



FIRST SESSION OF THE THIRTY-SIXTH PARLIAMENT

**REPORT OF THE
STANDING COMMITTEE ON LEGISLATION
IN RELATION TO THE
ROAD TRAFFIC AMENDMENT BILL 2001 &
ROAD TRAFFIC AMENDMENT
(VEHICLE LICENSING) BILL 2001**

Presented by Hon Jon Ford MLC (Chairman)

Report 3
September 2001

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

May 24 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“1. Legislation Committee

- 1.1 *A Legislation Committee* is established.
- 1.2 The Committee consists of 7 members.
- 1.3 The functions of the Committee are -
 - (a) to consider and report on any bill referred by the House;
 - (b) to review the form and content of the statute book;
 - (c) to inquire into and report on any proposal to reform an existing law;
 - (d) to consider and report on a bill referred under SO 230 (c).
- 1.4 Unless otherwise ordered, the policy of a bill referred under subclause 1.3(a) at the second reading or any subsequent stage is excluded from the Committee’s consideration.
- 1.5 The Committee of its own motion, or on a reference from a Minister, may inquire into and report to the House on any or all aspects, including policy, of a proposal for an agreement or arrangement that, to have effect, would necessitate the enactment of legislation of a type described in SO 230 (c).”

Members as at the time of this inquiry:

Hon Jon Ford MLC (Chairman)

Hon Adele Farina MLC

Hon Giz Watson MLC (Deputy Chair)

Hon Peter Foss MLC

Hon Kate Doust MLC

Hon Bill Stretch MLC

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CONTENTS

Executive Summary and Recommendations	i
Executive Summary	i
Recommendations.....	ii
CHAPTER 1 Background	1
Reference and Procedure	1
Committee Hearing and Written Submission Received.....	1
Uniform Scheme	1
Intergovernmental Agreements and Uniformity	2
Uniformity	2
Intergovernmental Agreements	3
National Road Transport Commission.....	5
Skeletal Legislation.....	6
General	6
The Road Traffic Amendment Bill 2001.....	7
CHAPTER 2 Road Traffic Amendment Bill 2001	9
Clause 4 – Declarations and Exemptions	9
Proposed Section 103A	9
Chamber of Commerce and Industry (WA) Submission.....	10
Chamber of Minerals and Energy of WA Inc Submission	11
Proposed Section 103B	12
Right of Appeal	14
The Australian Defence Force and Foreign Defence Forces.....	14
Clause 5 – Regulation-Making Powers and Adopting Technical Documents	15
Clause 6 – Adopting of Other Law, Codes etc.....	17
Grey-letter Law	17
Standards Australia.....	18
Proposed Section 111A – Adopting Law, Standards, Codes etc from “Time to Time”	19
Findings	21
Recommendations	22
CHAPTER 3 Road Traffic Amendment (Vehicle Licensing) Bill 2001	23
Henry VIII Clauses	23
Clause 10 - Removing Information from the Schedule to the Regulations.....	23
Control of Vehicles (Off-road Areas) Act 1978	24
Definitions in Regulations.....	24
Stamp Act 1921.....	25
Definitions in Regulations.....	25
Local Government Act 1995.....	25
Chattel Securities Act 1987.....	26
Findings	26
Recommendations	26

EXECUTIVE SUMMARY AND RECOMMENDATIONS

EXECUTIVE SUMMARY

1. The Road Traffic Amendment Bill 2001 and the Road Traffic Amendment (Vehicle Licensing) Bill 2001 contain amendments to the *Road Traffic Act 1974* with the Road Traffic Amendment (Vehicle Licensing) Bill 2001 also referring to consequential amendments to other Acts.
2. Western Australia is a party to the following four relevant intergovernmental agreements which are focused on creating nationally consistent transport policies and laws throughout Australia:
 - the Heavy Vehicles Agreement and the First Heavy Vehicles Amending Agreement; and
 - the Light Vehicles Agreement and the First Light Vehicles Amending Agreement.
3. The passing of these two Bills is also linked to National Competition Payments. As Western Australia is a signatory to the National Competition Agreements on an Executive Government level, it has agreed with the Commonwealth to national road transport reform. Therefore, Western Australian may place at jeopardy Commonwealth funding if it does not implement legislation that facilitates nationally consistent transport policies and laws.
4. In relation to the Road Traffic Amendment Bill 2001, the Committee examined the proposal to enable regulations to:
 - allow the Minister to declare certain areas to be roads; and
 - allow the Minister to declare exemptions from regulations so that any specified regulations under the *Road Traffic Act 1974* do not apply to a specified person or vehicle and allow the Director General of Transport to declare exemptions from regulations prescribing standards for vehicles.
5. The Committee also examined the proposal to allow regulations to adopt the text of Commonwealth regulations made under the Commonwealth *Motor Vehicle Standards Act 1989* as well as standards, rules, codes or specifications of Standards Australia or a similar specified body. The adoption could be either of a particular document or from time to time. The Committee is concerned that this removes Western Australian Parliamentary scrutiny.

6. In relation to the Road Traffic Amendment (Vehicle Licensing) Bill 2001, the Committee examined the proposal to remove matters presently found in the Second Schedule of the *Road Traffic Act 1974* into regulations. It appears in this instance that such material would be justifiably placed in regulations. This is particularly as the relevant proposed amendment would remove a ‘Henry VIII’ clause in the *Road Traffic Act 1974* which currently allows the Schedule of the Act (which forms part of the Act itself) to be amended by regulation.
7. The Committee also considered the proposal to give meaning to terms used in primary legislation (namely the *Control of Vehicles (Off-road Areas) Act 1978* and the *Stamp Act 1921*) in regulations. The Committee is concerned about the defining in regulations of terms used in the primary legislation.

RECOMMENDATIONS

8. Recommendations are grouped as they appear in the text at the page number indicated.

Page 21:

Recommendation 1: The Committee recommends that the Road Traffic Amendment Bill 2001 be passed subject to the following amendment to clause 6:

Page 4, line 5 – to insert after “section 111” -

“(2)(d) and section 111(2)(daa)”.

Page 26:

Recommendation 2: The Committee recommends that clause 30 of the Road Traffic Amendment (Vehicle Licensing) Bill 2001 be amended so that the definitions of “motor car” and “motor cycle” are expressly included in the *Control of Vehicles (Off-road Areas) Act 1978* rather than being defined by the regulations.

Recommendation 3: The Committee recommends that clause 34 of the Road Traffic Amendment (Vehicle Licensing) Bill 2001 be amended so that the definitions of “eligible vehicle” and “specialised equipment” are expressly included in the *Stamp Act 1921* rather than being defined by the regulations.

Recommendation 4: The Committee recommends that the Road Traffic Amendment (Vehicle Licensing) Bill 2001 be passed subject to the amendments referred to in recommendations 2 and 3.

CHAPTER 1

BACKGROUND

REFERENCE AND PROCEDURE

- 1.1 Following the second reading speeches, the Road Traffic Amendment Bill 2001 (RTA Bill) and the Road Traffic Amendment (Vehicle Licensing) Bill 2001 (RTA(VL) Bill) were referred to the Standing Committee on Legislation (the Committee) on August 2 2001 pursuant to Standing Order 230(d) for examination. The Committee is to report by September 13 2001.

COMMITTEE HEARING AND WRITTEN SUBMISSIONS RECEIVED

- 1.2 The Committee conducted a hearing with officers from the Department of Planning and Infrastructure and the Department of Transport on August 22 2001. The Committee thanks the following officers for their valuable assistance:
- 1.2.1 Mr Trevor Maughan, Manager, Legislative and Legal Services; Mr Jim Stiles, Legislation Officer; and Ms Rebecca Neilson, Legislation Officer from the Department of Planning and Infrastructure; and
- 1.2.2 Mr John Dombrose, Manager, Vehicle Standards; and Mr Kenneth Brandis, Principal Policy Officer, Registration from the Department of Transport (or Transport WA).
- 1.3 The Committee also thanks the Chamber of Commerce and Industry, Western Australia, Transport Forum WA Inc and the Chamber of Minerals and Energy of Western Australia Inc for their written submissions.

UNIFORM SCHEME

- 1.4 Both the RTA Bill and the RTA(VL) Bill contain amendments to the *Road Traffic Act 1974* with the RTA(VL) Bill also providing for consequential amendments to other Acts¹. In addition to these Bills, the Committee notes that the *Road Traffic Amendment Act 2000* was passed by the Western Australian Parliament last year with some of its provisions yet to come into operation.
- 1.5 The Committee notes that the provisions yet to come into operation of the *Road Traffic Amendment Act 2000* include licensing provisions which in turn may be

¹ The *Chattel Securities Act 1987*; the *Control of Vehicles (Off-road Areas) Act 1978*; the *Local Government Act 1995*; and the *Stamp Act 1921*.

amended by clauses in the RTA(VL) Bill. The proposed amendments in the RTA Bill are not dependent on provisions of the *Road Traffic Amendment Act 2000*.²

INTERGOVERNMENTAL AGREEMENTS AND UNIFORMITY

Uniformity

- 1.6 The Minister for Racing and Gaming, the Hon Nick Griffiths MLC, representing the Minister Assisting the Minister for Planning and Infrastructure in the Legislative Council, explained in the relevant second reading speech, that the RTA Bill contains amendments to the *Road Traffic Act 1974*:

...necessary to support the making of regulations that will introduce two important national road transport reforms in Western Australia. The first reform involves the implementation of national standards for the construction, equipment, loading and noise and exhaust emissions of vehicles. ...

*The second reform involves the implementation of national operating standards for heavy vehicles. The proposed regulations will delineate the frameworks within which heavy vehicles must operate on public roads to ensure the safe interaction on Western Australian roads of heavy vehicles and other road users and the safety of the public generally; the safe carriage and restraint of loads on heavy vehicles; the minimisation of wear and tear on roads caused by heavy vehicles; and the ability to regulate traffic flow and balance the need for heavy vehicle access to the road network with the need to preserve the amenity of residential areas. ... they will set standards for heavy vehicle use on public roads which will be uniform across Australia, ...*³

- 1.7 The Minister for Racing and Gaming, in the relevant second reading speech, stated that the RTA(VL) Bill aims to provide Western Australia with:

... a more efficient customer-orientated vehicle licensing regime that is consistent with the national vehicle registration scheme developed by the National Road Transport Commission, in consultation with state and territory jurisdictions. ... In particular, it will provide

² Mr Jim Stiles, Transcript of Evidence, August 22 2001, p. 18.

³ The Minister for Racing and Gaming, Hon Nick Griffiths MLC, representing the Minister Assisting the Minister for Planning and Infrastructure in the Legislative Council, Second Reading Speech. Western Australia, Parliamentary Debates (Hansard), Legislative Council, August 2 2001, p. 1950.

*uniform arrangements of initial registration, renewal, transfer, suspension and cancellation of vehicle registrations. The scheme is aimed primarily at heavy vehicles and will make these vehicles easier to operate across borders. Many provisions will, however, have application to all vehicles and generate benefits across the community.*⁴

- 1.8 The Committee notes that Transport Forum WA Inc is in support of both the RTA Bill and the RTA(VL) Bill and sees uniformity as essential to the "... efficient and effective cross-border operation of heavy vehicles".⁵
- 1.9 The Chamber of Commerce and Industry Western Australia and the Chamber of Minerals and Energy of Western Australia Inc expressed some concerns about proposed section 103A of the RTA Bill hindering companies who have private 'fit for purpose' roads on private property, such as mine sites. This will be discussed further in Chapter 2.

Intergovernmental Agreements

- 1.10 Intergovernmental agreements are entered into at an Executive Governmental level and cannot bind the State Parliament. They are usually entered into in an effort to achieve national coordination in relation to a matter for which the Commonwealth does not have power in its own right to legislate. The Commonwealth Parliament, unlike State Parliaments, is not a plenary Parliament and is strictly limited to the powers that can be found in the Commonwealth Constitution. The State, on the other hand, has broad powers to legislate.
- 1.11 The Commonwealth *National Road Transport Commission Act 1991* established the National Road Transport Commission (NRTC). The following inter-governmental agreements appear in Schedules to that Commonwealth Act and relate to the two Bills presently before the Committee (being proposed uniform legislation), which aim to facilitate the implementation of a national uniform road transport scheme:

1.11.1 the Heavy Vehicles Agreement⁶ and the First Heavy Vehicles Amending Agreement⁷; and

⁴ The Minister for Racing and Gaming, Hon Nick Griffiths MLC, representing the Minister Assisting the Minister for Planning and Infrastructure in the Legislative Council, Second Reading Speech, Western Australia, Parliamentary Debates (Hansard), Legislative Council, August 2 2001, p. 1948.

⁵ Transport Forum WA Inc, Written Submission, August 21 2001.

⁶ Schedule 1 of the *National Road Transport Commission Act 1991*.

⁷ Schedule 1A of the *National Road Transport Commission Act 1991*.

- 1.11.2 the Light Vehicles Agreement⁸ and the First Light Vehicles Amending Agreement⁹.
- 1.12 Clause 2(a) of the First Heavy Vehicles Amending Agreement amends Recital C in the Heavy Vehicles Agreement and states that the parties (the Heads of Government) are committed to implementing reform to national road transport through a "... consultative inclusive arrangement".¹⁰ Recital D of the Heavy Vehicles Agreement then states that Recital C (now amended) necessitates "... uniform or consistent road transport legislation throughout Australia" and provides for the establishment of a co-operative scheme to ensure the implementation of such legislation.¹¹
- 1.13 The relevant co-operative scheme sets out the consultation process for the development, implementation and administration of uniform road transport legislation throughout Australia.¹²
- 1.14 Western Australia did not originally sign the Light Vehicles Agreement but subsequently became a party to the agreement with the First Light Vehicles Amending Agreement. Like the Heavy Vehicles Agreement, this Agreement seeks to implement "... uniform or consistent light vehicle transport legislation throughout Australia".¹³
- 1.15 Certain road transport reforms were also developed. The Western Australian Government intends that these two Bills will allow Western Australia to adopt the following national standards and scheme:
- 1.15.1 RTA Bill – the Heavy Vehicle Operating Standards and the Combined Vehicle Standards; and
- 1.15.2 RTA(VL) Bill – the National Vehicle Registration Scheme.¹⁴

⁸ Schedule 2 of the *National Road Transport Commission Act 1991*; note that Western Australia did not originally enter into this agreement but became a party to it subsequently, as stated in Recital A of the First Light Vehicles Amending Agreement.

⁹ Schedule 2A of the *National Road Transport Commission Act 1991*.

¹⁰ Clause 2(a), First Heavy Vehicles Amending Agreement, Schedule 1A of the *National Road Transport Commission Act 1991*.

¹¹ Recital D, Heavy Vehicles Agreement, Schedule 1 of the *National Road Transport Commission Act 1991*.

¹² Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 2.

¹³ Recital C, Light Vehicles Agreement.

¹⁴ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 2.

- 1.16 The RTA Bill is to come into operation on a date fixed by proclamation so that standards being developed nationally, which are currently being drafted, can come into operation simultaneously throughout Australia.¹⁵
- 1.17 The implementation of these two Bills before the Committee is also linked to National Competition Payments. As Western Australia is a signatory to the National Competition Agreements¹⁶ on an Executive Government level, it has agreed with the Commonwealth to national road transport reform:¹⁷

All state heads of Government entered into an agreement with the Commonwealth Government some time ago to review legislation and put in place mechanisms to remove anticompetitive practices and regulations. As a carrot for the States to proceed with that, the Commonwealth makes payments to the States – national competition payments – which are based on their meeting certain outcomes set by the National Competition Council. These reforms form part of that assessment process and failure to comply with them or to instigate legislation to achieve them may result in funds being withheld by the Commonwealth.¹⁸

- 1.18 The Committee observes that the Western Australian Parliament is in a position of being at a financial disadvantage by not passing this legislation. The effect on Commonwealth funding to Western Australia of amending the two Bills is unclear.

NATIONAL ROAD TRANSPORT COMMISSION

- 1.19 Recital F of the Heavy Vehicles Agreement states that the essential elements of the co-operative scheme, besides the introduction of uniform legislation, is the establishment of a national commission responsible to a Ministerial Council. As noted earlier, the *National Road Transport Commission Act 1991* (Cth) established the NRTC. In relation to both the heavy and light vehicle intergovernmental agreements, the Australian Transport Council exercises the functions and powers of the Ministerial Council of Road Transport.¹⁹

¹⁵ Mr Trevor Maughan, Transcript of Evidence, August 22 2001. p. 4.

¹⁶ The Competition Principles Agreement, the Code Conduct Agreement and the Agreement To Implement The National Competition Policy And Related Reforms.

¹⁷ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 1.

¹⁸ Mr Trevor Maughan, Transcript of Evidence, August 22 2001, p. 3.

¹⁹ Clause 2(h), First Light Vehicles Amending Agreement, Schedule 2A of the *National Road Transport Commission Act 1991* (Cth).

1.20 The NRTC:

... works in close partnership with the road freight and passenger sectors, governments, transport agencies, police, motoring and other organisations to develop practical reforms.

Recommendations are made to a Council of Australia's nine Transport and Roads Ministers. Once approved, the NRTC coordinates the introduction of reforms on-the-ground by transport and other agencies and the transport industry, and monitors the results.²⁰

- 1.21 The NRTC has a primary role in the development of road transport policies with a focus on creating nationally consistent transport policies and laws throughout Australia.²¹

SKELETAL LEGISLATION

General

- 1.22 In this report 'skeletal legislation' means legislation passed by a Parliament which empowers either a Ministerial Council or another Parliament in a co-operative scheme to make subordinate legislation to implement a uniform scheme.
- 1.23 Where the body making the subordinate legislation is a Ministerial Council or an entity existing outside Western Australia (for example, a statutory body established by the Commonwealth, or another Parliament), the Western Australian Parliament has no power to scrutinise or disallow any of the subordinate legislation so produced, even though it thereby becomes the law of Western Australia.
- 1.24 Generally, therefore skeletal legislation may escape scrutiny (and public access) where there is no provision for gazetting or tabling the subordinate legislation in the Parliament.
- 1.25 Such legislation typically removes the role of the Parliament in scrutinising the resulting subordinate legislation, by circumventing the disallowance provisions of section 42 of the *Interpretation Act 1984*, or by removing the regulation-making body from supervision by the Parliament.

²⁰ National Road Transport Commission, "About the NRTC: Overview" [Online], Available: <http://www.nrtc.gov.au/about/overview.asp?lo=about> [2001].

²¹ National Road Transport Commission, "About the NRTC: Overview" [Online], Available: <http://www.nrtc.gov.au/about/overview.asp?lo=about> [2001].

The Road Traffic Amendment Bill 2001

- 1.26 The RTA Bill provides for a regulation-making power to adopt Commonwealth regulations under the *Motor Vehicle Standards Act 1989* (Cth) or Standards Australia (or a similar specified body) standards, codes and specifications "... from time to time". This would allow regulations made under the proposed amendment to the *Road Traffic Act 1974* to adopt regulations and standards (and the like) from another jurisdiction as they are amended in that jurisdiction. Therefore not only does the adoption relate to such instruments at the time of adoption but also to subsequent amendments, which do not require subsequent Western Australian regulation. Subsequent amendments in another jurisdiction would not be scrutinised by the Western Australian Parliament. This would therefore appear to be skeletal legislation.
- 1.27 The Committee notes, however, comments at its hearing for this inquiry from Mr Trevor Maughan, Legislation Manager, Department of Planning and Infrastructure, in the context of adopting instruments from other jurisdictions:

We [Western Australia] are part of the process of developing those national design rules and vehicles will be manufactured according to those rules no matter what we say – the commonwealth legislation requires that. It is not intended to adopt other codes [besides the Australian Design Rules] "as from time to time amended". ... There is no intention to go towards peg legislation.²²

- 1.28 While that may be the present intention, the Committee is concerned with the apparent ability of clauses in the RTA Bill to enable adoption of other instruments as well.

²² Mr Trevor Maughan, Transcript of Evidence, August 22 2001, p. 5.

CHAPTER 2

ROAD TRAFFIC AMENDMENT BILL 2001

CLAUSE 4 – DECLARATIONS AND EXEMPTIONS

- 2.1 Clause 4 of the RTA Bill proposes to insert new sections 103A and 103B. Proposed sections 103A and 103B both relate to the scope of regulations made under the *Road Traffic Act 1994*:

*Proposed section 103A relates to the ability to declare any area to which regulations apply. Proposed section 103B is a stand-alone provision, which would allow for the making of regulations that apply to vehicles generally.*²³

Proposed Section 103A

- 2.2 Section 5 of the *Road Traffic Act 1974* defines a “road” as a “... highway, road or street open to, or used by, the public...”. The purpose of proposed section 103A is to enable the Minister to declare a specified regulation under the *Road Traffic Act 1974* to apply to a specified area open to or used by the public. The relevant Explanatory Memorandum and Departmental submission state that the regulations will need to apply to certain specified areas in urgent circumstances to regulate traffic in an area, to ensure safety of vehicle users and in the case of special events involving vehicles.²⁴ Examples given are a mine site or a private port, which, although they provide vehicle access, may not fall under the definition of “road” in the *Road Traffic Act 1974*.²⁵
- 2.3 The Committee notes with some concern that the proposed provision would allow the Minister to “declare” specified areas open to public use to fall under a specified regulation. Even though proposed subsection 103A(2) states that the declaration is to be effective for a specified period, no restriction is placed on the length of this period of declaration.
- 2.4 Although the Department of Planning and Infrastructure submitted to the Committee that the only areas intended to be captured, at this time, are ports and mine site areas, the proposed provision provides for broad ministerial power. The Department of Planning and Infrastructure sees the use of a declaration as desirable because it

²³ Mr Trevor Maughan, Transcript of Evidence, August 22 2001, p.11.

²⁴ Ms Rebecca Neilson, Transcript of Evidence, August 22 2001, p. 6.

²⁵ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 2; also see Mr Trevor Maughan, Transcript of Evidence, August 22 2001, p. 2.

“...may be made quickly in relation to an important factor such as where it is to be made for safety or traffic regulations”.²⁶

- 2.5 A ‘declaration’ in this context is considered subsidiary legislation for the purposes of section 41 of the *Interpretation Act 1984*.²⁷ As such, it must be published in the *Government Gazette* and comes into operation at that time. Section 5 of the *Interpretation Act 1984* defines subsidiary legislation as including an instrument “... made under any written law and having legislative effect”.
- 2.6 For a ‘declaration’ to have legislative effect (as opposed merely to administrative effect) it must determine the law or alter the contents of the law, rather than merely apply the law. It must also affect a privilege or interest; impose an obligation; create a right; or vary or remove an obligation or right.²⁸ It would appear therefore that a declaration contemplated by proposed section 103A would be subsidiary legislation.
- 2.7 However, it is important to note that a Minister’s declaration would not be subject to parliamentary scrutiny. Unlike a regulation, a declaration of this type does not fall under the section 42 of the *Interpretation Act 1984* (which requires tabling in the Parliament and makes regulations subject to disallowance).
- 2.8 Section 42(8)(b) of the *Interpretation Act 1984* broadens the reference in section 42 of “regulations” to include rules, local laws and by-laws. However, it does not refer to declarations. In practical terms, this means that declarations will not be scrutinised by the Parliament.

Chamber of Commerce and Industry (WA) Submission

- 2.9 The Chamber of Commerce and Industry, Western Australia (CCI (WA)) submitted to the Committee the concerns of their members who maintain ‘fit for purpose’ roads on private property such as mine sites, quarries, construction sites and grain terminals. The CCI (WA) notes that the Department of Minerals and Energy already has control over mine site areas, which are also subject to occupational health, safety and welfare, environmental and local government regulation. The CCI (WA) stated that if proposed section 103A comes into force:

Under the reasons of public safety and/or regulation of traffic the minister has considerable power. In an extreme case this could be

²⁶ Ms Rebecca Neilson, Transcript of Evidence, August 22 2001, p. 7.

²⁷ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 3.

²⁸ Pearce, D. AIAL Forum No 21, 1998; also see *Harper v Racing Penalties Appeal Tribunal of Western Australia and Another* (1995) 12 WAR 337.

used to close operations on private land, although it is more likely that the use of Section 103A would be to apply public road regulations to companies private roads. Even in that circumstance, the impost to companies could be enormous in terms of capital cost, not to mention the day to day cost to a company (duty of care) in ensuring that compliance is achieved and risk exposure minimized.

Although section 103B allows exemptions, the time to apply, conditions and cost for business negate against this process.²⁹

Chamber of Minerals and Energy of WA Inc Submission

2.10 The Chamber of Minerals and Energy of Western Australia Inc (CME) expressed the view that standardisation of business regulation assisted economic efficiency.

2.11 However, the CME is also concerned with clause 4 of the RTA Bill and proposed section 103A:

As this establishes an ability to apply the rules to mine sites rather than actually making all mine site roads for the purposes of the Act, it is difficult to assess the impact of this change. The Chamber accepts that there may be some very specific circumstances where this is appropriate but would be concerned if the power was to be used on any more than a very occasional basis, noting that traffic movement and safety in virtually all circumstances is more appropriately regulated by the acts that apply to mine sites.³⁰

2.12 The Department appears to believe that section 103A allows the Minister to resolve doubts concerning roads, which may or may not have been 'roads' for purposes of the *Road Traffic Act 1974* dependent upon whether they were open to or used by the public. It does not do this. It allows the Minister to make areas, which are open to or used by the public, subject to specified regulations under the *Road Traffic Act 1974*. There would be no point in doing this with respect to an area that could be described as a road, as it would already be caught within the definition if it is open to or to be used by the public.

2.13 The provision therefore is more likely to be used for areas of land, whether public or privately owned, which are open to or used by the public and which do not fall within

²⁹ Chamber of Commerce and Industry WA, Written Submission, August 17 2001.

³⁰ Chamber of Minerals and Energy WA Inc, Written Submission, August 23 2001.

the ordinary meaning of ‘road’. The provision cannot be used turn a road which is “... open to or used by the public” into a public road.

Proposed Section 103B

- 2.14 Proposed section 103B provides the power to make regulations that allow the Minister and the Director General to declare exemptions from regulations under the *Road Traffic Act 1974*.
- 2.15 Proposed subsection (1) states that regulations may provide for the Minister to declare a specified persons or vehicle to be exempt from regulations under the *Road Traffic Act 1974*.
- 2.16 Proposed subsection (2) states that regulations may provide for the Director General to grant exemptions from provisions in regulations “... prescribing standards of vehicles”. The regulation-making power is therefore more restricted in relation to the Director General.
- 2.17 As discussed in the context of proposed section 103A, the Committee has concerns about the use of declarations.
- 2.18 The Department for Planning and Infrastructure stated the context in which proposed section 103B(1) is intended to be used:
- a) *when complying with a vehicle standards requirement would prevent the vehicle from operating in the way in which, or for the purpose for which, the vehicle was built or modified; or*
 - b) *when the vehicle is an experimental vehicle, a prototype, or another vehicle that could not reasonably be expected to comply with the vehicle standards requirements; or*
 - c) *when the vehicle:*
 - i) *was registered, or otherwise authorised to be driven or towed on a road, by the Director General or by a vehicle licensing authority in another jurisdiction, before the relevant vehicle standards provision commenced; and*

ii) *was not required to comply with a similar requirement before that commenced.*³¹

2.19 In relation to the Director General, proposed section 103B(2) intends to “... remove any doubt as to the power to make regulations so empowering the Director General”.³² Examples of the circumstances in which such exemptions could be granted by the Director General relate to:

- a) tyres fitted to some earthmoving vehicles and farm tractors with non-compliant tread patterns;
- b) compliance plates (which confirm compliance with Australian Design Rules) which have been damaged or stolen, which would otherwise result in unreasonable loss of the vehicle’s market value; and
- c) people with disabilities who require non-standard fixed seat belts, as opposed to retractor seat belts.³³

2.20 The Committee notes that the *Road Traffic (Vehicle Standards) Regulations 1977* already empower the Director General to approve or exempt. For example, the Director General can grant exemptions from minimum tyre tread requirements and approvals for modifications to specific types of motor vehicles and trailers.³⁴

2.21 Mr John Dombrose, Department of Transport, informed the Committee that regulations allowing for exemptions referring specifically to agricultural implements were being contemplated:

The regulations that we are in the process of adopting cover a certain number of the towed agricultural implements, but not the entire number. Once the drafting of the regulations was completed, we intended to examine the towed agricultural implements and adjust them according to what was left over from the other regulations. It will then be a question of where we put them. I would like to see the

³¹ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 3 - 4.; also see Ms Rebecca Neilson, Transcript of Evidence, August 22 2001, p. 11.

³² Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 4.

³³ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 4; also see Ms Rebecca Neilson, Transcript of Evidence, August 22 2001, pp. 12 – 13.

³⁴ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 5.

*exemptions covered so that those agricultural implements are covered by these exemptions so that we can handle them in the same manner.*³⁵

- 2.22 In light of the existing powers of the Director General, and the restriction to regulations prescribing standards for vehicles, the Committee is not concerned by the use of declarations in this context.

Right of Appeal

- 2.23 The Committee further notes that, at this time, there is no intention of drafting regulations that would allow an appeal to be made by a third party to the granting of an exemption from the requirement to comply with vehicle standards requirements.³⁶

The Australian Defence Force and Foreign Defence Forces

- 2.24 The Committee raised concerns, at the hearing for this inquiry about the ability for regulations to be made that would enable the Minister to grant exemptions to the Australian Defence Forces and foreign defence forces.
- 2.25 The Department of Planning and Infrastructure later responded in writing to the Committee's concerns and informed the Committee that it is presently proposing to draft regulations giving the Minister limited power of exemption based on the national model regulations which have been adopted in other jurisdictions. These include power to exempt a vehicle from a requirement to comply with vehicle standards if it would prevent the vehicle operating for the purpose for which it was built.³⁷
- 2.26 The Crown Solicitor's Office has advised the Department that regulations would extend to vehicles owned by the Australian Defence Force and also foreign defence force vehicles operating in Western Australia.³⁸
- 2.27 However, the Crown Solicitor's Office has also advised that in relation to the Australian Defence Force:

... if, pursuant to the Defence Act 1903 (Cth), a state of defence emergency is proclaimed, defence force members would be permitted

³⁵ Mr John Dombrose, Transcript of Evidence, August 22 2001, p. 19.

³⁶ Department of Planning and Infrastructure, Supplementary Written Submission, August 24 2001, p. 3.

³⁷ Department of Planning and Infrastructure, Supplementary Written Submission, August 24 2001, p. 2.

³⁸ Department of Planning and Infrastructure, Supplementary Written Submission, August 24 2001, p. 2.

*to control certain areas. In these circumstances, the direction of a defence force member would override state legislation.*³⁹

CLAUSE 5 – REGULATION-MAKING POWERS AND ADOPTING TECHNICAL DOCUMENTS

- 2.28 Clause 5 proposes the deletion and replacement of section 111(2)(d) which expands on the matters for which the Governor may make regulations:

*The proposed replacement of subsection 111(2)(d) will remove any doubt as to the scope of those regulation-making powers, including all matters necessary for prescribing appropriate standards for vehicle design, construction, maintenance, loading and noise and exhaust emissions.*⁴⁰

- 2.29 It also proposes the insertion of a new sub-subsection (daa) which provides that the Governor may make regulations “... applying, adopting or incorporating” any instrument or writing (with or without modification) related to vehicle standards, as in force or existing at the time of the regulation.

- 2.30 This provision is to enable referral, in regulations, to the *Load Restraint Guide*, which sets out guidelines for safe loading of vehicles.⁴¹ The Federal Office of Road Safety and the NRTC, in consultation with all Australian jurisdictions, relevant agencies and stakeholders developed this guide.

- 2.31 It appears that section 43(8)(b)(i) of the *Interpretation Act 1984* does not capture such a ‘guide’. That section states that subsidiary legislation may be made which is in accordance with “... a specified standard or specified requirement”:

*Whilst these provisions [in the Interpretation Act 1984] would clearly permit the drafting of regulations requiring compliance with a standard, such as an Australian Standard or an Australian Design Rule, neither empower the drafting of regulations which reference a document or instrument other than a “standard”.*⁴²

³⁹ Department of Planning and Infrastructure, Supplementary Written Submission, August 24 2001, p. 2.

⁴⁰ Explanatory Memorandum to the Road Traffic Amendment Bill 2001, p. 3.

⁴¹ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 6.

⁴² Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 6.

2.32 The Committee notes that this comment appears to relate also to the amendments proposed by clause 6 which refer to the regulation-making power to adopt standards, but also "... rules, codes or specifications"⁴³ from Standards Australia.

2.33 The Department of Planning and Infrastructure also informed the Committee that:

*It is intended that the proposed regulations enable a person, who is alleged to have committed an offence against the regulations' load restraint requirements, to raise a defence by proving he/she loaded the vehicle/trailer in accordance with the Guide. No defence has previously been available and the mere fact that a load or part of a load has fallen from a vehicle is currently prima facie evidence of an offence.*⁴⁴

2.34 The Committee notes the examination of the Federal Office of Road Safety guidelines in the Report of the Commonwealth Interdepartmental Committee of Quasi-regulation (the Commonwealth committee), dated December 1997 titled *Grey-Letter Law*⁴⁵. The Commonwealth committee noted generally that guidelines are not 'quasi-regulatory' but may be essentially advisory or explanatory:

Guidelines are likely to be quasi-regulation [sic] if:

They suggest particular actions or procedures not specified in the law itself which business should adopt: and

*Business has a strong incentive to comply [for example if there is an indication that following the guidelines will prevent a breach of the relevant legislative requirements].*⁴⁶

2.35 Whether being a 'quasi-regulation' is akin to being a "standard" for the purposes of the *Interpretation Act 1984* is unclear and therefore the proposed sub-section does appear necessary to effect the purpose stated by the Department. The Committee is satisfied that, in this context, the regulations should be able to duplicate such

⁴³ Clause 6 Road Traffic Amendment Bill 2001, proposed insertion of section 111A.

⁴⁴ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 6.

⁴⁵ Commonwealth Interdepartmental Committee on Quasi-legislation, December 1997, *Grey Letter Law*.

⁴⁶ Commonwealth Interdepartmental Committee on Quasi-legislation, December 1997, *Grey Letter Law*, p. 23.

instruments that exist at a particular point in time. As regulations, they will be disallowable and subject to parliamentary scrutiny.⁴⁷

CLAUSE 6 – ADOPTING OF OTHER LAW, CODES ETC

Grey-letter Law

2.36 The term ‘grey-letter’ law is used in a 1997 report of the Commonwealth committee, *Grey-Letter Law*, to describe ‘quasi-legislative instruments’,⁴⁸ such as industry codes, standards or voluntary rules. However, these instruments may become mandatory law by being referred to in legislation.⁴⁹ Proposed section 111A in clause 6 of the RTA Bill provides legislative power to make regulations adopting quasi-legislative instruments as well as regulations from the Commonwealth.

2.37 Pearce and Argument, in their text *Delegated Legislation in Australia*, note that there may be problems with accessing quasi-legislation and that it largely escapes parliamentary scrutiny:

*It is difficult to reach any sort of conclusion as to the reasons, if any, behind what has clearly been a pronounced trend towards this less formal law-making. It is interesting, however, to speculate about why a new level of law-making has developed which is increasingly the province of bureaucrats and into which the parliament often cannot intrude.*⁵⁰

2.38 Pearce and Argument also examine the matter of sub-delegation of law-making power.⁵¹ The legal maxim *delegatus non potest delegare* encapsulates the notion that a person who has been delegated power cannot in turn further delegate or ‘sub-delegate’ this power.⁵² The inclusion in delegated legislation of requirements stipulated by another organisation results in the other organisation stating the law on the topic. This is particularly so when the document is adopted as in force from time

⁴⁷ Section 42 of the *Interpretation Act 1984*.

⁴⁸ Commonwealth Interdepartmental Committee on Quasi-legislation, December 1997, *Grey Letter Law*, p. 2 & 5.

⁴⁹ Commonwealth Interdepartmental Committee on Quasi-legislation, December 1997, *Grey Letter Law*, p. 36.

⁵⁰ Pearce, D. and Argument, S. 1999, *Delegated Legislation in Australia* (2nd ed.) Butterworths, Australia, p. 11.

⁵¹ Pearce, D. and Argument, S. 1999, *Delegated Legislation in Australia* (2nd ed.) Butterworths, Australia, p. 280.

⁵² Pearce, D. and Argument, S. 1999, *Delegated Legislation in Australia* (2nd ed.) Butterworths, Australia, p. 257.

to time.⁵³ An interesting point is then raised as to whether this practice amounts to sub-delegation. The general legal position in Australia presently is that it is not, however this may change in the future.⁵⁴

Standards Australia

- 2.39 Standards Australia is a non-government standards making body. It is a member of various international standards organisations and owns the trademark ‘Australian Standard’.⁵⁵ Compliance with Australian Standards is only a legal requirement if they are referred to in legislation.⁵⁶ Proposed section 111A in clause 6 of the RTA Bill would allow the adoption of standards (or other instruments) made by this body to be incorporated into Western Australian regulations made under the *Road Traffic Act 1974*.
- 2.40 The Committee notes that the Statutes (Repeals and Minor Amendments) Bill 2001 proposes the insertion of a definition of “Standards Australia” into the *Interpretation Act 1984* as meaning “Standards Australia International Limited” and to state that reference to “Standards Association of Australia” shall be read as reference to Standards Australia.⁵⁷
- 2.41 It is apparent that the adoption of standards such as Australian Standards is attractive because it is faster and less costly than developing mandatory standards.⁵⁸ However, the Committee is concerned that Australian Standards referenced in legislation, as is contemplated here, must then be purchased from Standards Australia in order for them to be comprehended and to allow for legal compliance. This is because these standards are the intellectual property of Standards Australia.⁵⁹ It is interesting to note the comments of the Commonwealth committee that such instruments:

⁵³ Pearce, D. and Argument, S. 1999, *Delegated Legislation in Australia* (2nd ed.) Butterworths, Australia, p. 279 - 280.

⁵⁴ Pearce, D. and Argument, S. 1999, *Delegated Legislation in Australia* (2nd ed.) Butterworths, Australia, p. 280; also see Wilson, J. in *Dainsfield Ltd v Smith* (1985) 58 ALR 285 at 295.

⁵⁵ Commonwealth Interdepartmental Committee on Quasi-legislation, December 1997, *Grey Letter Law*, p. 35.

⁵⁶ Commonwealth Interdepartmental Committee on Quasi-legislation, December 1997, *Grey Letter Law* p. 35.

⁵⁷ Clause 67(2) & (3), Statutes (Repeals and Minor Amendments) Bill 2001.

⁵⁸ Commonwealth Interdepartmental Committee on Quasi-legislation, December 1997, *Grey Letter Law*, p. 44.

⁵⁹ Commonwealth Interdepartmental Committee on Quasi-legislation, December 1997, *Grey Letter Law*, p. 48.

*... impede access to information particularly for small business, due to costs and effort involved. This is particularly the case in circumstances where mandated standards contains cross-reference to other standards.*⁶⁰

2.42 The Committee is concerned about the cost of accessing standards, codes or other specifications that would be adopted in Western Australian using proposed section 111A.

2.43 In response to such concerns raised by the Committee regarding the issue of access to standards, the Department of Planning and Infrastructure acknowledged that the relevant standards, codes or specifications as well as Commonwealth regulations are publicly available, albeit at varying costs:

It is not possible for Western Australia to control the charge for a publication imposed by the Australian Government Publishing Service or Standards Australia for example.

*Increasingly, however, these documents are being made available free of charge either on the internet or in hard copy form.*⁶¹

Proposed Section 111A – Adopting Law, Standards, Codes etc from “Time to Time”

2.44 Clause 6 proposed to insert a new section 111A which empowers regulations made under proposed expanded section 111 to adopt, either wholly or in part national standards under the *Motor Vehicle Standards Act 1989* (Cth), or standards, rules, codes and specifications of Standards Australia “... or a similar specified body”.

2.45 It is unclear as to the actual meaning of “... a similar specified body”. However, reference in the Explanatory Memorandum and the submission from the Department of Planning and Infrastructure would suggest that the Federal Office of Road Safety is an example of “... a similar specified body”.⁶²

2.46 Of particular interest to the Committee is that proposed section 111A(2) provides for adoption “... as in force from time to time unless the regulations specify that a particular text is adopted”.

⁶⁰ Commonwealth Interdepartmental Committee on Quasi-legislation, December 1997, *Grey Letter Law*, p. 48.

⁶¹ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 6 - 7

⁶² Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 6; also see Explanatory Memorandum to the Road Traffic Amendment Bill 2001, p. 3.

- 2.47 The Committee has concerns regarding the adoption of instruments from another jurisdiction or (as in the case of Standards Australia or similar bodies) non-government bodies ‘from time to time’. The effect is that only an adopting regulation would be required. Any subsequent amendments to such instruments would not come under the scrutiny of the Western Australian Parliament.
- 2.48 The Department of Planning and Infrastructure put to the Committee that the adoption, from time to time, of instruments such as Australian Design Rules (ADRs) (which are prescribed standards for the design and construction of vehicles) is most appropriate to ensure uniformity of standards throughout Australia:

The proposed regulations will merely require vehicles to continue to comply with the standards which were applicable to them at the time of their manufacture. In other words, the ADRs will become “in-service” standards.

The proposed regulations will not impose a requirement upon any vehicle with which it does not already have to comply at the time of manufacture and it is difficult to envisage a circumstance when Western Australia would desire to impose a standard different to that imposed at the time of manufacture.

Without the ability to adopt the ADRs from time to time, the proposed vehicle standards regulations would require amendment each time an ADR is amended or a new ADR is developed, as is the case presently.⁶³

- 2.49 The Committee is further advised by the Department of Planning and Infrastructure that ‘in-service’ standards are those that apply to a vehicle after it is being manufactured and whilst it is in service. These are specified in the existing *Road Traffic (Vehicle Standards) Regulations 1977*. These ‘in-service’ standards provide that vehicles must continue to comply to the ADR standards applicable at the time of manufacture while the vehicle is in use on Western Australian roads:

New ADRs are constantly being developed and existing ADRs are constantly being amended. ... A vehicle manufactured to the standard

⁶³ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 7.

*of an earlier ADR [would] be required to continue to comply with the standard of that earlier ADR.*⁶⁴

- 2.50 Although the Committee acknowledges the justification for the adoption from time to time of ADRs, the proposed section allows for much broader regulatory powers beyond simply the adoption of these instruments. If it is only seen as necessary and expedient to empower the making of regulations adopting relevant ADRs from time to time, the Committee would prefer specific reference in the proposed amending provision to the ADRs and other relevant instruments. That is, to confine the ability to adopt material ‘from time to time’ to specified instruments.
- 2.51 The Committee does not condone an abrogation of parliamentary scrutiny, particularly with what would amount to a blind adoption of amendments to instruments. Although they may have been negotiated at an executive level, it is appropriate that the Parliament consider such instruments that are promulgated from time to time.
- 2.52 The Committee would prefer a restriction of the reference to an adoption “... from time to time” and require any amendments to adopted instruments to be subject to the usual parliamentary scrutiny process.
- 2.53 The Committee also notes that the scope of proposed section 111A presently allows for all regulations made under section 111, to adopt either wholly or in part, the instruments referred to in proposed subsections (1)(a) and (b). The Committee believes that it is not generally appropriate for regulations to adopt instruments (even “particular texts”) from other jurisdictions or non-government bodies.
- 2.54 The Committee considers it appropriate that the instruments referred to in subsection 111A(1) implicitly refer to regulations made under proposed subsection 111(2)(d) and (2)(daa).
- 2.55 This still supports the intentions stated by the Departmental officers.

Findings

- 2.56** *The Committee is concerned about the cost attached to accessing standards, codes or specifications that could be adopted in Western Australian by proposed section 111A.*
- 2.57** *Proposed section 111A(2) provides for adoption “... as in force from time to time unless the regulations specify that a particular text is adopted”. The Committee has*

⁶⁴ Department of Planning and Infrastructure, Second Supplementary Written Submission (e-mail from Ms Rebecca Neilson, Legislation Officer), August 29 2001.

concerns regarding the adoption of instruments from another jurisdiction or (as in the case of Standards Australia or similar bodies) non-government bodies from time to time. The effect is that only an adopting regulation would be required. Any subsequent amendments to such instruments would not come under the scrutiny of the Western Australian Parliament.

- 2.58** *Whilst unhappy with the general principle of adopting regulations or standards at all, and in particular “... from time to time”, the Committee can see the benefits with regards to uniform vehicle standards throughout Australia. However, the Committee would have grave concerns, for example, with adopting a standard maximum speed limit. For that reason the implied limitation in proposed section 111A to adopting vehicle standards should be made explicit.*

Recommendations

Recommendation 1: The Committee recommends that the Road Traffic Amendment Bill 2001 be passed subject to the following amendment to clause 6:

Page 4, line 5 – to insert after “section 111” -

“(2)(d) and section 111(2)(daa)”.

CHAPTER 3

ROAD TRAFFIC AMENDMENT

(VEHICLE LICENSING) BILL 2001

HENRY VIII CLAUSES

- 3.1 A ‘Henry VIII clause’ is a provision in an Act that authorises the amendment of the enabling legislation or another Act by means of subordinate legislation or executive act. Clauses that allow for the amendment of relevant Acts by subordinate legislation are generally objectionable:⁶⁵

*While it is customary for Parliament to delegate minor legislative powers to subordinate authorities and bodies there is a need to have in place safeguards against the risk of abuse incidental to such delegation. A “Henry VIII clause” contained in principal legislation highlights the need for such safeguards because not only can the Executive make delegated legislation, it is empowered to impose its own intent over Parliament as expressed in the principal legislation. ... It has long been a recognised principle of Parliamentary law making that an Act should only be amended by another Act of Parliament.*⁶⁶

CLAUSE 10 - REMOVING INFORMATION FROM THE SCHEDULE TO THE REGULATIONS

- 3.2 Clause 10 amends section 19(3) of the *Road Traffic Act 1974* so that “fee” presently referred to in Part III of the Second Schedule of the Act will be “... charge prescribed in the regulations”. Clause 24 replaces “fee” with “charge” in various sections of the Act to be consistent with national provisions and because it is considered a more appropriate term⁶⁷ (in relation to vehicle licensing). Clause 22 of the Bill repeals the First and Second Schedule. The effect is to remove information regarding fees/charges from the Schedules of the Act and place it in regulations.
- 3.3 Section 31(2) of the *Interpretation Act 1984* states that a Schedule forms part of the Act. Therefore any provision allowing the Schedule to be amended by regulation is a Henry VIII clause.

⁶⁵ Scrutiny of Legislation Committee, Parliament of Queensland Legislative Assembly, January 1997, *The Use of “Henry VIII Clauses” in Queensland Legislation*, p. 26.

⁶⁶ Joint Standing Committee on Delegated Legislation, Parliament of Western Australia, letter to Minister for Transport, June 10 1997.

⁶⁷ Explanatory Memorandum to the Road Traffic Amendment (Vehicle Licensing) Bill 2001, p. 8.

- 3.4 The Queensland Scrutiny of Legislation Committee, in its 1997 report, stated that regulations that amend Schedules to an Act could be avoided by relocating the information seeking to be amended to subordinate legislation (if it was appropriate to do so).⁶⁸
- 3.5 The question before the Committee is therefore whether it is appropriate for this information to be in subordinate legislation. The Joint Standing Committee on Delegated Legislation in a letter dated June 10 2001 to the then Minister for Transport, Hon E J Charlton MLC, regarding the *Road Traffic (Fees for Vehicle Licences) Regulations (No. 2) 1996*, stated that:
- The necessity for section 28A [of the Road Traffic Act 1974] could easily be avoided by placement of the fees and charges referred to in Part III of the Second Schedule in subordinate legislation.*
- 3.6 Clause 15 of the RTA(VL) Bill repeals section 28A (the Henry VIII clause) that provides that fees in the Schedule may be amended by regulation.
- 3.7 The removal of information currently contained in the Second Schedule of the *Road Traffic Act 1974* to regulations is justified, particularly in light of the removal of a Henry VIII clause from the Act.

CONTROL OF VEHICLES (OFF-ROAD AREAS) ACT 1978

Definitions in Regulations

- 3.8 While there is, on the one hand, an endeavour to avoid a Henry VIII clause in the Clause 10 proposed amendment, clause 30 (which refers to amending definitions in the *Control of Vehicles (Off-road Areas) Act 1978*) seeks to create a Henry VIII clause.
- 3.9 Clause 30 seeks to amend the *Control of Vehicles (Off-road Areas) Act 1978* by deleting the definition of “motor cycle” and providing that the meaning of the terms “motor car” and “motor cycle” are to be given meaning by regulation. This would therefore allow the primary legislation to be amended by subordinate legislation.
- 3.10 The Department of Planning and Infrastructure has informed the Committee that it is intended that the definitions in the *Road Traffic (Licensing Regulations) 1975* apply to the Act, but that Parliamentary Counsel have advised the Department that it would be inappropriate for direct reference to be made to those regulations. However,

⁶⁸ Scrutiny of Legislation Committee, Parliament of Queensland Legislative Assembly, January 1997, *The Use of “Henry VIII Clauses” in Queensland Legislation*, p. 32.

regulations under the *Road Traffic Act 1974* may refer to such definitions.⁶⁹ These definitions are presently located in the First Schedule of the *Road Traffic Act 1974*, which definitions are to be repealed by this Bill.

- 3.11 The Committee does not consider that this explanation justifies the creation of a Henry VIII clause in this circumstance and would prefer the definitions to be contained in the primary legislation.

STAMP ACT 1921

Definitions in Regulations

- 3.12 Clause 34 of the Bill seeks to delete specified definitions in the *Stamp Act 1921* and provide that the terms “eligible vehicle” and “specialised equipment” be given meaning by regulation. This would create a Henry VIII clause as such an amendment to section 76CB(1) of the *Stamp Act 1921* would allow the primary legislation to be amended by subordinate legislation.
- 3.13 The Department of Planning and Infrastructure has informed the Committee that the definitions for these terms are presently in the First Schedule of the *Road Traffic Act 1974*, which will be repealed by this Bill. It is intended that the definitions be removed to regulations.⁷⁰
- 3.14 The Committee does not consider that this explanation justifies the creation of a Henry VIII clause in this circumstance and would prefer the definitions to be contained in the primary legislation.

LOCAL GOVERNMENT ACT 1995

- 3.15 Clause 33 seeks to amend section 3.38 of the *Local Government Act 1995* by deleting the present definition of “vehicle” and changing the meaning to be:

... a vehicle for which a vehicle licence is required under the Road Traffic Act 1974 if the vehicle is to be used on a road.

This is apparently as a result of the repeal of the First Schedule of the *Road Traffic Act 1974*.⁷¹

⁶⁹ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 8.

⁷⁰ Department of Planning and Infrastructure & Department of Transport, Written Submission, August 22 2001, p. 8.

⁷¹ Explanatory Memorandum to the Road Traffic Amendment (Vehicle Licensing) Bill 2001, p. 10.

CHATTEL SECURITIES ACT 1987

- 3.16 Clauses 25 to 28 of the RTA (VL) Bill amend the *Chattel Securities Act 1987*. The clause 25 amendment is the insertion of a definition of “trailer”. This is a consequence of the intended repeal of the First Schedule of the *Road Traffic Act 1974*. Clause 28 amends section 13(b) by deleting reference in that section to “... caravans and semi-trailers described in the First Schedule to the *Road Traffic Act 1974*...”. Therefore the section would still refer to “trailers”, which would in turn be defined in section 3 of the Act.
- 3.17 Clause 27 also deletes reference to definitions tied into the First Schedule of the *Road Traffic Act 1974*. The new definition of “trailer” that is proposed appears to be broad enough to capture the terms “caravan” and “semi-trailer” but does not include a motor vehicle being towed.

Findings

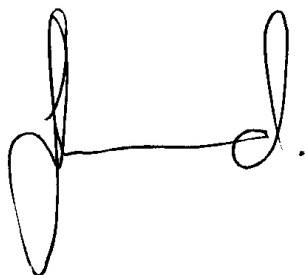
- 3.18 *Provisions that allow for the amendment of primary legislation by subordinate legislation (Henry VIII clauses) are generally objectionable.*
- 3.19 *The removal of information currently contained in the Second Schedule of the Road Traffic Act 1974 to regulations is justified, particularly in light of the removal of a Henry VIII clause from the Act.*
- 3.20 *The proposed amendments to the Control of Vehicles (Off-road Areas) Act 1978 and the Stamp Act 1921 whereby terms defined in the primary legislation would be “... given meaning by the regulations” is of concern to the Committee, as it enables the amendment of primary legislation by regulations. These proposed amendments would create provisions that are Henry VIII clauses. It is preferable that definitions of terms in primary legislation be defined in that primary legislation rather than in regulations.*

Recommendations

Recommendation 2: The Committee recommends that clause 30 of the Road Traffic Amendment (Vehicle Licensing) Bill 2001 be amended so that the definitions of “motor car” and “motor cycle” are expressly included in the *Control of Vehicles (Off-road Areas) Act 1978* rather than being defined by the regulations.

Recommendation 3: The Committee recommends that clause 34 of the Road Traffic Amendment (Vehicle Licensing) Bill 2001 be amended so that the definitions of “eligible vehicle” and “specialised equipment” are expressly included in the *Stamp Act 1921* rather than being defined by the regulations.

Recommendation 4: The Committee recommends that the Road Traffic Amendment (Vehicle Licensing) Bill 2001 be passed subject to the amendments referred to in recommendations 2 and 3.

A handwritten signature in black ink, consisting of a large loop on the left, a horizontal line, and a smaller loop on the right.

Hon Jon Ford MLC (Chairman)

Date: September 11 2001

