ROAD TRAFFIC (VEHICLES) BILL 2011

Committee

The Chair of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Simon O'Brien (Minister for Finance) in charge of the bill.

Clause 1: Short title —

Hon KEN TRAVERS: I was not going to raise this matter, but then the minister raised it in his reply to the second reading debate. The minister talked about consultation with industry between December 2009 and March 2010, and I have also seen reference somewhere to consultation from early December through to 15 January. I am not disputing that the government may have continued to take advice and receive submissions; however, I am intrigued to know whether the minister can tell us when industry was notified of the consultation period and who in industry was notified of the consultation period.

Hon SIMON O'BRIEN: The question is a fair question, but is one that is starting to get a little lost in the mists of time. The notifications went out through a number of means. Notice was placed on the relevant departmental website and mail notifications were sent to all and sundry—that is, those on a mailing list prepared by the department. Always, some people are missed in the process, but the key point is that the idea was to try to consult with everyone as much as they needed and to make sure that they knew that they were being consulted. As the minister at the time, I recall that I particularly wanted to make sure that everyone was consulted or had the opportunity to meet with me to make representations. This is one reason it took a while. It was almost excessive—if there is such a thing in consultation. I think the member simply wants to satisfy himself that everyone who wanted to make a contribution or to be heard had the opportunity. Without going into all the detail, I am satisfied that everyone had bucketloads of opportunity and that I encouraged them all to do so.

Hon KEN TRAVERS: Saying that now is fine, but I am interested to know the answer. I know the information was put on the website because that is where I discovered it. I am also interested to know who was written to and when they were written to because although we have moved on, I would like to know the answer. I accept that the minister may not be able to give an answer now, but ask whether he is prepared to take the question away and undertake to provide an answer either through the house at a later stage or by way of correspondence if no-one else in the chamber is interested. Will the minister advise me who exactly was sent letters advising of the consultation period and when those letters were sent?

Hon SIMON O'BRIEN: There were quite a number of hits on the website. Also, there were quite a few submissions, each of which were, I think, published on the website. Obviously, that group —

Hon Ken Travers: But some of them may have been notified by me. The reason I ask is that a significant number of groups within the transport industry—not just one, but a number—were, when I contacted them, not aware of this consultation process. They may eventually have been made aware of it and that is why I am interested to know who was consulted and when they were advised of the consultation process.

Hon SIMON O'BRIEN: I am trying to provide that information. I do not know the information about who was written to is still available.

Hon Ken Travers: It should be.

Hon SIMON O'BRIEN: If it is, we will look for it to try to satisfy the member. It is not my department. I do recall that at the time Hon Ken Travers complained publicly that someone or other said they had not been notified. Perhaps it was the case that they had not received their letter in the mail advising them about it between the time that Hon Ken Travers became aware of it and raised it publicly and then maybe they got it thereafter; but whether or not it was because the member raised it or they rang and asked us to send them a package or that their mail went through and they got it—they were always going to get it anyway—does not matter. There were extensive attempts to offer people the opportunity to make submissions, be in touch with us or have their views heard by this government and by me as the then minister. We were doing that because the previous government had not taken that on board and people were complaining that they had not been consulted. It is interesting to note the effect of an election and a change of government: all of a sudden the new opposition spokesperson is complaining that people have not been consulted. Everyone was given an opportunity to be consulted. Even Hon Ken Travers acknowledged in debate on the second reading of the bill that consultation occurred over a long time.

Hon Ken Travers: You still have not answered my specific question: will you undertake to go away and find out who was written to and on what date?

Hon SIMON O'BRIEN: I have already indicated that I would see if we can find that information and convey it to the member.

Clause put and passed.

Clauses 2 to 51 put and passed.

Clause 52: Dimension requirements: minor risk breaches —

Hon KEN TRAVERS: With the indulgence of the Chair, I will refer to clauses 52, 53 and 54, which are interlinked and basically deal with the width of vehicles. We can see the changes between the original bill in 2007 and this bill. In clause 52, I understand that originally the extent of the breach was 40 millimetres; it is now 100 millimetres; in clause 53 it was between 40 and 80 millimetres; it is now between 100 and 150 millimetres; and in clause 54 it was 80 millimetres but is now 150 millimetres. Has the government relied on any evidence-based research to determine either the original widths or the new widths; and, if not, how were the dimensions in the original and the current proposal chosen?

Hon SIMON O'BRIEN: There were some measurements. Let us start with width breaches. Hon Ken Travers cited the figures that were proposed in the 2007 bill and those in the 2011 bill. I will refer to them as the 2007 and 2011 figures. The 2007 figures were struck at intergovernmental agreement level as the collective view of the parties to the agreement, and the National Transport Commission, the various signatory transport authorities, and industry and road users would have been involved. The slightly amended 2011 figures came about as a result of consultation with local industry moderated by discussion with Main Roads in the sense of how we could relax the definitions which delineated between minor, substantial and severe offences. Perhaps I could explain to members that the national model bill provides for breaches of dimension requirements that are categorised as minor, substantial or severe. That depends on the size of the breach measured in millimetres. These new categories have been determined on the level of risk associated with the individual breach as indicated by the terms minor, substantial and severe. There is even a definition of the sort of damage which could occur in the case of a severe, substantial or minor breach. The categories themselves do not represent an increase in the statutory width limit of 2.5 metres but simply prescribe the different actions to be taken by compliance officers when breaches are detected in the three categories, including the different levels of sanctions to be applied. Not surprisingly, a minor breach gives rise to a lower penalty than a substantial breach and, in turn, a severe breach. During the consultation process industry representatives expressed the view that the current categories for dimension breaches within the model bill should be increased in acknowledgement of WA's transport requirements. Hon Ken Travers referred to evidence-based research, and I do not know what I can do to provide the member with that.

Hon Ken Travers: There must have been something that was used to determine the original width; it was not just plucked out of thin air!

Hon SIMON O'BRIEN: I do not think that the model was developed on evidence-based research. It was based on the input of industry and based on its experience. The extent to which that process was evidence based might assist the member's inquiry, but I do not have any document, for example, saying, "Here are the specs for this sort of thing as recognised by the United Nations", or anything like that.

Hon Ken Travers: But the Road Safety Council generally does things on the basis of evidence-based research; I mean, that is a fairly standard term in road safety matters.

Hon SIMON O'BRIEN: Having said that, though, these dimensions are not without rhyme or reason. For example, when we say that the statutory limit of a truck is 2.5 metres, it means just that. It does not mean 2.55 metres; it means 2.5 metres—no more. However, the reason for risk breaches being characterised as minor, substantial or severe is in recognition of the fact that if the width limit is exceeded by a certain point, it could be seen as posing a relatively minor threat to the safety of the vehicle, other vehicles or bystanders, whereas a more severe breach could result in a far more severe form of damage or injury; that is obvious from the way in which the terms are displayed. If we go to the figures in the actual table, what was contemplated in the 2007 bill was that a minor breach would be up to 40 millimetres, or four centimetres. We can perhaps just contemplate the chains that might be used over the entire width of the truck as a restraint mechanism. If for some reason the levers or the clasp that hold the chains down shift slightly, causing a protrusion of the chains beyond the width of 2.5 metres, the truck exceeds the permissible width, but it is not by that much and it is unlikely to be hugely dangerous. That is why 40 millimetres overall, including both sides, was struck as being a reasonable figure. The benefit of all the input, advice and experience of those who took part in the consultation in Western Australia as industry stakeholders was the recognition that up to 100 millimetres, in the case of a minor breach, was a far more acceptable standard. That is based on the knowledge that people have of the real world. We can consider, in the real world of Western Australia, the transport of wool bales. Wool bales might be loaded onto a truck and be within the 2.5-metre width requirement, but over a period of hundreds of miles, with the bumping that occurs on a truck carrying wool bales, it may happen that some of those wool bales shift slightly on their axes and that the compression of wool bales above might cause some bales on the bottom to bulge, and thereby the width requirements are exceeded and a dimension breach is produced. They are the sorts of practicalities that industry

wanted recognised, and we think that the figures in the 2011 bill do that because that is what has been indicated to government by industry stakeholders and moderated by the input of Main Roads' heavy vehicle operations.

Hon KEN TRAVERS: I would still assume that the original 2007 figures—I will use the same language—were not arrived at because everyone sat around a table and said that this is what they would do; the figures would have been based on something. There would have been a basis that people used to arrive at those figures. I understand what the minister has told me about the 2011 figures and that they are what the industry asked for because it thought they would assist it. What I am keen to know is what was used to arrive at those 2007 figures in the first place.

Hon SIMON O'BRIEN: These figures, as the member correctly surmises, were not plucked out of thin air, although I cannot identify exactly where they were plucked from or the point of plucking. I know they were formulated, at the latest, during the 1990s, and the 2007 figures are the product of the various industry considerations on that subject filtered from previous studies, but I cannot define a specific source beyond the fact that this was the consensus view that had evolved over a long time and a long period of practice in various jurisdictions, all of which, I imagine, had dimension requirements that would have varied according to their own circumstances and practices. When the 2007 figures were released in draft, I am aware that the Western Australian transport industry generally responded with a view that they were good figures for the eastern seaboard—dare I say Parramatta Road—but they were not suitable for Western Australia. I guess the debate probably started about then and reached its height in about 2008 when the bills were in this house, and they were further explored after the 2008 election. I am sorry I do not have a particular book to take off the shelf to show the honourable member. The figures are a distillation of all the threads of examination of this issue in various jurisdictions over a period of years.

Hon KEN TRAVERS: I am surprised, because I would have thought that in a matter such as this there would have been a bit more substance to the way in which the figures had been arrived at and that the minister would be able to advise the chamber about that. Under the legislation operating in Western Australia currently, maybe he could tell us which rules with respect to overwidth vehicles apply when there is a breach.

Hon SIMON O'BRIEN: The simple answer is that the current rule is that anything wider than 2.5 metres is a breach. There are not minor, substantial or severe categories at the moment.

Hon Ken Travers: What are the current penalties for a breach?

Hon SIMON O'BRIEN: It is contained in the regulations. Not having them immediately to hand, I am a little loath to advise the member, but I believe it is of the order of $600, and that is regardless of the scale of the offence. When I talk about the scale of the offence, having a one-size-fits-all approach produces some interesting results, because someone can exceed the 2.5 metre width by a little bit, perhaps in circumstances where it is not posing a particularly substantial danger, but then there are some terrible breaches. I have seen some of the photos. The penalty is very much a one-size-fits-all, but I think it is about $600 at the current penalty unit rate.

Hon KEN TRAVERS: Under these regulations, what will be the penalties for a minor, a substantial and a severe breach?

Hon SIMON O'BRIEN: Clause 30 contains all the information that the member requires. There are a number of tables there, providing both for heavy vehicles and light vehicles and the relative breaches of mass.

I appreciate your indulgence, Chair. We have already gone past these clauses, but it is pertinent to refer to them in answering the question. Clause 29 creates the offence that we are talking about. Clause 30, as I indicated, provides for the penalty. To spell it out, in the case of a minor risk breach the minimum penalty is a fine of six penalty units up to 20. For a substantial risk breach the minimum penalty is a fine of 10 penalty units up to 40 penalty units, and for a severe breach the figures are 20 penalty units and 100 penalty units respectively.

Hon KEN TRAVERS: What does that equate to in dollar terms?

Hon SIMON O'BRIEN: I believe it is about $50. Let us say the minimum penalty, for example, would be $300 for a minor risk, $500 for a substantial risk and $1 000 minimum for a severe risk.

Hon KEN TRAVERS: I thank the minister for that. Is it intended that the breaches will be dealt with by way of infringement notices rather than summons and court action?

Hon SIMON O'BRIEN: Yes; I think the member will be familiar with the regime that is envisaged, which is basically that the minimum penalty would apply to infringement notices, which would be by far the more common way of dealing with breaches. Obviously the upper penalties are reserved for all occasions when it may be taken to court.

Hon KEN TRAVERS: The reason I have asked all these questions is that I think it is important that the chamber has a full understanding of it. I do not disagree with the arguments about the general idea of what we

are doing here—that is, categorising the breaches. As the minister said earlier, there is obviously discretion but in theory, if someone is only 40 millimetres over the width limit of the vehicle, they can cop a $600 fine as their current infringement penalty for being over their 2.5-metre statutory limit. What we are saying is that there should be a better system that starts to graduate it. If it is a minor breach, one penalty is given; if it is substantial, a higher penalty is given; and then if it is a very bad—the term is "severe"—infringement, people should be given a higher penalty. I think the minister has also outlined to us today that as a result of these changes people who have either a minor or a substantial breach will, in theory, actually end up with a lower penalty than they currently would if they were pulled over and given an infringement by a police officer or a transport inspector. I am happy to take an interjection if the minister thinks that is wrong.

Hon Simon O'Brien: In general terms; for substantial it would be close, but it would be under.

Hon KEN TRAVERS: We are talking about $500 versus $600, but it is still less than it currently is. When it becomes a severe breach, it is only $400 more, yet I think we all agree that that should be the case. We are pushing out constantly the width of the vehicles as we do it.

There is another thing that we need to keep in mind, and that is why I was asking whether there was any evidence base from any research on overwidth vehicles. At what point do the safety issues increase? My approach to road safety matters—this is a road safety matter, in my view—is that, wherever possible, we should make our decisions based on evidenced research. We should constantly look at other sections of the Road Traffic Act and ask, "Where is there evidence to support why we do what we do?" I think that is a good way to approach road safety. The amazing thing these days is that a lot of work is being done. We need a better explanation.

The other way of looking at this—I understand the industry's concern—is that for two of these categories people will actually end up with lower penalties than they currently would if they were caught with an overloaded vehicle. The penalties are actually reduced.

The other issue we have to look at is that the difference between 80 and 150 millimetres is 70 millimetres, or seven centimetres. At one level a case can be made, as the minister said, that seven centimetres can be the result of hay bales spreading out at the bottom. The other way of looking at it is that on narrow roads where trucks are passing caravans, that is the difference between a near miss and a significant accident.

Every time one goes further out from that vehicle, the chances of an accident increase. The fundamental way in which this legislation is written agrees that the further out one goes, the greater the chance of an accident. I am glad that when this legislation came to this house, the minister asked for the "Parramatta Road" clause to be removed. I accept that he understands this issue, but I think that that clause, in the original second reading speech in the other place, revealed the mindset of the Minister for Transport, who is ultimately responsible for this legislation. He somehow believes that a heavy vehicle travelling down Parramatta Road is different from a caravan or truck travelling down one of the many roads in the wheatbelt. We know that we will have more trucks on the roads in the wheatbelt as a result of the closure of the tier 3 grain rail lines, and there will be a greater likelihood of conflicts between trucks. In fairness, grain trucks are unlikely to be picked up under the width provisions; if they were to be picked up, they would be more likely to be picked up under some of the other provisions. I want to make that point so that grain truck drivers do not think I am having a go at them; I doubt very much whether those sorts of trucks would very often be picked up for width issues; it would be more likely mass issues. But we are going to see more trucks out there. If two trucks, or any other combination of vehicles, are heading towards each other at 100 kilometres an hour, judgements have to be made about the standard size of a vehicle and allowances are made; however, halfway down the side of the other vehicle, it could turn out that the other vehicle is wider than anticipated. Modern semitrailers have pull-down sides; a lot of them do not secure them. They have chains inside, but they have plastic flaps that either pull back, concertina-style down the side of the vehicle, or pull down from the top, depending on the design of the vehicle. I once spoke to a truck driver who had been pulled over with a load of rolled grass on a pallet. The inspector fined him for his overwidth load and made him pull it all out and reload it manually; it is usually loaded with a forklift. He said that the inspector was actually a quite reasonable person and assisted him with some of the lifting to make the load safe again. I think that everyone will accept that that is the correct way, but the bottom line is that a lot of those vehicles are wide. If one is in an oncoming vehicle, it is very difficult to gauge the width of the vehicle if one is travelling down the road at 100 kilometres an hour or meeting on a bend. People may not get much time to judge the width of a vehicle, and that extra bit of width is going to be a problem. My view is that the Minister for Transport, in making that comment about Parramatta Road, was trying to trivialise a very important issue. That is why I wanted to spend some time on this; I think this is a very important matter. To what degree does one take out the width of vehicles?

At the end of the day, all I can rely upon is the government's judgement. The government has experts available to it who have far more knowledge than I will ever have on these matters and who can provide the government with advice. We have now established that there is no evidence-based research, so it is now going back to a

conflict, I suspect, between the officers of Main Roads who are dealing with this legislation, and the desire of the industry to have as much flexibility as possible and to avoid as many penalties as possible.

If we are going to see overwidth vehicles colliding with other vehicles, there are two places where that is highly likely to happen: on country roads and—this is not a political statement, but a straight comment—in the Graham Farmer Freeway tunnel. Problems will be exacerbated there because the lanes, as part of the widening process, will change from 3.5 metres, which gives 500 millimetres on either side of a vehicle, down to 3.4 metres. I do not know if the minister has ever driven a large vehicle, but I speak as someone who has driven a bus down St Georges Terrace. I do not know what the width is now, but in the old days it was not much wider than the buses. It is really quite difficult to keep within the lane width. Even in a 2.5-metre vehicle, to keep within a 3.5-metre lane is actually a skill.

In my view, truck drivers are skilled operators. People often think that driving a truck is something that anyone could do, but I can tell members that moving a heavy vehicle is an absolute skill. The lane width in the tunnel is going from 3.5 metres down to 3.4 metres. Again, most people will be used to a 3.5-metre lane on the freeway. On top of that, the load could be up to 150 millimetres before they get a severe penalty, so that is another 15 centimetres. It all adds up and we run the risk of getting that conflict. If two vehicles are both overloaded, before we know it we have an accident in those environments. I would like to know what is in place within the department to monitor whether there has been an increase in accidents as a result of this change. At the moment, people are reluctant to overload because they will get a $600 penalty. Under this legislation, they will be able to go out to 100 millimetres and only get a $300 penalty. The penalty for going out to 100 millimetres will therefore not be as great as it is currently. The responsible operator will do the right thing and always will, but my concern is about the cowboys. We all know that there is always the potential for a cowboy element in this industry, and that is why I think the overwhelming majority of the industry has supported this legislation. Even in its original form it was prepared to support it because it could see the benefits. The cowboys are a minority, but they will be constantly trying to push out the boundaries, so if they know that they are only going to get a $300 fine rather than a $600 fine, they will be tempted to push that boundary. There is the potential that we will see, through these changes, the cowboy element that often lurks in this industry trying to push the boundaries.

What procedures does Main Roads or the Department of Transport have in place to ensure that we are monitoring for any increases in overwidth vehicle accidents?

Hon SIMON O'BRIEN: It is necessary for me to respond to the central thread of discussion here, which is not what this clause is about and not what this bill is about, so before we go off on too much of a tangent, I must clarify a number of things. Firstly, this bill and the provisions we are discussing are exactly the same as the ones that we looked at in great length when the previous government brought them forward in 2007–08. The only item here is the breakpoints between minor, substantial and severe breaches. That is all it is: where the breakpoints occur. That is being done in consultation with our industry. The people in the Western Australian transport industry who have been consulting with us over a period of time are the professionals. They are the industry representatives. They are the ones with standing. They are not the cowboys who, as Hon Ken Travers pointed out, are out there and might try to push the envelope. As we all agree, this package of legislation deserves our support because it is about making things safer, amongst other things. Introducing a chain of responsibility means that more people, apart from just the driver, have to take responsibility for whether a vehicle is loaded too wide, for example. This bill does not militate against the interests of safety.

I want to assure Hon Ken Travers that the Minister for Transport was not being flippant or lacking in any understanding when he used the Parramatta Road analogy in another forum. That was used because as part of the original policy development consideration, people in the Western Australian industry, for example in logistics and transport, all cited the Parramatta Road example by saying, "That is why you had the 40 millimetre minor breach limit". That was the Parramatta Road example. That is the vernacular that is used within the transport industry, because they, like Hon Ken Travers and I, understand it and get it, but perhaps someone else might not get that reference and might wonder whether the author of this remark knows what he is talking about. Please do not think that the Minister for Transport does not understand that; he does.

The other point I must make in responding to the several points made by Hon Ken Travers is that we are not permitting breaches or saying that people can go a bit further and push the envelope a bit further. It will still be the case that our maximum width is 2.5 metres—finish. Above that, it is a breach.

Hon Ken Travers: But for up to 150 millimetres the penalty is reduced.

Hon SIMON O'BRIEN: The system that we all agree needs to be introduced via this legislation is one that differentiates between standards of breach or degree of severity, being minor, substantial and severe. I think we have all agreed on that. I think we all agree that there should be a sliding scale of penalties that reflects that. So, yes, for a minor breach the penalty is less than the across-the-board one that currently exists, for a severe breach

the penalty is much more and for a substantial breach it is somewhere in the middle. But none of these categories constitute a tolerance. We are not going to say that someone can be up to 100 millimetres out.

Hon Ken Travers: You and I know that minister, but people will interpret it and they will take that risk. They will make an assessment about the penalty and whether they are prepared to risk that penalty.

Hon SIMON O'BRIEN: People do that when they are observing speed limits and things, if they are silly enough to. The point is that an offence is an offence and the penalty should fit the severity of the offence. All of the advice we can obtain indicates that these are at about the right scale and, indeed, in terms of the national model, they are all agreed across jurisdictions. The breakpoints are agreed in a Western Australian context, and other jurisdictions do not object to us striking our own points.

The other matter Hon Ken Travers raised was about enforcement. That leads me to my final point on the series of things the member asked; that is, how is Main Roads or Transport going to monitor compliance? They will do so using the same mechanisms that they currently use—the heavy vehicle ops people and so on.

Hon Ken Travers: No, my point was about monitoring whether these changes have an impact in terms of the number of accidents.

Hon SIMON O'BRIEN: I reject any notion that passing this bill is going to lead or should lead to any increase in accidents. If anything, quite the reverse will happen, because everyone in the chain of responsibility has to take responsibility. As Hon Ken Travers said in his contribution to the second reading debate and as I said in mine, that is why we are bringing it in; to make sure that we have systemic improvements right across the board. Similarly, when the penalties are applied, people will have regard for the system. If in Hon Ken Travers' hypothetical situation people have a go and get a lot of penalties, then perhaps when they get another one they might instead find themselves going to court. That is how we deal with it.

Committee interrupted, pursuant to standing orders.

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Sitting suspended from 4.15 to 4.30 pm