

**ROAD TRAFFIC (VEHICLES) BILL 2011**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Norman Moore (Leader of the House)**, read a first time.

*Second Reading*

**HON NORMAN MOORE (Mining and Pastoral — Leader of the House)** [9.15 pm]: I move —

That the bill be now read a second time.

The Road Traffic (Vehicles) Bill 2011 seeks to introduce new national legislation designed to improve compliance with mass, dimension and load restraint requirements for vehicles and to consolidate Western Australia's existing vehicle licensing legislation into one act.

Its content is based on legislation that was previously considered by the Parliament in the form of the Road Traffic (Vehicles) Bill 2007, which lapsed with the prorogation of Parliament in August 2008; however, a number of that bill's provisions have been amended to address concerns that were put to this government during a comprehensive consultation process undertaken with industry during 2009 and 2010.

Aside from these variations, which I will describe in more detail shortly, this bill is based on model legislation developed by the National Transport Commission in the form of the Road Transport Reform (Compliance and Enforcement) Bill, which was developed in consultation with all states and territories and was approved by Australian transport ministers in November 2003.

Pursuant to standing order 126(1), I advise that this bill is a uniform legislation bill. It is a bill that ratifies or gives effects to an intergovernmental or multilateral agreement to which the government of the state is a party. However, as the bill has been previously before the Standing Committee on Uniform Legislation and Statutes Review and reported and there being no additional agreements in the bill, it should not be referred.

It is important to note that this reform has already been implemented in a number of other jurisdictions. Therefore, its implementation in Western Australia will better align this state's transport laws with those throughout the rest of Australia.

The model legislation contains the following important outcomes. Firstly, it extends accountability for breaches of mass, dimension and load restraint requirements to all parties in the supply chain, introducing the "chain of responsibility" concept. Secondly, it strengthens the sanctions that apply for such breaches and ensures that enforcement officers have the necessary powers to enable the investigation of alleged breaches. Finally, it encourages all parties in the transport chain to adopt active risk management strategies to prevent breaches of applicable transport laws.

What does "chain of responsibility" mean? It means that other parties, including consignors, packers, loaders or consignees—receivers—of goods, who have had control over any step in the process of distributing goods by road, may, in relevant circumstances, be held liable for breaches of mass, dimension and load restraint requirements. It is an expansion of the traditional enforcement focus on drivers and vehicle owners to other parties in the transport chain. It is hoped that this will, in turn, lead to improved compliance outcomes. Presently, simply targeting drivers and vehicle owners often does not have the effect of promoting changes in practice along the transport chain.

Under this new regulatory framework it will be possible to target other parties in the transport chain who by their actions or inactions, or because of the unreasonable demands they place on drivers, put other road users at risk. Their behaviour also risks damage to road infrastructure and potentially results in some parties gaining an unfair commercial advantage. Now such behaviour may constitute an offence and the offender may be liable to a substantial penalty. In practical terms, this means that it is essential that all parties in the transport supply chain are aware of their responsibilities and have active systems in place to manage risks, thereby minimising the chance of road transport laws being breached. The reform also mandates special requirements for the transport of containers by road. It will be necessary for the person defined as the responsible entity—namely, the person in Australia who consigns the container for transport or otherwise arranges its transport by road—to provide accurate container weight declarations. Without a container weight declaration, a driver will not be permitted to transport the container.

These provisions have been designed to ensure that drivers and road transport operators receive correct information that will enable the selection of the appropriate vehicle to transport the container within the relevant legal mass limits. Liability for a mass, dimension and load restraint offence will apply in relevant circumstances, unless a defendant can establish that they did not know and could not reasonably have been expected to know of

the contravention, and took all reasonable steps to avoid a breach, even though they may not have been physically involved in the breach.

In an effort to foster a culture of compliance within the industry, these reforms include a range of new and innovative penalties that have been tailored to address specific types of offences. For example, the legislation recognises that mass, dimension and load restraint offences pose differing degrees of risk to safety, infrastructure or the environment, depending upon the extent to which a load is over-mass or oversize. As a result, it provides for the penalties for such offences to be scaled according to risk.

It also distinguishes between first-time offenders and systemic offenders, with more serious sanctions applying for those who persistently break the law.

This new penalty regime is anticipated to act as a better deterrent to those who have been willing to break the rules for unfair commercial gain. Some offences may be dealt with by way of infringements. Administrative sanctions and court-imposed penalties will also be available. Administrative penalties that may be imposed will include the issue of improvement notices, which identify improvements a business can make to its systems to ensure compliance. In addition to fines, courts will also have the ability to impose a range of additional sanctions, including intervention orders, licensing and registration sanctions, prohibition orders and, in appropriate cases, commercial benefits penalties. Importantly, whistleblower protection for people who report alleged breaches or who assist with investigations also forms part of the regulatory framework.

In order to introduce this reform, it is necessary to restructure the Road Traffic Act 1974. Currently, the Road Traffic Act 1974 contains provisions regulating driver and vehicle licensing, including mass, dimension and load restraint requirements, and traffic matters. Under the restructure, vehicle licensing provisions now form the substance of this bill and will be deleted from the Road Traffic Act 1974; driver licensing provisions will be deleted from the Road Traffic Act 1974 and will form the substance of the Road Traffic (Authorisation to Drive) Act 2008, which has been passed and is awaiting commencement; administrative matters—including provisions I referred to earlier that will confer additional powers upon enforcement officers in order to enable the investigation of alleged offences—will form the substance of the Road Traffic (Administration) Act 2008, legislation that, once again, has already been passed and is awaiting commencement; and traffic regulation matters will be contained in what remains of the Road Traffic Act 1974.

Earlier I mentioned that during late 2009 and early 2010 this government undertook further consultation with industry, prior to determining to progress this reform. We did so to ensure that the policy outcomes underpinning it remained relevant both for Western Australia's transport needs and to the Western Australian transport industry. As a consequence of those consultations, this government resolved that some refinements were needed to the model legislation in recognition of and to cater for Western Australia's unique transport environment, which provides for higher productivity vehicles than those utilised on the east coast. Western Australia is a sizeable state and has a very different road network when compared with, for example, Victoria or New South Wales. Let me briefly describe some of those refinements.

This bill will extend the availability of the "reasonable steps" defence for drivers and vehicle owners, regardless of whether the level of mass breach is of the minor, substantial or severe category. The model legislation only provides drivers and vehicle owners with this defence for minor mass breaches, which has been determined unwarranted as the reliance on the reasonable steps defence should be applied equally to all liable parties within the transport chain.

The bill also includes a variation to the model provisions dealing with improvement notices. The Western Australian variation will enable a person to seek an immediate review of an officer's intention to issue an improvement notice. This is designed to ensure that the operations of a business are not unintentionally impacted by the imposition of such a notice. Also included is a provision that recognises that shifting of bulk commodity loads can occur during transport, resulting in unintentional mass breaches.

The bill contains different, Western Australian-appropriate break points for width breaches in the minor, substantial and severe categories. This is only fitting given Western Australia's very different road network and conditions. Similarly, our legislation will provide for a lower penalty to apply in the case of a load restraint breach that falls within the minor risk category. This is only appropriate as such breaches pose a minimal risk to other road users.

The bill also includes provisions that give effect to the continuation of the Commissioner of Main Roads' approval of the harvest mass management scheme. This scheme currently provides an extra 10 per cent mass allowance for the movement of grains from paddock to receipt facilities. It has been developed specifically to assist farmers and transport operators to manage mass variations associated with the natural changes in the density of grain when it is loaded from paddocks. The intention is that such a scheme will continue to operate

into the future, provided that parties continue to comply with the terms and conditions imposed under the scheme.

In conclusion, this bill will provide Western Australia with the tools to move to a more systematic and strategic approach to enforcing transport laws, particularly where noncompliant operators within the transport industry are gaining a commercial advantage over compliant operators. Parties in the transport chain other than owners and drivers will now be required to take a proactive approach to ensuring that the road freight task is undertaken in compliance with relevant rules. This will ultimately lead to safer roads and the protection of infrastructure, as well as providing a level playing field for the delivery of the growing freight task in Western Australia.

I commend the bill to the house and table the explanatory memorandum.

[See paper 4290.]

Debate adjourned, pursuant to standing orders.