




Speech By
Hon. Stirling Hinchliffe

MEMBER FOR SANDGATE

Record of Proceedings, 1 December 2016

HEAVY VEHICLE NATIONAL LAW AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

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

That the bill be now read a second time.

At the outset, I thank the Transportation and Utilities Committee for their consideration of the Heavy Vehicle National Law and Other Legislation Amendment Bill 2016. The committee has recommended that the bill be passed. Of the committee's 30 recommendations, two related to the Heavy Vehicle National Law section of the bill, with 28 covering the bill's amendments to the Transport Operations (Passenger Transport) Act. Of those recommendations, 14 are supported by the government, 12 are supported in principle, two are not supported and two require further consideration. I table the government's response to the committee's report.

Tabled paper: Transportation and Utilities Committee: Report No. 27—Heavy Vehicle National Law and Other Legislation Amendment Bill 2016, government response [[2228](#)].

The committee made two recommendations with regards to the Heavy Vehicle National Law changes. As recommended by the committee, I will consult with the National Transport Commission and the National Heavy Vehicle Regulator to encourage consideration of pre-transport stock preparation and consistent mass limit matters in future legislative amendments. I take this opportunity to thank the National Transport Commission for all its hard work in preparing the heavy vehicle amendments within the bill, as well as facilitating an extensive program of national consultation with industry and jurisdictions over the past 12 months.

The role of the industry in helping develop and continually improve the Heavy Vehicle National Law cannot be understated. I thank the industry for their detailed consideration and feedback on the bill, and for those associations that provided submissions to the committee and then appeared as witnesses. The Heavy Vehicle National Law, which commenced in February 2014, regulates the operation of heavy vehicles, including the mass and dimensions of heavy vehicles, vehicle safety standards, measures to manage fatigue, heavy vehicle accreditation, speed compliance and the use of intelligent transport systems. It also includes chain of responsibility offences, enforcement powers and administrative provisions.

Amendments in this bill will result in harmonisation between national safety laws and the Heavy Vehicle National Law through the implementation of key policy initiatives related to chain of responsibility. Chain of responsibility, in a heavy vehicle context, is about ensuring all parts of the transport and logistics supply chain contribute to safer roads. However, as it currently exists within the Heavy Vehicle National Law, chain of responsibility does not promote a proactive and systemic approach to risk identification or allow regulators to proactively address risks in the industry. In addition,

there are a number of practical problems with the existing approach. Many obligations are simply prescriptive, not all parties understand how chain of responsibility applies to them and their chain of responsibility obligations are often complex and can be costly to comply with.

It is for those reasons that chain of responsibility within the Heavy Vehicle National Law will adopt the primary duties approach within the model Work Health and Safety Law and the Rail Safety National Law. The key change is to restructure the existing prescriptive chain of responsibility obligations as an overarching and positive primary duty of care on all chain of responsibility parties and executive officers to ensure the safety of their road transport activities so far as is reasonably practicable. By replacing existing prescriptive obligations with the primary duty, industry will experience a reduction in regulatory burden. This will allow operators to focus more readily on safety outcomes. The primary duty will apply to all current chain of responsibility parties as defined in the Heavy Vehicle National Law, consistent with their role in the supply chain.

This means the chain of responsibility obligations will apply to operators, prime contractors, employers, schedulers, consigners, consignees, loading managers, loaders, unloaders and packers. Due to the familiarity of concepts and terms such as 'primary duty', 'reasonably practicable' and 'due diligence' and their current application in national workplace health and safety legislation, the regulatory burden on industry regulators and enforcement agencies will decrease.

The proposed amendments will enable a more flexible, outcomes based approach to compliance and enforcement and lead to better safety outcomes. The introduction of the primary duty and chain of responsibility reforms principally impacts parties in the transport and logistics supply chain, including executive officers. I note that these amendments will be complemented by revisions to the national heavy vehicle load restraint guide. For compliant operators and executive officers who are already doing the right thing under the Heavy Vehicle National Law and their work health and safety act obligations there should not be any significant changes.

The changes are focused on safety, but they remove some of the existing prescriptive requirements, which will give more flexibility to determine how operators ensure safety when considering the risks involved with their activities. It should be noted that these chain of responsibility reforms will have a limited impact on drivers. In general, drivers who do not have an additional role under the law as defined under the chain of responsibility parties will experience limited practical impact. Owner-drivers will be impacted in their role as the operator.

In a further alignment with national safety laws, penalties for breach of the primary duty are set to align with penalties for breach of duty under work health and safety laws and the national rail safety law. Penalties for serious safety offences under the Heavy Vehicle National Law are currently significantly less than the penalties for offences under these laws.

Where people recklessly endanger others or engage in conduct that exposes an individual to the risk of death or serious injury or illness, then the highest penalties will apply. The maximum penalty for the most serious cases concerning an individual will be \$300,000 or five years imprisonment or both, while corporations will face a maximum penalty of \$3 million. These penalties are based on similar categories of risk in the other national safety laws.

The Heavy Vehicle National Law amendments in the 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. The extension of the primary duty obligation to include the maintenance or repair of a heavy vehicle is a new obligation and has been subject to a regulatory impact assessment process.

In other amendments, a new information gathering power, section 570A, is to be added to the Heavy Vehicle National Law. This provision is intended to give the National Heavy Vehicle Regulator, NHVR, and enforcement agencies greater ability to access information from third parties for the purposes of investigating breaches of the primary duty. This is necessary because of the change in burden of proof. As it currently stands, 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 duty 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.

This power aligns with the information gathering powers under work health and safety laws, and has similar checks and balances on the use of the power. These include a requirement for an authorised officer to have formed a reasonable belief that a person has the information, and that the request must be made by notice in writing. There are also safeguards to ensure procedural fairness and natural justice. As an example, information provided by an individual pursuant to section 570A cannot be used as evidence in proceedings against that individual.

Finally, chapter 3 of the bill contains a range of minor and technical drafting amendments that will help to clarify existing provisions, streamline administrative processes, reduce the regulatory burden and improve productivity for the heavy vehicle industry. I look forward to the benefits the Heavy Vehicle National Law amendments will bring to industry, road safety and the Queensland economy as a whole.

I will now turn to the amendments in the bill relating to the Transport Operations (Passenger Transport) Act and the industry adjustment assistance package for the taxi and limousine industry. The Transportation and Utilities Committee received a large number of submissions on the personalised transport reforms and the industry assistance package. The committee held public hearings on the bill across the state during October of this year, which raised a number of issues for the committee's consideration in examining the bill.

These issues primarily relate to the amount and timing of payments to the industry and the eligibility criteria to receive these payments. I thank members of the industry for the time and effort that went into making their submissions and attending the committee hearings. I would like to particularly thank those individuals who were often out of their comfort zone in making submissions to a process that they would normally not have exposure to. I appreciate the passion and sometimes great emotion with which they gave evidence to the committee.

I would particularly like to thank and acknowledge the work done by the committee's chair, the member for Kallangur, on this body of work. It is one of the most thorough and considered committee reports I have seen in this place and it is testament to his measured consideration of the issues, the stakeholders, the community and the policy. To have worked so diligently with the subject material but also, clearly, with his fellow committee members in handing down this report speaks volumes. I thank him and the committee again for this report.

The government has carefully considered the committee's recommendations on the industry adjustment assistance package and is undertaking further consultation with the industry in finalising the package to be implemented. I am pleased to be able to outline further details of this today. This package is designed to assist the industry transition to a new regulatory framework for personalised transport services in line with the industry reforms announced by the Queensland government on 11 August 2016. The first stage of the reforms involved immediate regulatory changes to legalise ride booking in Queensland from 5 September 2016. The second stage, which will introduce comprehensive industry reform through changes to primary legislation, will be implemented from August 2017.

The government is confident that this assistance package strikes the right balance between supporting the industry through the transition and the government's fiscal responsibilities. We have listened to the industry and tailored the available funding to reflect their feedback. The total funding available for the assistance package will not increase, as any additional funding would be at taxpayers' expense. Further, we believe that a user-pays levy on personalised transport trips is not supported for the reasons given in my introductory speech on this bill.

The current bill before the Legislative Assembly facilitates the industry adjustment assistance package, the main components of which are transitional assistance and hardship payments. The amendments in the bill provide a legislative framework for administering these payments ahead of the comprehensive industry reforms that we have flagged in stage 2. I will ensure that these payments are made to the industry as soon as possible. Subject to the passage of this bill and the approval of regulatory amendments by the Governor in Council, it is expected the government will be in a position to send invitations to eligible taxi and limousine licence holders regarding the transitional assistance in December to enable payments shortly thereafter.

The government is currently finalising arrangements with the Queensland Rural Adjustment Authority to administer the payments. This approach echoes the recommendation of the committee. The \$100 million industry adjustment assistance package includes \$86.7 million for transitional assistance and hardship payments. An immediate payment of \$20,000 for each taxi service licence capped at two licences per holder will be made pending the passage of supporting regulations. An assistance payment of \$10,000 for each limousine service licence, excluding special purpose limousine licences, will also be made.

I can announce, based on the recommendations of the committee, that all ownership structures will be eligible for transitional assistance payments, including individuals, trusts, companies and superannuation funds. I want to acknowledge the committee for highlighting the complex nature of taxi ownership and operation structures. It is important that transitional payments reach those who most need it, including those who have taken steps to incorporate or purchase a taxi licence as an asset in their superannuation fund.

The remaining value of this pool, in excess of \$26.7 million, will be distributed as hardship payments. As noted in the government response, we are continuing to work with the industry to finalise the eligibility requirements for the hardship fund. I reiterate the government's desire for these payments to target those sections of the industry for which the funding is titled—that is, those owners and operators who have been hit hardest by the market transformation of the industry. I am committed to working with the industry reference group to determine the appropriate criteria for distributing these payments. The engagement of the Queensland Rural Adjustment Authority will be crucial in this process.

I can also announce to the House that I intend to move an amendment to the bill during the consideration in detail stage to broaden the regulation-making power to include operators within the taxi and limousine industry in addition to licence holders. This will allow flexibility to make hardship payments to a wider range of industry participants affected by the reforms.

Business advisory services will be provided to the industry as an important part of the assistance package. The amount of \$3.7 million has been allocated to these services to help taxi and limousine businesses adapt to changes in the industry, capitalise on new opportunities and remain competitive in the market. These reforms are about creating a sustainable personalised transport industry into the future. I believe the availability of business advisory services to the industry is a critical component of this package. In a period of significant change for the industry, it is important that those owners and operators who do not have access to the resources of large operators are appropriately supported.

The Queensland government will ensure the design of this aspect best suits the needs of the industry. As recommended by the committee, active consideration is being given to including legal assistance and advocacy support to assist industry participants in their negotiations with financial lending institutions regarding loans for licences. This is an area of the package that I feel particularly strongly about and I mirror the committee's desire to see this expanded. I am a believer in the power of knowledge and empowering small businesses to be armed with the tools they need to compete with larger players. I thank the Minister for Small Business for her support during the shaping of this package.

The industry adjustment assistance package also includes \$4.3 million in fee waivers and reimbursements—over \$2.8 million of which has already been received by existing industry participants. I note the concerns raised by the committee in relation to reports that lending institutions are foreclosing on taxi licence loans and the ability for people from within the industry to access Commonwealth social security benefits. I can advise the House that I have written to the Commonwealth Minister for Finance and the Commonwealth Minister for Social Services raising these issues.

The committee also identified the need for ongoing consultation with the industry on the industry adjustment assistance package and the broader personalised transport reform program. The government will continue to work with the industry including through the Personalised Transport Industry Reference Group. This consultation will be undertaken in finalising the administration of industry adjustment assistance and in developing the new regulatory framework in stage 2 of the reforms. A comprehensive communications strategy is also being developed to support the implementation of the package and a further strategy will be developed for the introduction of stage 2 reforms next year.

Another important issue raised by the committee is the accessibility of personalised transport to people with a disability. The Queensland government is committed to ensuring that people living with a disability have access to a range of transport options. The industry adjustment assistance package includes \$5.6 million to incentivise wheelchair accessible services by assisting with the additional time and training needs associated with their delivery. The \$5.6 million will fund the first full year of this initiative, but it is intended that this payment will continue into subsequent years subject to the normal budgetary processes. I am pleased to be able to advise that this incentive payment for drivers of wheelchair accessible taxis will be implemented from 12 December 2016. Eligible journeys will receive a \$20 payment, inclusive of GST, per journey for services provided to Taxi Subsidy Scheme members.

It is a priority of the Palaszczuk government to ensure that vulnerable members of our community continue to have access to services, ensuring their mobility and social inclusion. The stage 2 reforms will include the investigation of new opportunities for personalised transport operators to provide services to people living with a disability, including members of the Taxi Subsidy Scheme. There will be ongoing consultation with representatives from the disability sector to determine how best to meet their needs. We have ensured that a representative of the disability access sector is a standing member of the Personalised Transport Industry Reference Group for this very purpose. The government will also continue to monitor the provision of personalised transport services to people living with a disability. If evidence indicates that government intervention is needed to maintain or enhance the availability of services, appropriate options will be examined.

The committee also considered various aspects of stage 2 reforms proposed to be introduced next year and recommended that certain matters, such as changes to the licensing framework, compulsory third-party insurance, security camera requirements and penalties for noncompliance be brought forward urgently. While the government recognises the need to provide certainty to the industry, these matters are complex and require detailed policy consideration and consultation before any necessary legislative amendments are progressed. It is not feasible to bring the time frames forward for the implementation of stage 2 reforms. However, the work of the committee directly feeds into that policy work. When legislation is presented next year on the second stage of reforms, it will be further enhanced and informed as a consequence of the committee's comprehensive report.

To demonstrate the government's commitment to the continued protection of rank-and-hail services to the taxi industry, I can announce that I intend to progress an urgent regulation to increase the fine for illegally stopping in a taxi zone from \$48 to \$243. This change builds on recent increases to fines for related offences of soliciting and touting and providing an unlicensed taxi service and will support effective enforcement of illegal activity by ride-booking services. The government will continue to ensure that the penalties for these offences are set at the appropriate level to ensure that they provide an effective deterrent.

I will now turn to a number of matters the committee specifically recommended that I address in this speech. First, I will clarify why the previous requirement for taxis to have a valid safety certificate issued six-monthly has been amended to an annual requirement for all personalised vehicles. Road safety crash data indicates that the risk rating for taxis and limousines is lower than it was when the six-month requirement was first introduced. This is partly due to the use of modern vehicles, which have improved safety technologies that reduce the likelihood of an accident and the severity of injury in the event of a crash. Additionally, the overall risk rating for the taxi industry is lower than other industries using heavy vehicles, which are subject to 12-monthly programmed inspections. These changes do not remove the longstanding requirement that all vehicles are in a safe and roadworthy condition at all times.

The committee also recommended that I clarify whether the term 'personalised transport vehicle' will be defined in passenger transport legislation. It is not the government's intention to define this term. The personalised transport reforms are focused on services provided in either a 'taxi' or a 'booked hire vehicle', with these terms currently defined in the legislation. It is not proposed to introduce the more generic term 'personalised transport vehicle' because the stage 2 legislation is intended to introduce a new regulatory framework for taxis and booked hire vehicles, including limousines, only.

Finally, the committee recommended that I provide an analysis of the revenue impact of ride-booking services on the Queensland public transport sector. While this data is not currently collected by the Department of Transport and Main Roads, it has been discussed and encouraged at the Personalised Transport Industry Reference Group that ride-booking platforms provide open data on ridership figures to improve policy planning. The issue of data collection in relation to ride-booking services is something that will continue to be explored through stage 2 of the reforms.

I can confirm that, since the announcement of the personalised transport reforms on 11 August this year, the number of driver authorisation holders entitled to provide personalised transport services has increased by approximately 3,500. The consequential revenue increase of approximately \$490,000 is primarily used to offset the cost of processing applications, undertaking criminal history checks on drivers and administering the driver authorisation scheme.

The Queensland government is introducing a new framework to deliver certainty to the personalised transport industry and increased choice for customers in Queensland. The reforms are designed to support a competitive and sustainable industry for the benefit of Queenslanders. I ask members to support this bill to enable the government to administer and distribute financial assistance to the taxi and limousine industry as soon as possible. In short, these amendments and the small amendment I will move during consideration in detail allow for the provision of transitional payments to traditional taxi licence holders and operators. That is the only question before the House in this bill. I am pleased to commend the bill to the House.