Speech By

Hon. Stirling Hinchliffe

MEMBER FOR SANDGATE

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HEAVY VEHICLE NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL

Introduction

Hon. SJ HINCHLIFFE (Sandgate—ALP) (Minister for Transport and the Commonwealth Games) (3.05 pm): I present a bill for an act to amend the Heavy Vehicle National Law Act 2012 and the Transport Operations (Passenger Transport) Act 1994 for particular purposes. I table the bill and the explanatory notes. I nominate the Transportation and Utilities Committee to consider the bill.

Tabled paper: Heavy Vehicle National Law and Other Legislation Amendment Bill 2016 [1492].

Tabled paper: Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, explanatory notes [1493].

I am pleased to introduce the Heavy Vehicle National Law and Other Legislation Amendment Bill 2016. The bill amends both the Heavy Vehicle National Law Act 2012 and the Transport Operations (Passenger Transport) Act 1994. The Heavy Vehicle National Law Act 2012 is administered by the National Heavy Vehicle Regulator and provides for the consistent regulation of heavy vehicles over 4.5 tonnes across most of Australia. The national law establishes requirements for heavy vehicle registration; mass, dimension and loading; fatigue management; vehicle standards; and enforcement. The Heavy Vehicle National Law is part of a program of national reforms advocated by the Council of Australian Governments to establish single regulatory environments across the Australian economy.

The changes proposed in this bill were supported at the Transport and Infrastructure Council in June 2016 by all participating jurisdictions. This endorsement followed extensive consultation undertaken by the National Transport Commission in developing the bill with state and territory transport authorities, police agencies and heavy vehicle industry representatives. As host jurisdiction for the Heavy Vehicle National Law Act the Queensland parliament must first consider and pass amendments to the national law before they can be applied by participating jurisdictions.

The bill before parliament today aims to implement national reforms to chain-of-responsibility obligations and executive officer liabilities as well as introduce key heavy vehicle roadworthiness initiatives. Chain-of-responsibility provisions are designed to ensure that any party in a position to control and influence on-road behaviour is identified and held accountable. These provisions recognise the significance of on-road effects of the actions, inactions and demands of all levels in the transport and supply chain.

Chain of responsibility has been present in transport legislation in one form or another since the late 1990s. The provisions in the Heavy Vehicle National Law Act 2012 were based on the national model compliance and enforcement laws agreed by ministers in 2008. The changes contained in this bill will bring the national law into line with the primary duties approach taken in other national safety legislation, including the model work health and safety law and the Rail Safety National Law. This

approach places the focus squarely on achieving real safety outcomes in the transport sector by introducing a positive duty on chain-of-responsibility parties and executive officers to ensure the safety of their operations.

In particular, these reforms amend the national law so that each party in the chain of responsibility has a primary duty of care, so far as reasonably practicable, to ensure the safety of their transport activities. In addition, executive officers are required to exercise due diligence to ensure their operations comply with this primary duty. In effect, chain-of-responsibility parties must ensure that their conduct does not cause or encourage drivers, or another person, to contravene the national law or to exceed a speed limit. While terms and concepts such as 'reasonably practicable' and 'due diligence' are new to the national law, they are familiar to transport operators. The proposed amendments act to harmonise safety initiatives within the national law with the national model Work Health and Safety Act by using the same framework and principles.

Due diligence includes taking reasonable steps to acquire, and keep up to date, knowledge about the safe conduct of transport activities, to gain an understanding of the nature of the legal entity's transport activities, and the hazards and risks associated with those activities. Due to the familiarity of these concepts and their current application through workplace health and safety legislation nationally, the regulatory burden on industry, the National Heavy Vehicle Regulator and enforcement agencies will decrease. By replacing the current standard of 'all reasonable steps' and the reasonable steps defence with the 'so far as reasonably practicable' standard, transport operators will be able to manage all their heavy vehicle safety obligations under one framework. By reframing the chain-of-responsibility provisions in the national law to reflect a principles based approach, the efforts of each relevant party can be focused on proactively identifying and managing safety risks in a way that best meets their individual business needs and allows for innovative responses to safety concerns.

The shift away from existing prescriptive and deemed liability provisions also represents a change to the way chain-of-responsibility offences will be investigated and prosecuted by enforcement agencies. The most significant change will be the shift in the burden of proof for chain-of-responsibility offences. Currently the onus is on the defendant to prove that they took all reasonable steps to avoid the offence, known as reverse onus of proof. Under the proposed primary duties approach, the obligation will be on the prosecution to prove each element of the offence, including that a party did not do everything reasonably practicable in the circumstances to avoid the offence. It is a testament to the importance of this reform that there is almost universal agreement across governments and industry for the adoption of a positive duty on all parties in the chain of responsibility to ensure the safety of road transport operations.

The amendments in this bill also provide for the inclusion of heavy vehicle roadworthiness and vehicle standards as part of the primary duty of care for chain-of-responsibility parties. In addition, the amendments in the bill introduce enforceable undertakings, an innovative tool that will improve compliance outcomes. An enforceable undertaking is a legally binding agreement that is used as an alternative to prosecution for certain offences. They allow an authorised officer to enter into an undertaking with a person or organisation to carry out specific activities to improve workplace health and safety. Their use can lead to positive, long-term change in how a workplace manages its health and safety systems, providing lasting benefits to workers, industry and the community as a whole.

Enforceable undertakings are used to fix a problem and make sure that it does not recur. It would generally be used where an investigation has shown a relevant law has not been followed but that the operator is prepared to voluntarily take steps to fix the issue and agrees to preventative actions. This would typically include an agreement by the operator to take certain actions to prevent future breaches of the law such as implementing maintenance management systems and a commitment by the operator to future compliance measures. Such measures could include regular internal audits, training for managers and staff, or future reporting requirements to the National Heavy Vehicle Regulator. If the National Heavy Vehicle Regulator were to decide that an enforceable undertaking is the best way to resolve a breach of roadworthiness requirements, it may negotiate terms with the operator that are practical, effective and can be complied with. If the operator does not complete the actions or implement the specified policies, then enforcement action would be taken.

The bill also makes a number of minor and technical amendments to the national law that will see the removal of unnecessary administrative or regulatory burdens, improved safety outcomes and enforceability, and the minimisation of imposts on the court system. Currently, authorised officers are limited in their ability to issue formal warnings for defective heavy vehicles that do not pose a safety risk. As a result, an increased compliance burden is placed on industry due to the requirements and obligations associated with the issue of minor defect notices. The amendments in this bill provide for the creation of a self-clearing defect notice—an additional type of defect notice—that reduces the

compliance burden for industry because the operator of the heavy vehicle is not required to present the vehicle for inspection to have the defect notice cleared. The operation of these provisions does not impact the operation of the current provisions for the issue of minor and major defect notices.

Self-clearing defect notices are a new stand-alone category of defect notice that authorised officers have the discretion to issue where the defect does not pose a safety risk. This new approach will improve roadside enforcement, reduce the compliance burden for industry and reduce the administrative burden for the National Heavy Vehicle Regulator. The maintenance amendments to the national law also include new offences relating to the display of accreditation labels. The national law requires the National Heavy Vehicle Regulator to give an operator an accreditation label for each relevant vehicle for accreditation under the National Heavy Vehicle Accreditation Scheme. However, there are no offences for failing to display and maintain the labels in the primary legislation. These amendments create offences for failing to display and maintain a National Heavy Vehicle Accreditation Scheme label on a nominated heavy vehicle. Requirements to display and maintain relevant accreditation labels assist authorised officers to more effectively target roadside enforcement and compliance activities.

The National Heavy Vehicle Regulator will also be authorised to make minor administrative amendments to road access statutory instruments without the requirement to seek additional road manager consent. In addition, responsible ministers, under certain circumstances, may delegate their approval powers to the National Heavy Vehicle Regulator Board to facilitate the making of minor amendments to guidelines and statutory approvals. To realise the full potential of these reforms, the change to a primary duties approach in the national law will require the development of detailed guidelines for industry as well as training for enforcement agencies and prosecutors. The National Heavy Vehicle Regulator will lead the implementation of these reforms and, in consultation with jurisdictions and industry, will develop training programs for enforcement officers and a comprehensive support package for industry. This will provide a range of educational materials on new terms, definitions and amendments to the national law, as well as updating applicable industry codes of practice. The amendments in this bill, in particular reforming the chain-of-responsibility and executive officer liability requirements under the Heavy Vehicle National Law, represent a significant step forward in the way that safety risks are to be identified and managed by the heavy vehicle industry.

I will now address amendments to the Transport Operations (Passenger Transport) Act 1994. The Queensland government is committed to ensuring Queenslanders have access to safe personalised transport services and a sustainable and competitive industry to deliver them. Emerging technologies are shaping customer expectations and changing the personalised transport industry in Queensland and across the globe. As such, there was a need to review existing policy and legislation and deliver a reform program that allows for an agile regulatory framework that is responsive to the changes facing the personalised transport industry. The reforms will strengthen safety standards, encourage competition, provide customers with choice and flexibility, drive innovation and ensure accountability across the industry.

The first stage of the reform program has already commenced. Since 5 September 2016, ride-booking services have been able to operate legally in Queensland, subject to safety requirements. Taxis continue to have exclusive access to rank and hail services. Red tape has also been cut for the taxi and limousine industry so that they have more flexibility to respond to this increase in competition. The government values the services that taxis and limousines provide to the Queensland community and recognise that it is important that these services continue to be competitive into the future. The existing taxi and limousine industry is in a strong position to adapt to increased competition. We acknowledge though that some existing taxi and limousine businesses will face challenges in transitioning to the new framework. The government has announced a $100 million industry adjustment assistance package to provide support to existing industry participants during this transition. This bill has been introduced to provide for administration of the main elements of the industry adjustment assistance package, being transitional assistance payments and a hardship fund. Some $60 million will be provided in transitional assistance for taxi and limousine service licence holders. Taxi licence holders will receive a payment of $20,000 per taxi service licence, capped at two licences per holder, and limousine licence holders will receive $10,000 for each licence except for special purpose limousine licences, which are annual.

A hardship fund of $26.7 million will also be made available to assist licence holders who experience financial hardship due to the reforms subject to eligibility criteria. We have moved quickly to introduce this bill so that transitional assistance and hardship payments can be made to licence holders as soon as possible. The bill allows for the eligibility criteria and procedures for accessing these payments to be set out in regulations. This legislation will operate for two years with the delivery of financial assistance expected to be completed in this time.

While access to the transitional assistance payment and the hardship fund is dependent on the passage of this legislation, other assistance is being implemented without legislation as soon as possible. This includes $4.3 million in fee waivers for the existing industry, $5.6 million for incentive payments to drivers of wheelchair-accessible taxis and $3.7 million for business advisory services. Immediate financial relief of approximately $2.6 million has already been provided to the taxi and limousine industry through the waiving of fees for taxi and limousine licence renewals, taxi and limousine operator accreditation, the annual taxi industry security levy payment and driver authorisation renewals. Further fee waivers will be provided as driver authorisation renewals fall due.

The disruption being experienced by the taxi and limousine industry is not unique to Queensland. Like other states, we will provide a level of assistance to support the industry to transition but, unlike other states, a levy will not be imposed on customers to fund this assistance. While there are some of the view that a levy should be imposed on industry, in practical terms it is likely the industry will pass on this cost to customers, resulting in increased fares. This government does not want to impose a new tax on personalised transport customers. Higher fares may also result in reduced demand for taxi and ride-booking services.

In addition, the experience in other states indicates that the design and administration of a levy is complex and the costs to government and industry in setting up systems to enable administration and collection would be significant. The effective administration of the levy is also dependent on the cooperation of industry participants including ride-booking companies and taxi-booking companies. Coverage is also an issue. Imposing the levy on the taxi industry would mean they effectively self-fund their assistance package, whereas limiting the levy to ride-booking services is inequitable and would significantly increase the time it takes to collect the funds. Modelling indicates that this could take up to 15 years depending on the amount of the levy. For these reasons, funding from consolidated revenue is preferred in terms of having the lowest administration cost and impact on industry and customers and ensuring the timely delivery of assistance.

There are more comprehensive changes to come for the personalised transport industry in the second stage of this reform program, including the introduction of a new licensing framework for taxi and booked hire services. I plan on introducing a bill for these changes into parliament early next year for implementation by August. We will continue to consult with the personalised transport industry and monitor and evaluate the reforms to ensure that we have the balance right. I commend the bill to the House.

First Reading

Hon. SJ HINCHLIFFE (Sandgate—ALP) (Minister for Transport and the Commonwealth Games) (3.23 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Transportation and Utilities Committee

Mr DEPUTY SPEAKER (Mr Furner): Order! In accordance with standing order 113, the bill is now referred to the Transportation and Utilities Committee.