are not only applicable to passenger ships. I understand that they have predominantly been drafted as a result of a potential disease issue with a cruise ship. However, the drafting of this legislation will pertain to a far wider range of ships and, therefore, the insurance provisions for those ships may be quite different. I certainly flag that issue with the minister as to what the potential impact will be beyond the cruise ship industry, given that we are also an export nation and ships being held at bay or being directed elsewhere may have implications for a different aspect of the freight market.

In speaking to this legislation, we recognise those aspects that are in the public interest and raise some concerns about other aspects as mentioned, particularly the provisions pertaining to transport inspector powers in high-occupancy vehicle lanes and the extension of taxi licences. I commend the bill to the House.