



Speech By
Hon. Mark Bailey

MEMBER FOR MILLER


Record of Proceedings, 13 June 2018

**HEAVY VEHICLE NATIONAL LAW AND OTHER LEGISLATION AMENDMENT
BILL**

Second Reading

Resumed from 12 June (see p. 1424), on motion of Mr Bailey—

That the bill be now read a second time.

 **Hon. MC BAILEY** (Miller—ALP) (Minister for Transport and Main Roads) (11.14 am), continuing: Under current legislation, a roadside police officer who conducts an initial roadside drug test is unable to conduct subsequent saliva analysis. Changes in this bill will amend this process and allow roadside police officers to conduct subsequent drug analysis in addition to an initial drug test. This change reflects improvements in drug testing technology and will lead to greater efficiency in the enforcement of drug driving. The changes will be especially beneficial for regional police officers, allowing them to better perform their duties and ensure the safety of roads in these areas.

In relation to careless and dangerous driving, the bill also includes amendments to enhance penalties for leaving the scene of a crash and for careless and dangerous driving offences where a person is killed or seriously injured. As this issue has been subject to significant comment during the committee process and in the media, I will address these amendments in detail. Road crashes where a person dies or suffers grievous bodily harm are devastating to families and communities.

Mr SPEAKER: Minister, sorry to interrupt. Members, can you please leave the chamber quietly. I would like to hear the minister's contribution. I also want to acknowledge that we have in the gallery students from Beenleigh State School in the electorate of Waterford. Welcome to the Queensland parliament.

Mr BAILEY: I acknowledge the fortitude of family members who have been so greatly impacted by serious road crashes. I also acknowledge the valuable contribution of those affected by these horrific incidents to the committee process and their commitment to enhance road safety for all Queenslanders. By raising awareness of the tragic outcomes of careless driving, they have reminded us all to take more care.

I can advise the House that I personally met with a number of affected families last week to hear their stories firsthand and to discuss the changes proposed in this bill. I would like to take this opportunity to again reassure those families that their comments and feedback have been considered very carefully in the formulation of these amendments. I would like to acknowledge the member for Murrumba, who also met with affected families during the period when he was acting minister for main roads and road safety. I also note that the member for Burnett recently sponsored a petition in this House in relation to these amendments. I would like to thank the member for the support that he has given to his constituents and for his role in highlighting how important these changes are to the community.

The Palaszczuk government is determined to make Queensland's roads safer, and that is the intent of this bill. As was identified by the coroner in the inquest into the death of Audrey Anne Dow, there is currently a significant legislative gap in Queensland law between careless driving offences and dangerous driving offences. The amendments proposed in this bill will close this gap by creating two new offences. These new offences will give courts more capacity to deal with people who commit careless driving offences where a person is killed or suffers grievous bodily harm.

Currently in Queensland, the maximum penalty for careless driving is \$5,046 or six months imprisonment. While this may be an appropriate level of punishment for an offence where there is no harm caused to others, the government recognises that this is entirely inadequate for careless driving where it results in death or grievous bodily harm. That is why the changes in the bill propose to create the new offence of careless driving causing death or grievous bodily harm. The penalty for this new offence will be double that of the existing offence including a maximum fine of \$10,092 or a maximum of 12 months imprisonment. This doubles the current maximum penalty and aims to specifically recognise the seriousness of crashes that result in death or grievous bodily harm.

The maximum penalty will again be doubled to \$20,184 or two years imprisonment for the new offence of careless driving causing death or grievous bodily harm while also unlicensed. The government recognises that the offences and penalties need to reflect community expectations and that is what we are trying to achieve through these amendments. The bill also introduces a new minimum mandatory licence disqualification period of six months for the new careless driving offences that result in death or grievous bodily harm. It also increases the mandatory disqualification period for dangerous driving offences that result in death or grievous bodily harm from six to 12 months, doubling the current minimum licence disqualification period for this offence.

It is important to note that these are minimum licence disqualification periods. It is up to a court to consider the particular circumstances of each case, and these amendments will allow a court the flexibility to impose a longer licence disqualification period if it sees fit.

There has been comprehensive consultation throughout the formulation of these important amendments. This process has seen a number of suggestions and comments put forward relating to the severity of the proposed penalties and alternative measures that could be implemented in addition to the proposed tiered penalty regime. I would like to take a moment to address some of these.

In relation to harsher penalties, as I mentioned earlier, the proposed changes will provide the courts with greater flexibility in sentencing to impose a penalty that reflects the specific circumstances of the crash. However, it is important that the maximum penalties reflect that the majority of careless driving offences involve momentary inattention or a simple mistake on the part of a driver. The penalties must also reflect that there are different offences which may be applicable in different circumstances. For example, the offence of dangerous operation of a motor vehicle—dangerous driving—is a more serious offence in terms of the offending driver's behaviour or actions. Therefore, this offence has different implications with higher maximum penalties.

A court will determine the penalties to apply in an individual case based on the specific facts of the offence and within the legislative framework—that is, it has discretion to apply penalties up to the maximum thresholds in legislation. Case law may also be referred to by the court to order penalties that are consistent with the facts of the offence. There is currently no mandatory requirement for a court to order a minimum period of licence disqualification for a careless driving offence, even for a careless driving offence that results in the death or grievous bodily harm of another person.

It is proposed to introduce a mandatory minimum licence disqualification of six months for careless driving offences that result in death or grievous bodily harm. The minimum licence disqualification for a dangerous driving offence resulting in death or grievous bodily harm will be doubled from six to 12 months. However, these are minimum periods so the court will still have the discretion to order a longer period of licence disqualification having regard to the facts of the offence.

The Penalties and Sentences Act 1992 provides that a person may be disqualified from holding or obtaining a Queensland driver's licence if they are convicted of an offence in connection with the operation of a motor vehicle. This gives courts the discretion to disqualify an offending driver based on the specific facts of a case. There is no limit on the court's discretion to order a period of licence disqualification. It can be absolute. The government has approached the drafting of these amendments in a way that balances community expectations while aiming to maintain the independence and discretion of the courts in sentencing.

In relation to driver retesting and regression, another suggestion that has been put forward is that where a driver is charged with a careless or dangerous driving offence they should be retested or made to complete their learner or provisional licence period again. In Queensland, it is already the case that if a driver is disqualified from holding or obtaining a licence by a court they are subject to a probationary

licence when the period of disqualification ends. This means that for a period of 12 months the driver must carry their licence at all times and must have a zero blood alcohol concentration while driving. Additional restrictions also apply to drivers under the age of 25.

In relation to retesting drivers who are convicted of these offences, while it is true that practical driving tests are a useful step in assessing whether a novice driver has developed the skills they need to drive, driving retests are limited in their ability to assess a person's future driving behaviour. This is because generally a person will show a higher level of compliance with and knowledge of the road rules during such a test. This type of reassessment is not necessarily reflective of future road safety attitudes.

In relation to the committee recommendation, I again thank all members of the Transport and Public Works Committee including the chair, the member for Kurwongbah, for the work they have done on this bill. In its report, the committee asked the government to consider including the term 'negligent' in the amendments, whether that be in the careless driving provision or in a new provision. This was intended to better reflect that the tiered penalties closed the gap between careless and dangerous driving offences.

The government gave this recommendation a lot of consideration, including consulting with independent, experienced and well-respected legal experts in the field. Following detailed examination, I am confident that the full spectrum of driving behaviours that cause serious crashes are covered by the available offences. The advice suggested that introducing a new offence of negligent driving or adding the term 'negligent' into the careless driving provision could have serious undesirable consequences. This includes making it more difficult to prosecute drivers for unsafe behaviours and potentially undermining the new penalties that are introduced by the bill.

As mentioned earlier, after having received the committee's report and reviewing the independent legal advice, I met with a number of affected families to discuss the issues I have just outlined and explain the government's position in relation to the committee's recommendation. I am confident that the bill, as drafted, will make available more appropriate penalties to deal with the more serious careless driving offences. I trust that the prosecutors and courts will apply the new penalties appropriately.

I want to conclude by emphasising that financial penalties, terms of imprisonment and licence sanctions are only one part of how the government addresses unsafe driving conduct and improves road safety. The Palaszczuk government continues to educate to better influence driving behaviour and adopt innovative road safety measures. We are committed to working toward a safer road network for all in the hope that one day charges under these offences are rarely needed, if at all.

In relation to the Container Refund Scheme, as I noted earlier, I intend to move an amendment during consideration in detail regarding the Container Refund Scheme made under the Waste Reduction and Recycling Amendment Act 2017. This amendment was originally included in the Mineral and Energy Resources (Financial Provisioning) Bill 2018 and is now proposed to be made through this bill. The change will defer the commencement of the Container Refund Scheme from 1 July 2018 to 1 November 2018. This change, which has significant support, follows consultation with beverage manufacturers and community groups, and advice from the recycling sector and local governments to allow sufficient time to roll out infrastructure for the container refund points and container-processing facilities.

Extending the time frame for introduction will ensure the scheme is right for Queensland from the beginning and that we avoid the rollout issues experienced in New South Wales when its scheme started on 1 December last year. It also provides more time to build community awareness of the scheme and communicate the location of the refund points. This is a scheme for the whole state, not just for the populated south-east corner. We need to make sure that all Queenslanders have the ability to receive or donate the 10-cent refund.

This amendment will ensure that, from the outset, the Queensland scheme will be able to deliver on environment and community group expectations. It will also ensure that beverage manufacturers can prepare for the scheme and are able to meet their scheme obligations well in advance of it commencing. I commend the bill to the House.