

ROAD TRAFFIC AMENDMENT BILL 1999

Committee

The Deputy Chairman of Committees (Hon Derrick Tomlinson) in the Chair; Hon M.J. Criddle (Minister for Transport) in charge of the Bill.

Clauses 1 to 11 put and passed.

Clause 12: Section 23A amended -

Hon M.J. CRIDDLE: I move -

Page 8, line 10 - To insert before "owner" the word "the".

Page 8, line 13 - To insert before "responsible" the word "a".

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 13 to 19 put and passed.

Clause 20: Section 42B inserted -

Hon M.J. CRIDDLE: I move -

Page 15, line 3 - To delete "Act" and insert instead "Part".

Page 15, line 7 - To delete "40 PU" and insert instead "Imprisonment for 2 years".

Page 15, line 10 - To delete "Act" and insert instead "Part".

Page 15, line 12 - To delete "Act" and insert instead "Part".

Page 15, line 18 - To delete "40 PU" and insert instead "Imprisonment for 2 years".

Hon MARK NEVILL: I would like to query the minister about the amendments that substitute two years' imprisonment for 40PU, which I presume are penalty units. Does that mean there is no alternative to custody under those provisions?

Hon M.J. Criddle: That would be the maximum penalty. There would be other alternatives to that under the Sentencing Act.

Hon MARK NEVILL: Under the Sentencing Act there would be outs where imprisonment is the only penalty.

Hon M.J. Criddle: That is right.

Hon MARK NEVILL: It is undesirable to give the impression that a prison term is the only option, particularly for some magistrates. Rather than rely on their knowledge of the Sentencing Act, perhaps it would be better to offer them some other non-custodial alternatives. It would be a lot clearer if the maximum penalty in the Bill was imprisonment for up to two years, a community sentence, a fine, or something like that.

Hon M.J. CRIDDLE: Yes, this is a very serious issue. We are dealing with images and this is the same sort of penalty that would be imposed on a public servant for disclosing information. It is a very serious offence from that point of view, so I think it is a reasonable penalty.

Hon NORM KELLY: There are concerns that, because the Government is committed to more outsourcing of these sorts of services, private sector employees would not be covered by the same types of penalties as employees under the Public Sector Management Act and the like. I know that in our briefing with the department officers, the Australian Democrats and the Australian Labor Party expressed their concerns that people in the private sector could be given more lenient treatment than a public servant who committed the same offence. We support these amendments to bring the penalties into line with those to which a public sector officer would be liable. In a sense it is probably more important that private sector employees are covered by these types of penalties for this sort of offence.

Amendments put and passed.

Clause, as amended, put and passed.

Clause 21: Section 43 amended -

Hon KIM CHANCE: I move -

Page 17, after line 8 - To insert the following subclause -

- (2) Where regulations require that the holder of a licence operated by reference to a vehicle classification that no longer exists produce documentary evidence of their practical experience, this evidence must be supported by a statutory declaration.

This amendment addresses concerns about the national driver legislation, first promised in the wake of the Greenmount Hill tragedy in 1993. The system proposes to introduce a raft of different drivers licences to replace the current B and C-class licences in recognition of the fact that a much more sophisticated array of vehicles is now on the roads. To facilitate the transition to this system, which the Opposition supports wholeheartedly, the Government has decided to allow a person with a C-class licence to obtain a licence for a heavier class of vehicle if he has a letter from his employer stating that he has been driving a vehicle of that type for the past 12 months. This avoids the need for every person with a truck drivers licence to sit the test to gain the appropriate classification. The Labor Party supports the principle that people with experience in heavier vehicles should be given the right to move automatically to that class of licence. However, given the types of heavy vehicles involved, it is also clear that drivers should be given the relevant licence only where they have the requisite experience. The Labor Party does not believe that an employer's letter will provide sufficient assurance that the person in question has gained the required experience. It is relatively easy to imagine circumstances in which false or even fraudulent declarations could be made. Our amendment provides for a person seeking a licence for a class of vehicle heavier than a C-class to provide a statutory declaration, rather than merely a letter from his employer stating that he is an employee or subcontractor with that company and outlining the nature of his experience. We believe that this measure would provide greater assurance that the person in question has the relevant experience.

The Government claims that the regulations will require proof from drivers who seek to shift from the old to the new style of licence in the form of a statutory declaration indicating that the person in question has experience and currently drives vehicles of that type. Therefore the Government does not believe it is necessary to incorporate that provision within the legislation itself. The Labor Party's concern with this is that such regulations are yet to be drafted, so whether they will cover this issue is still a matter subject to speculation. Normally, we would not be a party to an amendment that seeks to bring into legislation something the Government has already agreed to do by regulation. However, our imperative in this matter was reinforced by the fact that the original scheme, as it was presented to this House, did not contain the requirement for a statutory declaration. The publicly available information, and the information communicated to the transport industry, did not mention the requirement.

The clause we propose to amend contains the power to make regulations, and this amendment would provide more structure to the nature of the regulations that could be made. There is no reason why such a requirement could not be contained in the Act rather than the regulations, because it would not restrict the regulations that might be made under the Act, but make it clear to all concerned that a statutory declaration would be required. An amendment to be considered later, the insertion of a new section 102(B), contains a requirement for a statutory declaration to be provided, in this case in relation to traffic infringement notices. Although this proposed new section does not carry a regulation-making power, there is no reason that a regulation setting out the requirements for a statutory declaration could not be contained in this part of the Bill. The amendment seeks to strengthen the provisions of the Bill to provide greater confidence that only capable people are permitted to drive heavy vehicles. The amendment will improve the safety of our roads for all drivers, and for this reason alone, the Labor Party asks for the support of the Government.

Hon NORM KELLY: I am concerned about the wording of this amendment. According to my reading of the Bill, clause 21 has two subclauses: Subclause (1) which seeks to amend section 43(1) of the Act and subclause (2) which seeks to repeal section 43(2). The wording of the amendment would need to be changed to make sense of this clause. It seems it would require that a new section 43(2) be inserted.

Hon KIM CHANCE: I thank Hon Norm Kelly for drawing this matter to the Committee's attention. I have looked at the matter he raised, and I am confident the amendment is worded correctly. The amendment is to the Road Traffic Amendment Bill 1999, not to the Road Traffic Act 1974. If read in the context of the Act, what Hon Norm Kelly has said makes sense. Given that subclause (2) of clause 21 of the Bill refers to the repeal of section 43(2) of the Act, that subclause would no longer exist. If that part of the Bill were to be carried, the words in my amendment would appear in the Act under the heading numbered (2). I was a little confused when I first read it. Perhaps I still am, and I rely on the Chairman's clarity to inform me if I am wrong. Even though there is some confusion about the two versions of subclause (2), it seems to me that it is correctly worded.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): What Hon Kim Chance has said about the two versions of subclause (2), in the context of the Bill, is correct. However, I cannot clarify what is unclear until I see the

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Act, because I am not sure of the context without the Act in front of me. However, I am guided by Hon Kim Chance's wisdom.

Hon NORM KELLY: Further to the point I raised, perhaps the problem is that Hon Kim Chance should have moved to insert this proposed new subclause after line 7, because after line 8 the quotation marks have already been closed and we move on to subclause (2) of clause 21. The amendment does not propose to insert a new subclause but to make an insertion within the existing subclause (1), at the very end of what is already in the Bill, prior to the closure of the quotation marks. I know that this is very technical, but I think that may make sense in the end. Maybe I should not have brought this up. Perhaps in the first place I should have just spoken to the amendment and given the Australian Democrats' position on it.

Hon M.J. Criddle: If it is defeated, I do not think there will be a problem.

Hon NORM KELLY: Yes. Maybe we could just go on and speak to the amendment.

Hon M.J. CRIDDLE: The amendment to clause 21 seeks to make it mandatory for the Department of Transport to require a statutory declaration as evidence of practical experience when a person applies for a conversion of a vehicle licence when there is no direct equivalent. It has always been Transport's intent to require a statutory declaration. However, the inclusion of such a requirement in the Act is unnecessary. Clearly, section 43(1) enables the regulation to provide for a transitional type of arrangement in the widest possible terms, which is what we are talking about here. Section 111(5) of the Act empowers the regulations to require any matter to be verified by way of statutory declaration. This amendment would limit the regulation-making power and unnecessarily restrict the possible scope of the regulations. It is considered highly inappropriate since it would insert a substantive provision into the Bill. In making our position clear, I give an undertaking that a statutory declaration will be included in the regulation. This amendment is not required; it will be done through a regulation.

Hon NORM KELLY: The Democrats were looking for that form of undertaking from the Government. Unfortunately, I do not have the *Hansard* from half an hour ago, otherwise I could directly quote Hon Nick Griffiths, who said that we should not unnecessarily write into statutes things that can be done by regulation. I believe that this is best handled by regulation. If the requirement to provide a statutory declaration were not included in the regulations, the Democrats would most likely support the disallowance of those regulations because we believe that it is essential. As Hon Kim Chance's amendment suggests, we are talking about a changeover of differing standards when a classification no longer exists. That is what this is all about, and we should be very wary of it. Although these provisions about providing statutory declarations - we will come to more of them later on - put an added onus on the people filling them out, the ability to police what is contained in those statutory declarations is limited to being able to follow through so that there is an assessment, at least on a random basis, that the information contained in the statutory declarations is true. Therefore, anybody who is required to sign a statutory declaration under these circumstances would have an expectation that there was a good chance that the validity of his claims or statements would be further investigated.

Hon KIM CHANCE: I will deal first with the question and then with the substance. It seems apparent, since this amendment may not be supported by the Chamber, that the Chair does not need to rule on the question.

The DEPUTY CHAIRMAN: I will rule on the question. The advice I have received is that it does not matter.

Hon KIM CHANCE: Thank you, Mr Chairman. I was going to argue that to the extent that there might be a problem, it is a clerical problem rather than a substantive problem.

The DEPUTY CHAIRMAN: Exactly. I could not put it better myself.

Hon KIM CHANCE: Dealing with the substance, the Opposition has not intended to interfere with the regulation-making power. Indeed, section 43 relates specifically to that regulation-making power. Of course, we are conscious of the words that Hon Nick Griffiths so recently used in another matter. However, at the time we made the decision to draft this amendment, we were concerned about the manner in which the Government had said it proposed to deal with this. As I said, at that stage the Bill was silent on the requirement for a statutory declaration, and it certainly seemed open to unscrupulous persons to make a false declaration in the form of a letter or to forge a letter in a manner which could mislead the licensing authorities about the status and the competence of an applicant for a heavy vehicle licence. We were so concerned about that possibility that, notwithstanding the Government's later commitment, repeated just now, to include the requirement for a statutory declaration among those degrees of evidence and proof that would be required to support such applications, we felt it was important to add to and qualify the regulation-making power rather than remove from the Government the ability to properly regulate under the Act. Although it seems, on the face of it, that we are acting in a way that we would not normally act in trying to legislate for those things which should properly be

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regulated, that is not the case. We are simply attempting to add strength and direction, if one likes, to the regulation-making power.

Hon J.A. SCOTT: I have a query concerning the regulation-making power of this clause, which ties in with the proposed statutory declaration that will be provided under regulation. Will this transition cut off after a certain time? Will that be in regulation as well?

Hon M.J. CRIDDLE: Yes, the transition will be a 12-month period. People will then use the normal means to obtain a licence. There is a series of events. A person must have an earlier licence and he must qualify over a period.

Amendment put and negatived.

Clause put and passed.

Clauses 22 to 41 put and passed.

Clause 42: Sections 102A to 102D inserted -

Hon KIM CHANCE: I move -

Page 31, line 14 - To insert after "time" -

provided that the responsible person in that statutory declaration demonstrates that they have complied with their duty under section 58A of the Act

The most controversial part of this Bill has been owner-onus with regard to photographic evidence arising from either red light or Multanova cameras. Currently, about 20 per cent of speed and red light camera fines are not paid. The police have indicated that they do not have the power to investigate and make offenders pay, hence the need for some sort of owner-onus legislation. Members will be aware from what the minister has told us in this place both in relation to this Bill and in question time, and from what we have read in the media, of the extent of the problem that the police traffic branch has experienced in bringing about prosecutions in certain cases.

The people who have been identified as having a major problem with owner-onus legislation are the proprietors of car yards, where prospective buyers test drive vehicles; the people who hire and lease cars; and the owners of large fleets, such as Telstra, where a large number of people may legitimately drive a vehicle that is owned by that corporate owner. On any one day, the proprietor of a car yard may have seven or eight different people test drive particular vehicles, and at some stage one of those vehicles may be featured in a Multanova photograph. The proprietor will then receive an infringement notice but will have no means of determining who was driving the vehicle at that time, and that will create some problems for that proprietor. The proprietors of car yards made that point clearly to the Government, and the Government has attempted to deal with that situation and to meet the concerns expressed by those proprietors.

However, we believe that the provisions of proposed section 102B(4)(b)(iii), which provide that a statutory declaration should state that the responsible person did not know, and could not reasonably have ascertained, the name and address of the driver or person in charge of the vehicle at the time, are too weak and will continue to provide the opportunity for massive evasion of the payment of fines, particularly by people who drive fleet vehicles. As the minister stated in his second reading speech, this is not fair to individual owners and is not conducive to road safety. Speed and red light cameras have helped to reduce the road toll and to control speed and dangerous conduct at intersections. The minister also referred to the fact that the high level of use of such devices in Victoria has had a remarkable effect on speeding habits, as indicated by the number of vehicles that are clocked at travelling over the speed limit in the general environment; and the minister gave a figure of about 2.5 per cent. Since the introduction of speed cameras in Western Australia, the number of vehicles that are clocked at exceeding the speed limit has fallen from 68 per cent to 26 per cent. Therefore, speed cameras have certainly been effective.

I would be happy to argue with the minister about whether speed is as crucial a factor in road safety as is implied in the second reading speech, but that is another question. It is unarguable that speed is a factor, if not in the occurrence of accidents certainly in the severity of accidents. Similarly, it is unarguable that Multanovas are controlling speed, so we are happy to join with the Government on that.

We enthusiastically support the scope of this Bill, and there is no doubt that it contains some good elements for improving road safety. However, we are disappointed that some elements are not, or perhaps cannot be, addressed in this legislation. One of those matters is the causes of accidents, particularly country accidents, which seem to me to be often written off as speed related and, therefore, deemed by some to be speed caused, when in fact they are not accidents that relate primarily to speed. I believe fatigue, inattention and lack of skill,

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but principally fatigue, are areas in which we need to do a lot more work. I am disappointed, particularly given that this legislation is national and semi-uniform legislation, that it has not made any attempt to limit the number of hours that drivers can spend at the wheel, as does the legislation in other States, at least in respect of professional drivers. However, I do not believe professional drivers are the major problem. The day-to-day driver who is unaware of the onset of fatigue is at much greater risk, but I will leave that for the time being.

In our view, it is not acceptable that people who drive vehicles owned by corporations have a system applied to them that is different from that applied to other road users. A person who drives a Telstra vehicle should be subject to the same road rules and sanctions as a person who drives a private vehicle. The wording in this Bill is far more lax than the wording in legislation that has been passed in other States of Australia. The reason is that Western Australia relies on the notion of photographic evidence. In Western Australia, in 45 per cent of the photographs of vehicles that are exceeding the speed limit the image of the driver is not identifiable. That gives people a significant opening to avoid liability. In the past, reasonable ascertainment of the driver was based on the identification of the driver in the photograph. This meant that the car owner could reasonably sign a statutory declaration stating that he or she could not reasonably have ascertained who the driver was; hence it is possible that 45 per cent of drivers would escape liability. Proposed section 58A(2) states that a person responsible for a vehicle commits an offence if that person fails to take reasonable measures, or make reasonable arrangements, to ensure that if a driver identity request is made in relation to the vehicle, the responsible person will be able to comply with it.

The Labor Party was advised during briefings on this Bill that the provisions of proposed section 58A were, in effect, already caught by the provisions relating to statutory declarations. However, the requirements set out in proposed section 102B(4)(b)(iii) are demonstrably more lax than those in section 58A and there is no explicit link between these two proposed sections. Unfortunately, there is no requirement in the Bill that car yards or corporations that have fleet vehicles must keep any record of the driver of the vehicle at any time. The aim of this amendment is to ensure that the responsible person under this section will meet the higher obligations contained in proposed section 58A. This will require record keeping or some other means of meeting those obligations. It will not allow the mere declaration that the infringement photograph is unrecognisable, which may be all that is required under proposed section 102B(4)(b)(iii) as currently drafted. It will ensure that the section 58A offence and the relevant penalty will apply to traffic infringement notices where that otherwise may not be the case.

Hon M.J. CRIDDLE: The proposed amendment to clause 42 is unacceptable from both a policy and drafting perspective. It suggests not only that proposed section 102B will deal with traffic infringements but also that all persons who respond to a traffic infringement notice will be required to demonstrate that they have complied with section 58A. It is considered inappropriate to refer to this section as this relates to a person's responsibility to take reasonable measures to identify the driver when the identity request is made. It is not intended that a traffic infringement notice issued under proposed section 102B be a notice requiring information. That requirement is clearly set out in proposed section 102C. Failure to identify the driver may lead to the responsible person being liable for prosecution under proposed section 58A. It is considered that the amendment proposed places the new onus of proof on the person receiving the infringement notice under proposed section 102B.

Hon Kim Chance mentioned a couple of other issues, including the problems with fatigue, which is not related to this Bill. We are dealing with that through a code of practice which is proving satisfactory in Western Australia compared with some of the methods in the eastern States.

Hon Kim Chance: That is with professional drivers. I am more worried about non-professionals.

Hon M.J. CRIDDLE: I understand that fatigue is a problem, and we are dealing with that in other ways.

Hon NORM KELLY: I will not go through the background to the need for an amendment, or otherwise, as Hon Kim Chance has outlined that in considerable detail. The Australian Democrats support the amendment. When the driver of the vehicle cannot be identified and the responsible person cannot identify the driver of the vehicle and cannot have reasonably ascertained the name and address of the driver in charge of the vehicle at that time, will it be shown in regulations what "reasonably ascertained" would require? Would there be a requirement for a statutory declaration to show what measures that responsible person had undertaken to identify the driver at the time?

Hon M.J. Criddle: A statutory declaration is a serious obligation.

Hon NORM KELLY: I am fully aware of the serious nature of signing a statutory declaration. The Australian Democrats would support the Bill in its current structure if we received an undertaking that the regulations would provide some detail as to what would be required within that statutory declaration - for example, the measures the responsible person had taken to reasonably ascertain the driver of the vehicle at the time. A

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responsible person could easily sign a statutory declaration saying, "Sorry, I have been unable to find out who was driving the vehicle." That would fulfil the requirements of the Bill but not provide any worthwhile information as to what measures that person had taken to find out. The onus would then be on either the Department of Transport or the police to investigate further. Providing the details in the initial statutory declaration would go a long way towards minimising the amount of work the Department of Transport must do later on. We would like an undertaking that the regulations will require a statutory declaration to include the measures that the responsible person has taken to identify the driver.

Hon M.J. CRIDDLE: A statutory declaration is a pretty serious formality. For instance, if a person went to a car yard and took out a vehicle for a test drive it would be in the interests of the car yard to check the licence as there would be insurance implications. It is in the car yard's interest to have a clear indication of who is driving the vehicle and to have seen the licence.

Hon KIM CHANCE: I would like clarification from the minister about what is proposed for legislation that will proceed, assuming that this amendment is not carried. What will be required by law of a car yard owner, for example, in terms of further evidence that that car yard owner has made every effort to ascertain who the driver was? For example, will the law require the car yard owner to show that he or she made every reasonable attempt to log the drivers of a vehicle on the day that photographic evidence was taken?

That is the core of the question. The minister suggested that he would have the capacity to take that action through proposed section 102C. The amendment suggests that this cannot be done without cross-requiring the implementation of proposed section 58A.

Hon M.J. CRIDDLE: The member is on the wrong track. Proposed section 102C deals with the information required. The amendment relates to another part. One is the infringement notice and one is the information. Once the infringement notice is sent out, one receives the information required in proposed section 102C. That is the reference I made earlier outlining why the amendment is not necessary.

Amendment put and negatived.

Clause put and passed.

Clauses 43 to 64 put and passed.

Clause 65: Section 5 repealed -

Hon M.J. CRIDDLE: I move -

Page 50, line 4 - To delete "*Act*".

This is a typographical amendment.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 22 -

Hon M.J. CRIDDLE: I move -

Page 17, after line 9 - To insert the following new clause -

22. Section 44 amended

Section 44(3) is amended as follows -

- (a) by inserting before "endorsed" -
" to be taken to be ";
- (b) by deleting paragraph (b) and inserting instead the following paragraph -
" (b) a prescribed notation is endorsed on the licence to show that the licence is subject to conditions or limitations set out in a notice under paragraph (a)."

This new clause will provide drivers licence conditions and limitations to be endorsed on a licence by way of a prescribed notation. The Director General of Transport will be required to serve a notice to an applicant for, or the holder of, a licence setting out the conditions in full. Given the small amount of space available on a licence,

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it is impractical to place full conditions on all licences. When sufficient room is unavailable, notification will be endorsed on a licence to signify that other conditions have been imposed. It is purely administrative.

New clause put and passed.

New clause 28 -

Hon M.J. CRIDDLE: I move -

Page 20, after line 9 - To insert the following new clause -

28. Section 51 amended

Section 51(5) is repealed and the following subsection is inserted instead -

- (5) Subsection (5a) applies to a person who does not hold a driver's licence under this Act and who, under this Act, could not be issued with a driver's licence except on probation.

New clause put and passed.

Schedule put and passed.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

Third Reading

Bill read a third time, on motion by Hon M.J. Criddle (Minister for Transport), and returned to the Assembly with amendments.

Hon N.F. MOORE: Mr President, we have almost reached an agreement on amendments to the Electoral Act which, if possible, I would like passed this evening. Could you leave the Chair, Mr President, until the ringing of the bells while I sort out some agreement on the amendments? It will take about five minutes.

The PRESIDENT: I will leave the Chair until the ringing of the bells.

Sitting Suspended from 9.28 to 9.35 pm

Hon N.F. MOORE: Regrettably, Mr President, we could not reach agreement on that matter.