THIRTY-SEVENTH PARLIAMENT

REPORT 31

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

ROAD TRAFFIC (ADMINISTRATION) BILL 2007; ROAD TRAFFIC (VEHICLES) BILL 2007; ROAD TRAFFIC (AUTHORISATION TO DRIVE) BILL 2007; ROAD TRAFFIC (CONSEQUENTIAL PROVISIONS) BILL 2007 AND ROAD TRAFFIC (VEHICLES) (TAXING) BILL 2007

Presented by Hon Simon O'Brien MLC (Chairman)

May 2008

STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

Date first appointed:

17 August 2005

Terms of Reference:

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

"**8. Uniform Legislation and Statutes Review Committee**

8.1 A *Uniform Legislation and Statutes Review Committee* is established.

8.2 The Committee consists of 4 Members.

8.3 The functions of the Committee are -

(a) to consider and report on Bills referred under SO 230A;

(b) of its own motion or on a reference from a Minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;

(c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;

(d) to review the form and content of the statute book;

(e) to inquire into and report on any proposal to reform existing law that may be referred by the House or a Minister; and

(f) to consider and report on any matter referred by the House or under SO 125A.

8.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the Parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting."

Members as at the time of this inquiry:

Hon Simon O'Brien MLC (Chairman)
Hon Matt Benson-Lidholm MLC
Hon Donna Faragher MLC
Hon Sheila Mills MLC

Staff as at the time of this inquiry:

Jan Paniperis, Committee Clerk
Paul Grant, Clerk Assistant (Committees)

Address:
Parliament House, Perth WA 6000, Telephone (08) 9222 7222
unileg@parliament.wa.gov.au
Website: http://www.parliament.wa.gov.au
ISBN 1 921243 66 X

CONTENTS

REPORT OF THE STANDING COMMITTEE ON UNIFORM LEGISLATION AND STATUTES REVIEW

IN RELATION TO THE

ROAD TRAFFIC (ADMINISTRATION) BILL 2007; ROAD TRAFFIC (VEHICLES) BILL 2007; ROAD TRAFFIC (AUTHORISATION TO DRIVE) BILL 2007; ROAD TRAFFIC (CONSEQUENTIAL PROVISIONS) BILL 2007 AND ROAD TRAFFIC (VEHICLES) (TAXING) BILL 2007

1 REFERENCE AND PROCEDURE

1.1 The following five bills (**Bills**) were introduced into the Legislative Council on 20 March 2008 by Hon Adele Farina MLC, Parliamentary Secretary to the Minister for Planning and Infrastructure (**Parliamentary Secretary**), on 20 March 2008:

- Road Traffic (Administration) Bill 2007;
- Road Traffic (Vehicles) Bill 2007;
- Road Traffic (Authorisation to Drive) Bill 2007;
- Road Traffic (Consequential Provisions) Bill 2007; and
- Road Traffic (Vehicles) (Taxing) Bill 2007.

1.2 The purpose of the Bills, according to the Parliamentary Secretary, is to *"facilitate the introduction of the Road Transport Reform (Compliance and Enforcement) Bill national reforms and to restructure Western Australia's road traffic legislation based on administrative and functional responsibilities"*.[1]

1.3 Although only the first two of the Bills stood referred to this Committee pursuant to Standing Order 230A (as they ratify or give effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party), the Legislative Council referred all five Bills to the Committee for consideration as a suite of legislation. Additionally, the House authorised the Committee to inquire into the policy of the Road Traffic (Administration) Bill 2007 and the Road Traffic (Vehicles) Bill 2007 pursuant to Standing Order 230B.

[1] Hon Adele Farina MLC, Parliamentary Secretary to the Minister for Planning and Infrastructure, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 20 March 2008, pp1310-1311.

1.4 The reporting date was no later than 6 May 2008. On 9 April 2008 the Committee sought, and obtained, from the Legislative Council an extension of time in which to report to 29 May 2008.[2]

2 INQUIRY PROCEDURE

2.1 The Committee advertised for public submissions on the Bills in *The West Australian* newspaper on Saturday, 29 March 2008. Stakeholder letters were also sent to relevant organisations.

2.2 Written submissions were received from the following organisations:

- Livestock Transporters and Country Bulk Carriers Association (Inc);
- Chamber of Commerce and Industry of Western Australia;
- Western Australian Local Government Association; and
- a joint submission from the Western Australian Farmers Federation, the Pastoralists and Graziers Association of Western Australia and the Co-operative Bulk Handling Group.

2.3 On 9 April 2008 the Committee held a hearing with the following witnesses:

- Mr Trevor Maughan, Manager, Strategy and Policy, Department for Planning and Infrastructure (**DPI**); and
- Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, DPI.

2.4 On 16 April 2008 the Committee held hearings with the following witnesses:

a) Mrs Janet Cooper, Consultant, Livestock Transporters and Country Bulk Carriers Association of Western Australia (Inc), and Mr Grant Robins, President, Livestock Transporters and Country Bulk Carriers Association of Western Australia (Inc);

b) Mr Andrew Canion, Senior Adviser, Industry Policy, Chamber of Commerce and Industry of Western Australia; and

c) Mr John Hassell, Vice President and Transport Portfolio Representative, Western Australian Farmers Federation; Ms Melissa Price, Manager, Business Development, Co-operative Bulk Handling Group; Mr Owen Davies,

[2] Hon Simon O'Brien, Chairman, Standing Committee on Uniform Legislation and Statutes Review, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 9 April 2008, p2001.

Logistics Strategy Manager, Co-operative Bulk Handling Group; Mr James Kirton, Corporate Analyst, Co-operative Bulk Handling Group; Mr Graeme Smith, Farmer and Grains Representative, Pastoralists and Graziers Association of Western Australia; and Mr Slade Brockman, policy Director, Pastoralists and Graziers Association of Western Australia.

2.5 On 7 May 2008 the Committee held a hearing with the following witnesses:

- Mr Doug Morgan, Director Heavy Vehicle Operations, Main Roads Western Australia (**MRWA**);
- Mr John Rossiter, Heavy Vehicle Access Planning Manager, MRWA;
- Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, DPI; and
- Mr Iqbal Samnakay, Policy Adviser - Transport, Department of the Premier and Cabinet.

2.6 The Committee is grateful to the witnesses for their attendance and the assistance provided by them to the Committee.

3 UNIFORM LEGISLATION

3.1 National legislative schemes implementing uniform legislation take a variety of forms. Nine different structures, each with a varying degree of emphasis on national consistency or uniformity of laws and adaptability, have been identified. The structures are summarised in **Appendix 1**. The Bills most closely resembles the legislative structure referred to as 'Structure 6', with Western Australia implementing a nationally agreed legislative framework.

3.2 When examining uniform legislation, the Committee considers what are known as 'fundamental legislative scrutiny principles'. Although not formally adopted by the Legislative Council as part of the Committee's terms of reference, the Committee applies the principles as a convenient framework for the scrutiny of uniform legislation.[3] These principles are set out in **Appendix 2**.

[3] For further background on fundamental legislative principles can be found in a report by the predecessor Committee, the Standing Committee on Uniform Legislation and General Purposes. Refer to Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, Report 23, *The Work of the Committee During the Second Session of the Thirty-Sixth Parliament - August 13 2002 to November 16 2004*, November 2004, pp4-9.

4 BACKGROUND TO THE BILLS

The inter-governmental agreement

4.1 In 2003 the Commonwealth and all State and Territory governments signed the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport* (**inter-governmental agreement**).

4.2 The inter-governmental agreement gives effect to a prior agreement between the parties to the inter-governmental agreement to establish a National Transport Commission (**NTC**) *"to progress regulatory and operational reform for road, rail and intermodal transport in order to deliver and sustain uniform or nationally consistent outcomes"*.[4]

4.3 The inter-governmental agreement sets out how the NTC is to be established, funded and operated. Amongst the responsibilities and functions of the NTC is to *"develop uniform or nationally consistent regulatory and operational arrangements for road, rail and intermodal transport, including recommending to the* [Australian Transport Council[5]] *Proposed Reforms and amendments to Agreed Reforms"*. Reforms include model legislation developed by the NTC. Clause 14.1 of the inter-governmental agreement states:

> *The Parties agree that there is a need to maintain a 'single reference point' for Agreed Reforms that take the form of Model Legislation or Road Transport Legislation, in order to promote and maintain a uniform or nationally consistent regulatory and operating environment.*

4.4 Section 12 of the inter-governmental agreement provides that the parties will use their best endeavours to implement and maintain agreed reforms in a uniform or nationally consistent manner:

> *However the Parties acknowledge that, in exceptional circumstances, a Proposed or Agreed Reform, or aspects of a Proposed or Agreed Reform, may not be able to be implemented by a Party, for example due to policy or practical constraints.*[6]

4.5 The Hon Alannah MacTiernan MLA, Minister for Planning and Infrastructure (**Minister**), advised the Committee that:

---

4 *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*, 2003, p1.

5 For the purposes of the inter-governmental agreement, the Australian Transport Council is made up of the relevant minister for each of the States, Territories and the Commonwealth.

6 Clause 12.2, *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*, 2003, p10.

> *WA is a willing signatory under the* [inter-governmental agreement], *which is designed to achieve national uniformity and consistency in transport reforms through collaboration amongst all the jurisdictions. Notwithstanding this, WA can decide to take alternative action to that proposed nationally. Under clause 12.2 of the* [inter-governmental agreement], *a party to the* [inter-governmental agreement] *(eg. WA) in exceptional circumstances, may not be able to implement a reform due to, for example, policy or practical constraints. …*
>
> *A decision to opt out of the reform would only be taken after considering all the impacts and risks associated with such a decision."*[7]

The Model Bill

4.6 The Bills implement agreed reforms as contained in the Road Transport (Compliance and Enforcement) Bill 2003 (**Model Bill**). The Model Bill was agreed in November 2003, with a proposed implementation date of December 2005.[8]

4.7 Mr Trevor Maughan, Manager, Strategy and Policy, DPI, gave the following background to the development of the Model Bill:

> *I will commence by looking at the genesis of this legislation. It started back in the early 1990s. It was really a national attempt to provide a number of things with respect to heavy vehicle operation. The first and most important thing was to provide a level playing field for people operating within that industry. There was much anecdotal evidence at the time of individual operators, predominantly small businessmen, being forced by large multinational corporations to commit criminal offences on the road in order to meet unrealistic time lines, carry extra freight capacity and what have you. This was leading very much to what used to be called the road jockeys, who would overload to get reasonable rates and drive excessively long hours at high speed to go from point A to point B. This was identified as a real issue. The problem was that unless you could go back beyond the driver to the person who actually caused the offence, there was no real way of addressing it. The driver or the small operator was the bunny who took all the risk, and the large corporation stayed behind the bail. This was an attempt to try to do that. The compliance enforcement legislation was about that levelling of the field, about*

---

7 Information attached to letter from Hon Alannah MacTiernan MLA, Minister for Planning and Infrastructure, 23 April 2008, p2.

8 Ibid, p1.

> *going back and ensuring that those who cause the commission of the offence are the people who are held responsible for that offence.*
>
> *That is the policy basis that started this whole suite of legislation nationally. It was about improving compliance rates within the heavy vehicle operations industry. As I said, that legislation took a long time to be developed. It started in the early 1990s. It seems like a lifetime ago now. There was much debate and much involvement at all levels. Industry was involved and farming industries were involved. There were extensive negotiations along the way. The Australian Trucking Association was represented on the legislation advisory panel, on which I sat, which developed most of this legislative framework, as was the Farmers Federation and others. It really was a very inclusive model. Hence, it took from 1990 until 2003 when the legislation was finally signed off by ministers, with an anticipated introductory date of 2005.*[9]

4.8 The provisions of the Model Bill have so far been implemented in Victoria, New South Wales, Queensland and South Australia.[10]

4.9 Implementation of the Model Bill reforms is part of Western Australia's commitment under the inter-governmental agreement, and when implemented by all jurisdictions the reforms will ensure consistency in the management of the transport of goods by road across jurisdictions in order to:[11]

a) improve road safety;

b) reduce infrastructure damage;

c) improve deterrence and enforcement;

d) promote a level playing field for industry; and

e) improve business efficiency and compliance.

4.10 The Model Bill has two distinct elements:[12]

---

9 Mr Trevor Maughan, Manager, Strategy and Policy, Department for Planning and Infrastructure, *Transcript of Evidence*, 9 April 2008, pp1-2.

10 Information attached to letter from Hon Alannah MacTiernan MLA, Minister for Planning and Infrastructure, 23 April 2008, p1.

11 Ibid, p2.

12 National Road Transport Commission, *Road Transport Reform (Compliance and Enforcement) Bill Regulatory Impact Statement*, approved by the Australian Transport Council 3 November 2003, Summary, p1.

- the creation of a general framework for most compliance and enforcement activities in all areas of heavy vehicle regulation; and

- specific offence provisions in relation to mass, dimension and load restraint issues.

4.11 The specific problems in the existing legislation that the Model Bill seeks to address are:[13]

- inadequate enforcement powers (such as search and entry powers, the power to require information, and the power to stop direct and move vehicles) compared with other areas such as occupational health and safety and environmental laws;

- inadequate range of sanctions;

- inadequate responsibility, with existing offence provisions focussing on the driver and transport operator only; and

- evidentiary and related problems, including inadequate defences to offence provisions.

4.12 The mass, dimension and load restraint reforms contained in the Model Bill "*are crucially related to road safety concerns*":

> *While the road safety performance of the heavy vehicle industry has improved substantially in recent years, in line with road safety performance generally, there remains scope for significant further gains. Moreover, the achievement of high levels of road safety performance is essential to the achievement and maintenance of public acceptance of the industry and its operations* … .[14]

4.13 As indicated above, there are various mechanisms under the inter-governmental agreement by which individual jurisdictions may amend or omit provisions of the Model Bill.[15]

5 OVERVIEW OF THE BILLS

5.1 The Western Australian Government has decided not to implement the Model Bill in Western Australia as a stand alone piece of legislation. Instead, existing legislation will be amended, retained and supplemented by additional legislation by the suite of

---

13 Ibid, p2.

14 Ibid, p5.

15 Information attached to letter from Hon Alannah MacTiernan MLA, Minister for Planning and Infrastructure, 23 April 2008, pp2-3.

five Bills now before the Committee. The reason for this was set out in a letter to the Committee from the Minister on 10 October 2007 (as part of the Committee's regular audit of proposals to enact uniform legislation):

> *On the advice of Parliamentary Counsel's Office, the Road Traffic Act 1974 ("the Act") is to be restructured to enable the implementation of the reform. Traffic regulation matters will remain in the Act. Provisions relating to the conferral of authorisation to drive will be excised from the Act and form the basis of the Road Traffic (Authorisation to Drive) Bill 2007.*
>
> *Similarly, provisions relating to vehicle standards and vehicle licensing will be excised and form the basis of the Road Traffic (Vehicles) Bill 2007. Administrative matters pertinent to both of these Bills and to the remainder of the Act will be contained in the Road Traffic (Administration) Bill 2007.*
>
> *The amendments necessary for the implementation of the compliance and enforcement reform will be contained in the latter two bills.*[16]

5.2 Mr Maughan expanded upon this point as follows:

> *In looking at the legislation, it was originally thought that this will be easy, we will take parts of the national compliance and enforcement legislation and put it in the existing Road Traffic Act. On the advice of Parliamentary Counsel, that was not a very clever idea. It became apparent that the more we went into it, there was a need to separate the Road Traffic Act into its component parts. This has presented us with a lot more work than we ever intended to do with it but in the end it will be a far better structure for legislation in Western Australia. Amongst other things, it will allow incoming governments to determine where things should sit administratively within departments and which ministers should have responsibility for particular pieces of legislation. It gives governments a lot more flexibility but that was never the main intent. The main intent was always the implementation of the* [Model Bill]. [17]

5.3 Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, DPI explained the purpose of each of the five Bills generally as follows:

---

16 Letter from Hon Alannah MacTiernan MLA, Minister for Planning and Infrastructure, 10 October 2007, pp1-2.

17 Mr Trevor Maughan, Manager, Strategy and Policy, Department for Planning and Infrastructure, *Transcript of Evidence*, 9 April 2008, p2.

[T]*o facilitate* [the Model Bill] *we have had to effectively restructure the Road Traffic Act to do so and, as a result, there have been five bills created. The first bill is the Road Traffic (Administration) Bill, which, in summary, incorporates the administrative-type issues as to delegated authority to the Commissioner of Police and the Director General of Planning and Infrastructure as to responsibilities. It provides general administrative-type issues in relation to delegations and it also provides for overarching powers of enforcement officers. "Enforcement officers" covers people like police officers and wardens who are appointed via delegation to enforce various parts of road traffic law. In the case of mass dimension, that would pick up the Main Roads inspectors who are appointed and given powers to stop vehicles and associated powers necessary to do so. It also provides for general sanctions and court-imposed provisions; provisions for the taking of evidence by way of averments and certificates, which currently exist in the Road Traffic Act, and it provides for new provisions from the model bill ranging from reciprocal powers of officers in two states enforcing similar provisions. It also ranges from the powers of inspection and search—which have been brought in from the model provisions—other powers dealing with directions that inspectors will now have as part of this reform. It also covers administrative-type issues about warrants per se—the nature of warrants and all that sort of thing. It is all effectively the supporting material required to enforce the offences under the road laws that have been amalgamated. It also provides other provisions that are simply being moved from the existing Road Traffic Act to the Administration Act; for example, provisions dealing with infringements. The existing provision has not changed, but the advice from parliamentary counsel was that, given the nature of it, that it fit better in the Administration Bill.*

The next bill is the Road Traffic (Vehicles) Bill. Effectively, that bill consolidates all existing matters under road traffic dealing with licensing of vehicles, specifications, and a raft of those sort of administrative-type issues. It also brings in the other part of the compliance and enforcement reforms dealing with offences per se, the structure of the liability of people in the transport chain, as has been touched on. It further brings in the new concept of categories of breaches, which have been brought in from the model provision, and other aspects of the model provision dealing with sanctions and touching on matters like container weight declarations which have been brought in from other provisions. I must just say that as a raw statement, the model provision, or the model bill—the compliance and

enforcement bill—effectively has been broken up between the vehicles bill and the administration bill. There are three other bills that I will speak about, but effectively, for the purposes of new legislation, if I can call it that, that is being introduced, it sits within those two bills.

…

The third bill is the Road Traffic (Authorisation to Drive) Bill. Effectively this bill consolidates all matters dealing with authorities to drive, ranging from the driver's licence to the learner's permit and all other associated issues. As mentioned previously, this does not contain any new provisions from the model bill, but effectively just consolidates all existing provisions and provides a better structure as to consolidating all the various provisions under one act. It also deals with the existing provisions dealing with administrative-type issues, dealing with consequences of disqualifications and so forth. ... Just to qualify that—I used the term that it simply moves provisions from the current Road Traffic Act to this new bill. It should be noted there are provisions in this bill that are contained in the Road Traffic Amendment Act 2006 which effectively has been assented to, but has not been proclaimed. Just to clarify, it actually incorporates legislation that has been assented to, but in parts it may not appear in the Road Traffic Act as we speak now.

…

The first of the remaining two bills is the Road Traffic (Consequential Provisions) Bill 2007. As its title suggests, it effectively provides all the consequential amendments to the Road Traffic Act that have been moved and all other acts in the state that reference the Road Traffic Act. It is quite large. Effectively, the concept of road traffic licensing of vehicles is quite generic and used frequently in other acts. That is why there are such a large number. As Trevor said, these are simply cosmetic changes that have been made to make sure that the correct references continue to operate.

Finally, the last bill of the suite is the Road Traffic (Vehicles) (Taxing) Bill 2007. This bill effectively replaces the existing Road Traffic (Vehicles) (Taxing) Bill 2001. This bill needed to be republished primarily because the matters dealing with the issue of vehicle licences are being moved from the Road Traffic Act to the new vehicles bill. It had to be republished to continue the current practice of allowing for registration fees to be issued beyond the cost recovery

of issuing a licence. As explained in the explanatory memorandum, that is effectively to fund infrastructure projects for the state. [18]

5.4 To assist the Committee in its inquiry into the Bills, DPI provided the Committee with marked-up versions of the Road Traffic (Administration) Bill 2007 and the Road Traffic (Vehicles) Bill 2007 and relevant explanatory memoranda. The marked-up versions were designed to make it *"easier to identify which provisions are effectively new and identifying those that simply had been moved to facilitate the introduction of the compliance and enforcement reforms"*.[19]

6 THE GOVERNMENT'S CONSULTATION WITH STAKEHOLDERS

6.1 The Committee was advised that there had been lengthy consultation with stakeholders. Mr Maughan stated:

> *As I said, that legislation took a long time to be developed. It started in the early 1990s. It seems like a lifetime ago now. There was much debate and much involvement at all levels. Industry was involved and farming industries were involved. There were extensive negotiations along the way. The Australian Trucking Association was represented on the legislation advisory panel, on which I sat, which developed most of this legislative framework, as was the Farmers Federation and others. It really was a very inclusive model.*[20]

6.2 When questioned as to the level of consultation with local government, Mr Tamigi of DPI gave the following evidence:

> *In response to the consultation, as I mentioned at the initial hearing, the National Transport Commission undertook the consultation at a national level and I am advised that there was considerable consultation in WA, both metropolitan and regional. I am unaware whether that consultation stemmed to local government, so I really cannot assist the committee any further. As I said, there was wide consultation, as the committee is aware. The culmination of the legislation took a number of years. I would be surprised, to be honest, if local government was not aware of this legislation given the time of the consultation period and the attention that has been given, given their own activities. A lot of local governments, through their own network, operate trucks and various equipment, and probably, in*

---

18 Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure, *Transcript of Evidence,* 9 April 2008, pp3-5.

19 Ibid, p4.

20 Mr Trevor Maughan, Manager, Strategy and Policy, Department for Planning and Infrastructure, *Transcript of Evidence,* 9 April 2008, p2.

> *some cases, liaise with Main Roads for the purposes of permit access. I cannot say categorically they were involved in the consultation process, but I would be surprised if they were not.*[21]

6.3 The Committee received a submission from the Livestock Transporters and Country Bulk Carriers Association (Inc).[22] The Association represents approximately 90% of operators that transport the $1.1b (2003/2004) livestock industry and a large percentage of operators that cart the $3.01b grain industry.[23] The Association advised the Committee that:

> *The Minister for Planning and Infrastructure undertook to ensure our Association was consulted about the draft legislation prior to it being introduced to Parliament. Apart from an information session provided by an officer from the Department of Planning and Infrastructure there have been no discussions that are worthy of the term "consultation". Following the briefing from the Department, the Association wrote to the Minister outlining specific concerns with certain aspects of the proposal and to date we have received no response. We therefore would like to refute the claim made during the debate in the Legislative Assembly that our organisation had been consulted; we have in fact been informed.*[24]

Committee Observation

6.4 It was apparent to the Committee, after considering the written submissions and the evidence before it, that many of the road transport issues raised by stakeholders during the inquiry were unrelated to, or indicated certain misunderstandings as to, the content of the Bills. The Committee is of the view that these concerns and misunderstandings could have been largely resolved prior to the Bills' introduction.

6.5 In addition to addressing the issues arising from the Bills, the Committee has endeavoured to resolve each of the stakeholders' concerns and misunderstandings as to the content of the Bills in the following sections.

---

21 Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure, *Transcript of Evidence*, 7 May 2008, p13.

22 Submission No 2 from Mr G. Robins, President, Livestock Transporters and Country Bulk Carriers Association, received 8 April 2008.

23 Ibid, p1.

24 Ibid, p2.

7 ROAD TRAFFIC (ADMINISTRATION BILL 2007

7.1 The Bill proposes provisions for the administration and enforcement of the *Road Traffic Act 1974*, and the proposed Road Traffic (Authorisation to Drive) Act and Road Traffic (Vehicles) Act.

7.2 According to the marked-up version of the Bill provided by DPI, substantive new provisions are included in the following clauses of the Bill:

- Clause 4 - includes a number of new definitions;
- Clause 13 - provision of information to corresponding authorities;
- Clause 17 - reciprocal powers of officers;
- Clause 18 - various administrative actions of other jurisdictions under road laws are to be recognised and have force in Western Australia;
- Clause 19 - court orders of other jurisdictions in relations to road laws are to have effect in Western Australia
- Clause 25-27 - identification cards for wardens;
- Clauses 28-31 - new definitions in enforcement provisions;
- Clause 32 - new definition of *"personal details"* and new defences and excuses for failing to provide personal details when requested by a police officer to do so;
- Clauses 37-44 - directions to stop, move or leave vehicles;
- Clause 45, 46 and 50 - power to move vehicles;
- Clauses 51-78 - powers of inspection and search for mass, dimension or loading requirement compliance purposes;
- Clause 85 - issuing of infringement notices for driving an unlicensed light vehicle on a road;
- Clause 106 - commencement of prosecutions;
- Clause 109 - averments in prosecution notices;
- Clause 110 - certificate evidence in prosecutions;
- clause 111 - proof of authority of a warden or vehicle examiner;

- Clause 115 - evidence regarding manufacturer's ratings;
- Clause 116 - proof of appointments and signatures of office holders under a road law is unnecessary;
- Clause 118 - proof of transport and journey documentation;
- Clause 119 - establishing state of mind and conduct on behalf of bodies corporate or employers;
- Clauses 123-130 - damage to road infrastructure;
- Clause 134 - a police officer may amend or revoke a direction given or condition imposed under a road law by a police officer or warden; and
- Clause 138 - a provision or condition in a contract that purports to exclude, limit or modify a road law has no effect.

Clause 17

7.3 Under clause 17 of the Bill, the Minister may enter into agreements with a Minister of another jurisdiction giving officers reciprocal powers, enabling Western Australian police officers to exercise powers or perform functions in another State or Territory under that other jurisdiction's road laws, and allowing authorised officers or police officers from other States and Territories to exercise powers and functions in Western Australia under this State's road laws.

Clause 42

Directing a driver to leave a vehicle

7.4 Under clause 42 a police officer may direct a driver, co-driver or any other person to leave a vehicle or not to enter the vehicle until permitted to do so by a police officer.

7.5 The Livestock Transporters and Country Bulk Carriers Association (Inc) was concerned that this provision may result in a situation where a vehicle and load is left unattended. As well as the security of the vehicle and load, the well-being of transported livestock and also the public (in the case of dangerous loads) is also an issue.[25] The Association suggested that the legislation should clearly provide a requirement for the police officer to take steps to protect the load and the vehicle.[26] The Association noted that:

[25] Ibid, p3.

[26] Ibid.

> *Our industry often receives the response when raising issues of this nature that the officer will use their discretion. Whilst this might occur in most cases, there remains scope for an individual to act capriciously. Increasingly we are experiencing a trend by public officers towards individual interpretations of the rules that does not provide absolute certainty for our members as business operators.*[27]

7.6 The Association suggested that reasonable steps that should be specified that a police officer must undertake could include notifying the consignor and/or transport operator to activate contingency plans.[28]

7.7 DPI was of the view that this issue was sufficiently covered by the legislation and practice:

> *The legislation will not allow a public officer other than a police officer to remove a person. The person cannot be apprehended or taken into custody by the inspector, so that the person can remain with the vehicle. In any respect the position would be that the enforcement agency would be expected to contact the owner of the property and say, "We have a situation here"—as they currently do—"this vehicle is grounded, or this vehicle is this, that or something else. You need to send somebody." The custody of the vehicle would be retained until alternative arrangements were made. The same with stock—there is no intention ever to leave a truck stranded at the side of the road with stock on it in 40-degree temperatures.*[29]

7.8 Mr Tamigi added that:

> *With the stock scenario, the Animal Welfare Act also places obligations on various parties and my understanding is that the inspectors would have an obligation to a degree to make sure—as Mr Maughan has highlighted—not to simply leave the welfare of the animals on vehicles in jeopardy. Just to clarify: the legislation also provides ability for inspectors—although they may direct a person to leave a vehicle—to then go back in. My understanding is that that is designed for issues of obtaining food that may be in the vehicle, or mobile phones. Again, there are mechanisms in the legislation that enables officers to take into account all those facets of making sure*

---

27 Ibid.

28 Ibid.

29 Mr Trevor Maughan, Manager, Strategy and Policy, Department for Planning and Infrastructure, *Transcript of Evidence*, 9 April 2008, p7.

> *the vehicle is not left in a situation where it is vulnerable to damage or theft.*
>
> …
>
> [I]*t is common practice for trailers of those multi combination vehicles to be left on the side of a road because they cannot enter certain roads because of their size. It happens. We have road train assembly areas in various parts of the metropolitan area. It is common practice for trailers to be left. The point is that this is not bringing in anything new. Those issues are already catered for by industry, and it is widely accepted that those things happen as part of day-to-day transport.*[30]

7.9 At a subsequent hearing, representatives from DPI and MRWA provided the following evidence:

> ***Mr Tamigi****: As the committee has correctly highlighted, this is a model provision that is being implemented in WA. It is our submission that this provision is used where a vehicle has been stopped and the officer needs to gain access to that vehicle for a number of issues, whether they are to avoid obstruction to other road users or for the purpose of carrying out an inspection to determine whether the vehicle is a compliant vehicle or not. There has been some concern, as has been highlighted, that this power effectively requires a person to simply vacate the scene of where the vehicle is stopped. That is not the intention, in our view. The legislation envisages that it is a requirement for the driver to leave the vehicle for the purposes of giving inspectors access to that vehicle. There is nothing in the legislation that requires, in our submission, that the driver leave the vicinity.*
>
> *It is not a case where a vehicle will be stopped on the Great Northern Highway and inspectors will say to the driver, "Leave the scene and head off down the highway." That is not the intention of this legislation. It is power for officers to gain access to the vehicle for a number of issues, as is highlighted in previous clauses and, as the legislation is framed, it provides a mechanism where the officers can rescind that direction. At clause 42(2)(c) and (d) it provides that the person can envisage that the person can re-enter the vehicle. The person can get back into the seat once the direction has been*

[30] Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure, *Transcript of Evidence*, 9 April 2008, pp7-8.

> *rescinded. It is not a case where it is a definitive power where a person is told to leave and they simply cannot get back.*
>
> ….
>
> ***Mr Morgan**: We have existing powers to drive vehicles in a very similar way, and it is not used very often but it is required regularly. Take the situation where we stop a vehicle, through a random patrol, that is clearly overloaded. We have followed it down the road, it is struggling, it is flat to the boards, we pull it over and say, "We are going to weigh this vehicle." The driver then says, "Sorry. You want me to drive up on the scales so you can prosecute me—I am not doing it." "That is fine. We have the authority to do it. Hop out of the cab." They say, "If it is going to happen anyway, I'll do it." The advice I got from my inspectors is that once a year we actually have to drive a road train onto a set of scales. Bear in mind the portable scales you actually put in front of the tyres—so you are talking about moving it about half a metre—that is the most common usage of this kind of provision, which are existing. Probably in some ways the restrictions in the model legislation are more restrictive than our current powers in this regard.*[31]

Finding:

The Committee is satisfied that, in practice, there will not be any problems with the security of vehicles where the driver is subject to a direction to leave the vehicle. The Committee believes that the concerns of stakeholders reflect an incomplete consultation process.

Clauses 54 and 55

Powers of entry

7.10 Clauses 54 and 55 of the Bill provide police officers with wide powers to enter and search premises connected with road transport businesses. The Explanatory Memorandum for the Bill states in relation to clause 54:

> *This clause contains provisions that have been imported from the model Bill and creates a limited power for police officers to inspect premises for the purposes of checking compliance with mass,*

[31] Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure; Mr Douglas Morgan, Director, Heavy Vehicle Operations, Main Roads Western Australia, *Transcript of Evidence*, 7 May 2008, pp2-3.

dimension or loading requirements under the proposed Road Traffic (Vehicles) Bill 2007.[32]

7.11 Subclauses 54(5)-(7) state that:

> *(5) An inspection under this section may be made -*
>
> *(a) at any time with the consent of the occupier of the premises; or*
>
> *(b) if a business is carried on at the premises - at any time during the usual business operating hours applicable at the premises (whether or not the premises are actually being used for that purpose), and without the consent of the occupier of the premises.*
>
> *(6) A police officer must not exercise the power to enter and inspect premises mentioned in subsection (5)(b) without the consent of the occupier unless the police officer reasonably believes that the premises are attended.*
>
> *(7) A police officer must not exercise the power to enter and inspect premises mentioned in subsection (5)(b) without the consent of the occupier if the premises are, or any part of premises is, used predominantly for residential purposes.*

7.12 The submission of the Livestock Transporters and Country Bulk Carriers Association of WA (Inc) expressed concern at the powers of entry of police officers with respect to businesses operated out of residential premises:

> *The concern in relation to powers of inspection, I suppose, is one of those that is a worst-case scenario concern. The provisions, as we understand them, allow officers to enter premises under certain circumstances and there are restrictions relating to the definition of premises that are used predominantly for residential purposes.*
>
> *There is a considerable amount of concern from many of the members of the association because, as I am sure you would appreciate, they run family-based businesses. Often, their vehicles are parked near the family home. The office is either attached to the home or is close by. In many cases, the wives are the people at home looking after the office and taking care of domestic duties at the same time. I suppose*

[32] Road Traffic (Administration) Bill 2007, *Explanatory Memorandum*, undated, p19.

we are saying that, if there is the potential for someone to enter premises, which are, for all intents and purposes, a family home, we can see the potential for a horrible outcome. Whilst there appear to be some protections built-in to the bill, we think that the definition of "predominantly for residential purposes" is not really that clear and that it is open to individual interpretation and could give rise to a fairly unsavoury outcome.

…

We think that a safer approach would be to prevent entry without authority to any premises used for residential purposes and that, even if that were to fail, there should be a fallback position that grants entry only when there is a reasonable belief that a severe breach of the law has occurred, rather than one of the minor or insubstantial breaches.[33]

Finding:

The Committee is satisfied that there is no capacity under the Road Traffic (Administration) Bill 2007 for a police officer to enter residential premises without a warrant or the owner's consent.

8 ROAD TRAFFIC (VEHICLES) BILL 2007

8.1 The Bill proposes provisions for the licensing and standards of vehicles and for mass, dimension and loading requirements for vehicles used for transporting goods and passengers by road.

8.2 Substantive new provisions are included in the following clauses of the Bill:

- Clause 3 - includes a number of new definitions;
- Clauses 30-32 - mass, dimension and loading requirements and the *"reasonable steps"* defence;
- Clause 35 - an order or permit for modification of a mass or dimension requirement;
- Clause 40 - complying restricted access vehicles;

[33] Mrs Janet Cooper, Consultant, Livestock Transporters and Country Bulk Carriers Association of WA (Inc), *Transcript of Evidence*, 16 April 2008, p2.

- Clauses 42 and 43 - access approvals;
- Clauses 48-70 - breaches of mass, dimension or loading requirements;
- Clauses 71-77 - defect notices;
- Clauses 78-84 - improvement notices;
- Clauses 85-94 - container weight declarations;
- Clauses 95-108 - other mass, dimension and loading requirement offences;
- Clauses 109-113 - liability for mass, dimension and loading requirement offences committee by other persons;
- Clause 114 - the reasonable steps defence;
- Clauses 115-116 - other defences;
- Clauses 117-129 - court imposed sanctions; and
- Clause 134 - exemptions from mass, dimension and loading requirements in emergencies.

Clause 30

Mass, dimension and loading requirements

8.3 According to the Explanatory Memorandum for the Bill, clause 30 replicates the substance of Part 3 of the *Road Traffic (Vehicle Standards) Regulations 2002*.

8.4 The mass, dimension and loading requirements (**MDLR**) appeared to the Committee to be the most controversial aspect of the Bills. A significant proportion of the road transport industry have indicated dissatisfaction with the MDLR provisions of the Bills, and in particular the fact that no margin for error has been allowed for in the case of loads of variable materials, such as grain and livestock.

8.5 The main issue of concern is in the area of mass requirements with respect to vehicles and loads. Various penalties are established under clause 30 of the Bill for breaches of mass requirements - that is, where a vehicle is overloaded - based on the percentage by which the vehicle is overloaded. In addition, the following three categories of MDLR breach are created for additional purposes, such as distinguishing what types of directions may be given by police officers to breaching drivers, and what types of compensation orders may be made by the courts:

- minor risk breach (which in the case of mass requirements is overloading by less than 5% of the allowable mass);

- substantial risk breach (which in the case of mass requirements is overloading of between 5% and less than 20% of the allowable mass); and

- severe risk breach (which in the case of mass requirements is overloading by 20% or more of the allowable mass).

8.6 A heavy vehicle breaching a mass requirement by a minor risk breach is subject to a fine of up to $1,000. A substantial risk breach may incur a fine of between $2,000 and $4,000. A severe risk breach may incur a fine of between $6,000 and $15,000.[34]

8.7 These categories are designed to *"reflect more accurately the impact of breaches on road safety, damage to infrastructure and unfair competition"*.[35] DPI also advised that:

> *These new categories DO NOT represent any new legal "TOLERANCES", but simply prescribe different actions to be taken by compliance officers, when breaches are detected and they provide for different levels of sanctions to be applied (eg the greater the level of breach the greater the sanction).*[36]

8.8 The Livestock Transporters and Country Bulk Carriers Association (Inc) were of the view that the above categories of breach do not adequately account for the peculiarities of carrying livestock and bulk loads.[37] The Association submitted that the category of minor risk breach should have a limit of 10% over the allowable mass, rather than 5%, so as to accommodate situations beyond a driver's control, such as:[38]

a) heavy rain on woolly livestock during transit;

b) livestock with varying levels of weight based on when they were last fed and watered;

c) the load shifting over the axles after heavy braking; and

---

34 Clause 30(3), Road Traffic (Vehicles) Bill 2007; clause 7, Road Traffic (Administration) Bill 2007.

35 Department for Planning and Infrastructure, Government of Western Australia, 'New Road Transport National Compliance and Enforcement Laws', *Information Sheet 3 - Categories of risk for breaches*, undated, p1.

36 Department for Planning and Infrastructure, Government of Western Australia, "Risk Categorisation of Breaches", undated document tabled at hearing on 9 May 2008.

37 Submission No 2 from Mr G. Robins, President, Livestock Transporters and Country Bulk Carriers Association, received 8 April 2008, p4.

38 Ibid.

d) variations in grain density.

8.9 Similar arguments were raised by the Chamber of Commerce and Industry of Western Australia[39] and grain industry participants, that pointed out that in the absence of a certified weighbridge, it is very difficult for a farmer or transporter to accurately ascertain the total mass of vehicle mass levels given paddock loading conditions, machinery speeds and where there is a move to a new paddock or a change to the type of grain loaded.[40] It is estimated that there are over 55,000 loading points during harvest, comprising 5,500 growers multiplied by a minimum of ten paddocks.[41]

8.10 The Livestock Transporters and Country Bulk Carriers Association (Inc) noted the following regarding variations in grain density:

> *The hectolitre weight of grain varies between seasons, soil types and variety. It is not possible to be precise when loading from a paddock without weighing equipment. A trial conducted by Main Roads on a property in York apparently indicated a high degree of accuracy in loading from the paddock. We believe this was not representative of the circumstances that drivers would be loading in. In particular the soil types in York are not overly variable and would result in a certain amount of consistency. We are also unaware of whether different varieties of grain were being loaded.*[42]

8.11 The Livestock Transporters and Country Bulk Carriers Association (Inc) advised the Committee that they understand that the experience with the Model Bill in New South Wales has been that vehicles carrying grain to Grain Corp on average are under loaded by 6-7%:

> *This has come about because the transport chain is erring on the side of caution and not loading to the full potential. The end result of this is higher transport costs and more vehicle movements; it is in no way a demonstration of improved performance.*[43]

8.12 The Association suggested that a similar result would be experienced in Western Australia:

---

39 Submission No 1 from Mr Trevor Lovelle, Director Industry Policy, Chamber of Commerce and Industry of Western Australia, 31 March 2008, p2.

40 Submission No 3 from Pastoralists and Graziers Association of Western Australia, The Western Australian Farmers Federation (Inc.) and CBH Group, 7 April 2008, p3.

41 Ibid.

42 Notes accompanying verbal submission to the Committee by the Livestock Transporters and Country Bulk Carriers Association (Inc), 16 April 2008, pp2-3.

43 Submission No 2 from Mr G. Robins, President, Livestock Transporters and Country Bulk Carriers Association, received 8 April 2008, p5.

> *Those in the transport chain are clearly being cautious about loading to the full potential. The direct result of this is increased truck movements, more driver fatigue and therefore greater safety risks. During WA's harvest* [an] *estimated 22,000 additional trips would be necessary. Approximately 400,000 tonne of extra tare weight would be placed on the road.*
>
> *More truck movements also result in increased transport costs which will eventually find their way to the consumer. Much is being made of the price pressure consumers are experiencing. It is questionable whether another decision that impacts on them in this regard would be welcome. Under loading in the grain industry alone is estimated to cost at least an additional $7 million before the consumer impacts are factored in. In addition there are obvious environmental implications.*
>
> …
>
> *An objective assessment should be made as to whether the resistance to an additional 5% to the minor breach break point is more important than the potential safety, economic, community and environmental implications.*[44]

8.13 Other submissions also stressed the side-effects of under loading as being an increased risk of road accidents, lost value of grain due to weather damage, financial strain on the Grain and transport industries and increased pollution.[45]

8.14 It was pointed out to the Committee that in the past the Government administratively applied a 10% tolerance to the mass requirements where no infringements were issued. It is understood that up until a few years ago all Australian road agencies applied a tolerance to all heavy vehicle mass weighings to account for variances in the weighing process.[46] The Livestock Transporters and Country Bulk Carriers Association (Inc) submitted that that arrangement was practical and worked well, with no evidence that the 10% tolerance was treated by drivers as a *de facto* maximum load.[47] DPI provided the following evidence to the Committee:

---

44 Notes accompanying verbal submission to the Committee by the Livestock Transporters and Country Bulk Carriers Association (Inc), 16 April 2008, pp3-4.

45 Submission No 3 from Pastoralists and Graziers Association of Western Australia, The Western Australian Farmers Federation (Inc.) and CBH Group, 7 April 2008, p3.

46 Main Roads Western Australia, HVO Updates, HVO 40-2006, p1.

47 Notes accompanying verbal submission to the Committee by the Livestock Transporters and Country Bulk Carriers Association (Inc), 16 April 2008, p3.

> *It is called the mass management, or measurement adjustment, scheme. It was adopted nationally. Effectively, the states have come to an agreement or acknowledgement that it is not always ideal to weigh vehicles on the side of the road or in truck bays. There is an agreed position throughout the states that if those situations occur, some adjustments be made to the final readings. I have a copy of a document published on the Main Roads website that reiterates that concept. Effectively, a vehicle is stopped. The legal weight on a certain axle may be 20 tonnes but it is found to be 22 tonnes. Current practice is that that vehicle is weighed in a certain location, which is demonstrated. All enforcement officers throughout the jurisdictions have to take certain measurements off that calculation, which is to acknowledge that the sites are not always the best. Once they do that, they end up with a figure and that is the basis from which they go back to the prescribed limits and say "Okay, you may have been 22 tonnes." I do not know the exact figures myself but if we say half a tonne is the measurement adjustment, they then work out that the vehicle is one and a half tonne over the prescribed limit and then sanctions and actions will flow from that. That is the current position and has been for some time.*[48]

8.15 It was also noted that many transporters currently operate under concessional schemes in Western Australia that allow for overloading of up to 35%.[49] As one witness told the Committee:

> *When we look at trucks: my truck is a late-model truck. It is a very good truck. However, by the same token, that same truck could be working the off-season in the mining industry. The truck has not changed one skerrick, but it could go to the mining industry and be allowed to carry a much higher load characteristic under concessional loading. The truck has not changed. A lot of farmers have very good trucks, but the acceptable level of risk for the truck changes when the farmer uses it to cart in the mining industry. In many cases, trucks in the northern wheatbelt will go to be used in the mining industry. I cannot understand why, in the grain industry, we cannot get this tolerance, yet in the mining industry we can.*
>
> …

---

48 Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure, *Transcript of Evidence*, 9 April 2008, p9.

49 Notes accompanying verbal submission to the Committee by the Livestock Transporters and Country Bulk Carriers Association (Inc), 16 April 2008, p3.

> *The same truck that carries grain could also carry sea containers. On a tri-group for a sea container, the concessional loading of* [27] *tonnes is allowed. In the grain industry it is 21 tonnes and a concessional loading is normally 22.5 to 23 tonnes. The same truck can do all three things, but the minister will not give a 10 per cent tolerance to farmers. I cannot understand why.* [50]

8.16 The Committee was advised that Co-operative Bulk Handling Limited (**CBH**), with the support of the Western Australian Grain Industry, has implemented a Harvest Mass Management Scheme (**HMMS**) for the past two harvests. The rules of the HMMS allow up to a maximum of 10% flexibility in overloading above the permitted total mass of a vehicle to the participants in the HMMS.[51] This flexibility is applied only where it is safe to do so. The following background was given to the Committee on the HMMS:

> *The reason for introducing the harvest mass management scheme was simple in knowing that the legislation was coming and would be imminent. It is a pre-emptive approach that CBH had taken before the legislation was being enacted. The reasons for introducing it was; firstly, to set a process as a handler and a receiver of grain and to demonstrate reasonable steps of defence. Secondly, by demonstrating again responsible behaviour, it would hopefully demonstrate to the government that the industry itself could self-regulate. Additionally, we spent considerable effort in helping prepare and educate our member growers and the transport industry of the forthcoming legislation.*
>
> *The scheme has developed and evolved over two years. Essentially, flexibility is allowed to vehicles mass when they deliver, to account for the unique difficulties of the grain industry's encounters when loading on-farm. Essentially, a grower or a transporter will not know the weight of the vehicle when leaving the farm, and only know when they reach a weighbridge. Our scheme rules are only applied if the vehicle is safe to manage that weight and is managed very carefully in our systems. If a vehicle is overloaded, they have two options: whether to forfeit the overload proportion and the forfeited portion either goes to a charitable cause or to a community cause in the past two years or to leave site and rectify their load and re-present. The scheme itself has incurred much expense to CBH and the industry*

---

50 Mr Graeme Smith, Farmer and Grains Representative, Pastoralists and Graziers Association of Western Australia, *Transcript of Evidence*, 16 April 2008, p6 and p10.

51 Submission No 3 from Pastoralists and Graziers Association of Western Australia, The Western Australian Farmers Federation (Inc.) and CBH Group, 7 April 2008, p2.

already. Our systems have been changed; there has been an extensive communication program, a big training exercise of our staff and growers in the transport industry and we have had to face considerable opposition, initially, and certain conflict onsite in trying to police the rules strictly.

…

We were introducing a rule where in the past Main Roads on-roadside weighing was the only deterrent; in our scheme, every single vehicle is captured. However, having faced wide opposition initially, the scheme is now widely supported. People have understood the consequences of the forthcoming legislation and have understood the actions that CBH in the industry are taking. Further to this, in year two, we voluntarily tightened the rules to address some of Main Roads' initial concerns. So, we have evolved the scheme to actually make it even more practical and responsible.

It has been extremely successful as a scheme. We have even had acknowledgement from Main Roads and the Minister for Planning and Infrastructure. The stats in the submission clearly demonstrate there has been a dramatic reduction in overloading from the year in 2005-06, before the introduction, to the past two years. You will see that 15 per cent overloading of both our scheme rules was experienced before the scheme and that is down to one per cent overloading. This also demonstrates, we feel, that the 10 per cent tolerance was set at the correct level. In the second graph, it is also important to note that around 81 per cent of all vehicles were at or around the standard mass limits allowed on Western Australian roads. It can be demonstrated that the industry is loading responsibly within the scheme rules. The strike system that we have implemented discourages repeated infringement and should they lose all their strikes within a season, they then lose any entitlement to a tolerance or to flexibility.

One important point I would like to make about overloading is that it is not necessarily unsafe. Many vehicles are capable of carrying more than the standard limits and, indeed, gain concessions, if carrying different commodities on the same roads using the same vehicles. [52]

[52] Mr Owen Davies, Logistics Strategy Manager, CBH Group, *Transcript of Evidence*, 16 April 2008, pp2-3.

8.17 The joint submission from the Western Australian Farmers Federation, the Pastoralists and Graziers Association and CBH sets out detailed statistics and tables in relation to the HMMS. The submission is at **Appendix 3**.

8.18 The HMMS has its own overload remedies of either a grain forfeiture option or a load rejection option. The participants in the HMMS have a set number of overload strikes (with a single strike for up to a 5% overloading breach and up to 8 strikes for a more than 10% overloading breach) before being barred from the HMMS. Currently, the participants are struck off once they have accrued eight strikes.[53]

8.19 The Committee was advised that the HMMS has proven to be effective in reducing the incidents of grain transport vehicles overloading.[54] The following figures were provided:[55]

- In 2005/06 15% of deliveries would have been above HMMS flexibility limits if HMMS was operating; this was reduced to less than 1% upon the introduction of HMMS in 2006/07.

- In 2005/06, 71% of deliveries were above the standard axle mass Vehicle Regulation Limits. Following the introduction of the HMMS, this was reduced to 41%.

- 81% of all loads were either below the Vehicle Regulation Limits or less than 5% above in 2006/07, demonstrating that farmers were aiming for the standard axle mass and not the maximum flexibility threshold.

8.20 The joint submission of the Western Australian Farmers Federation, the Pastoralists and Graziers Association and CBH added that:

> *CBH had 394,053 loads delivered to its bins in* [the] *2005/06 season, which represents a moderate year. Of these loads, 73% of them were over legal* [Vehicle Regulation Limits]. *Under the Bill these deliveries would be turned away and thus 287,659 extra round trips would be made by transporters and farmers.*[56]

8.21 The Committee received evidence from a farmer as to the value of the HMMS:

> *The Harvest Mass Management Scheme has been very successful during the past two years and, from a farmer's perspective, I have*

---

53 Submission No 3 from Pastoralists and Graziers Association of Western Australia, The Western Australian Farmers Federation (Inc.) and CBH Group, 7 April 2008, p3.

54 Ibid.

55 Ibid, p4.

56 Ibid, p5.

> *seen the success of the scheme. I would like to give members an example of the difficulties associated with the variations in the hectolitre weight of grain.*
>
> *Last year I took part in a secondary scheme with CBH in which we actually measured the hectolitre weight of grain on a regular basis so that we could determine if it were possible to load trucks to the correct weight. We harvested in one paddock, went to the next paddock, took a correct hectolitre weight of the grain and the harvesters then went to the other side of the paddock, on the same day—as they will—and the grain weight increased from 74 hectolitres to 82 hectolitres. We did not actually have a hectolitre weight for the other side of the paddock and suddenly we had an additional nine tonnes of grain on the truck. It is very, very difficult to accurately weigh grain 100 per cent of the time. What we are saying is that this scheme is most probably not the be-all and the end-all of all scenarios. As technology catches up, and we can actually get accurate weights in the paddock, the scheme may be discontinued or changed in some manner. However, until such times as we have that improved technology we really need a scheme that will work otherwise we end up with a criteria of having a lot more trucks on the road for a longer period of time during the harvest period. That is not a good scenario. On the statistics that have been presented, we are looking at an increase of 5.2 more accidents in the system; meaning every two years we are possibly going to have a fatal accident as the result of that scenario. It is not necessarily the weight that kills; it is the speed that kills. As it is now, the Harvest Mass Management Scheme has been very, very successful.*[57]

8.22 Mr Tamigi of the DPI commented on the HMMS:

> *The actual limits are not changing. There has been a perception in industry in the presentations that I have done that all the limits are changing. The limits are not changing. If you overload by one tonne today and you overload by one tonne when the* [Bills come] *in, you are still committing an offence. The legislation tries to create a greater liability on other people in the chain. Going back to the issue of the farmer, yes, I acknowledge that there are issues that have variables on the weight of grain, whether it is the type of grain, moisture content and so forth. Farmers have had to live with those*

[57] Mr Graeme Smith, Farmer and Grains Representative, Pastoralists and Graziers Association of Western Australia, *Transcript of Evidence*, 16 April 2008, p5.

variables for some time, such as whether their truck can carry 20 tonne. That will still continue.

What we have found from advice from Main Roads, which was mentioned in the house by Hon Alannah MacTiernan, is that CBH is running a mass management scheme in preparation for the C & E because the new legislation places certain obligations on it as the receiver. I do not have the figures with me but effectively over the last two grain seasons CBH had a system in place where it turned away trucks that were over the mass requirements. Main Roads has detected a downturn in the frequency of overloaded vehicles. The reason I make that comment is that they can load correctly if they want to. It is a case of what is the desire to do so? Yes, whilst there is acknowledgement that the farmers may have those problems, those factors are in place now. The measurements and adjustments that we have talked about acknowledges that. Vehicles are weighed in certain locations and some adjustments need to be made to take that into account. The general status quo on working out the mathematics of whether a person has committed an offence is not changing.[58]

8.23 The Committee understands that the grain industry is undertaking discussions with the Minister for Planning and Infrastructure regarding a transitional HMMS for the coming harvest year to "*ease*" the industry into the new legislation:

> ***Mr Morgan****:* [W]*e have been trying to work out a transitional scheme with CBH to look at a way of, I suppose, easing the industry into the tighter regime. CBH has gone a long way on its own initiative, which I commend. In the previous two harvest seasons it implemented a scheme. From a government point of view, because there was no compliance enforcement legislation, it was up to CBH; however, I note that its 10 per cent tolerance on receival means it is receiving overloaded vehicles, and the people delivering them are committing an offence now. This transitional scheme we are trying to get up for this year is to look at giving a temporary mass concession, to give people time to adjust their loading practices accordingly.*
>
> …
>
> *There is, at law, no such thing as a tolerance. They are either within the limit or not. Main Roads would issue a mass concession; that is, raise the bar saying that they can carry additional load.*

---

[58] Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure, *Transcript of Evidence*, 9 April 2008, p9.

…

***The CHAIRMAN**: Thank you for clarifying that. You were telling us about a temporary concession.*

***Mr Morgan**: The minister has written to CBH saying that, for this coming harvest, there is an opportunity to develop a transitional scheme to offer that extra mass concession—in this case five per cent—with the idea of allowing people to adjust their loading. Our concern, from an ongoing basis, is that five per cent mass means it can be legally carried. What may happen is that everyone will load to 105 per cent and we have the same issues about tolerances, when the intention was to say to the operators, "You should be loading to your legal limits; however, we will give you a mass concession for this coming harvest". In fact, at law, that does not exist because they either have the mass concession or not. They can either load it legally or not.*

***The CHAIRMAN**: It will be an announcement that a blind eye will be turned to five per cent.*

***Mr Morgan**: No, not exactly. We are saying that we will give the legal concession; that is, they will be allowed to load to 105 per cent.*

***The CHAIRMAN**: You will give a legal concession, in the absence of which the activity would be illegal.*

***Mr Morgan:** Yes.*

***The CHAIRMAN**: If that is the case for this harvest, why not do it for this harvest and the one after?*

***Mr Morgan**: There are two issues here. They have said, firstly, there is an issue about managing the variability of loading. This is an attempt, as a transitional scheme, to assist with that. If we give a mass concession, legally, they are allowed to carry that. Really, we are simply saying that the new limit is 105 per cent; then we will be back to where we are in terms of enforcement. From a policy point of view, if we want to change the allowable axle and vehicle loadings, let us have that debate, but they have been set for a national basis on clear research; for example 20 tonnes for a tri-axle. If we want to change that on an ongoing basis, that is a debate we need to have at the policy forum, and perhaps at the national policy forum, and that is the danger*

> *with an ongoing concession because, effectively, we are saying they can load to those limits ad infinitum.*[59]

8.24 The joint submission from CBH, the Pastoralists and Graziers Association of Western Australia and the Western Australian Farmers federation (Inc.) recommended that:[60]

- the Bill be amended to make provision for mass management schemes or mass management concessions that is grain industry specific for harvest deliveries; and

- clause 30(3) of the Bill be amended to remove any penalties for 0-5% and 5-10% for vehicles transporting grain from farm to receival points during the months of October, November, December and January.

8.25 DPI, however, indicated that it was not in favour of any tolerances for MDLR breaches:

> *There is no doubt that some elements of industry wanted some sort of tolerances provided and that sort of thing. The evidence showed that when those jurisdictions provided the tolerances for error, the operators loaded it to the maximum of the tolerance—surprise, surprise—because that meant they could get another half tonne or another tonne on. Even though they know they are committing the offence, they are getting some return. The whole concept of the legislation was to take out the profitability for the operators to knowingly overload their vehicles. If we do not do that, we end up with an unlevel playing field where the legitimate operator is forced to load to the maximum of the tolerances. Very clearly, the policy position was that the law is the law so that is the amount operators are allowed to carry.*[61]

8.26 Mr Tamigi also emphasised that:

> *At the moment, as we have said many times, if there is a breach of a mass limit, they commit an offence. This legislation will provide the mechanism to gather the evidence to hit other people in the chain. With regard to drivers who come from the farm or another depot to the weighbridge, there is a chance that if they are weighed they are in*

---

59 Mr Douglas Morgan, Director, Heavy Vehicle Operations, Main Roads Western Australia, *Transcript of Evidence*, 7 May 2008, pp15-16.

60 Submission No 3 from Pastoralists and Graziers Association of Western Australia, The Western Australian Farmers Federation (Inc.) and CBH Group, 7 April 2008, p6.

61 Mr Trevor Maughan, Manager, Strategy and Policy, Department for Planning and Infrastructure, *Transcript of Evidence*, 9 April 2008, pp8-9.

> *breach. If their loading practices cause them to be overloaded in every situation now, that is not a suitable situation. Mass limits have been around for a number of years. C and E does not change the regime in which they operate. Compliance and enforcement extends the responsibility on various parties. There has been a lot of discussion on this. I appreciate industry's concern. It is in the business of moving goods from point A to point B and any change can impact on their operations. If I were in their shoes, I would be concerned and I would want to know to what extent it will impact on me.*
>
> *Zero tolerance has been mentioned. Without going over it again, the legislation under the Road Traffic Act has never ever provided for a tolerance.*[62]

Committee Observations

8.27 In the light of the written submissions, evidence and Government responses set out above, it is apparent to the Committee that the consultation processes undertaken by the Government with the transport operators regarding the MDLR aspects of the Bills have been inadequate, leading to considerable differences of understanding of the issues.

8.28 The Committee is of the view that there is merit in amending the Road Traffic (Vehicles) Bill 2007 to provide a concession or tolerance for heavy vehicles carrying grain during peak harvest periods. The particular difficulties associated with determining the exact weight of grain and the size and value of the grain industry in Western Australia needs to be recognised in this State's road traffic legislation.

Recommendation 1: The Committee recommends that the Road Traffic (Vehicles) Bill 2007 be amended to make provision for mass management schemes or mass management concessions that are grain industry specific for harvest deliveries.

Recommendation 2: The Committee recommends that clause 30(3) of the Road Traffic (Vehicles) Bill 2007 be amended to remove any penalties for mass breaches in the ranges of 0-5% and 5-10% for heavy vehicles transporting grain from farms to receival points during the months of October, November, December and January in any year.

62 Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure, *Transcript of Evidence*, 7 May 2008, p18.

Clause 58

8.29 Clause 58 deals with securing loads and the *"imminent displacement"* of loads. The Chamber of Commerce and Industry had a concern as to how this provision would impact on vehicles carrying forklifts or bobcats in small trailers attached to a truck once the truck had unloaded:

> *Industry is concerned that an uneven weight distribution might arise following the unloading of cargo which could potentially lead to a breach of the 'loading requirement' provisions of the Bill. Notably, s.58(1)(b) notes that the placement and securing of the load shall be a factor in determining whether the load is likely to become displaced or unsecured. Given the uneven weight distribution that may arise with a truck carrying an empty trailer but a laden 'dog' trailer, industry is concerned that this section may become relevant.*
>
> *If this were the case, CCI understands that it would likely invoke s.59 which mandates a minor load breach.*
>
> *If these sections of the legislation were not activated due to this type of loading activity, then industry would not raise objection with this aspect of the proposed legislation.*
>
> *I am aware of at least one business within the industry that has chosen to install on their trucks cross-ramps that allow a forklift to drive from the 'dog' trailer to the main trailer after a load is delivered. I am advised that these were installed at the time of construction of the trailers (not retro-fitted) at a cost of approximately $2000 - $3000 per unit. I would assume that this cost would be higher for retro-fitting - if it is possible at all - however I cannot provide evidence of this.*[63]

8.30 Both the DPI and MRWA assured the Committee that the Bills will not introduce any new requirements in this area of vehicle operations:

> ***Mr Morgan**: In the current vehicle standards regulations there is what is called a tow mass ratio for truck and trailer combination. It basically says that a very light truck cannot pull a heavy trailer because, through its mass, the trailer will steer the truck and it will come into an unstable situation. It is the equivalent of the classic situation that occurs when towing a large caravan and the sway behind occurs because the caravan starts steering the private car. In*

[63] Email from Mr Andrew Canion, Senior Adviser, Industry Policy, Chamber of Commerce and Industry of Western Australia, 24 April 2008, p1.

the current vehicle standards regulations there is a set tow mass ratio of one to one across Australia. Unfortunately, it is common practice for some operators to do exactly what you described. They have the rigid truck with bricks, sand or whatever loaded on and a pig or dog trailer behind with the bobcat on. When the truck is loaded they are legal. When they have unloaded it on site and taken the weight out of the truck, it becomes less in mass—perhaps significantly less. They are illegal now and they have been at all times.

This legislation does not, of course, address that kind of detail of tow mass ratios. That will always remain in the regulations and there is no intent to change that.

…

***Mr Tamigi**: …* [A]*s Mr Doug Morgan said, the current regime experienced by brick carters we have referred to will not change under the senior legislation. If the second trailer is currently too heavy and breaches the requirement of vehicle standards, it commits an offence now. If there is a perception that they will need to purchase extra or new equipment so that they are compliant, with respect, they should be doing that now. If they are doing that now and are stopped by a Main Roads inspector today, they will be in breach of the regulations. Although C and E will bring in a raft of reforms, it will effect increase liability. If a driver at the moment is in the firing line for a breach, the legislation envisages because it will be a mass breach, other parties in the chain will have an obligation.*

Clause 58 deals with securing. If we are talking about a bobcat or forklift, there is an obligation now that that is secured to the vehicle whether by chains, ropes or whatever; that will not change. The issue I believe has been raised by industry is the question of having to move that vehicle to the front vehicle, as Mr Morgan explained, so that it complies nationally. That is the case now. If they do not do that now, they are in breach. C and E will not change that. We accept that it will increase the liability. They are longstanding provisions that are in place and, as has been quite rightly pointed out, there is a safety issue.[64]

[64] Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure; Mr Douglas Morgan, Director, Heavy Vehicle Operations, Main Roads Western Australia, *Transcript of Evidence*, 7 May 2008, pp4-5.

Finding:

The Committee finds that clause 58 does not change the current legislative requirements with respect to unladen vehicles towing a trailer bearing a load.

Part 6, Division 4

Improvement notices

8.31 The Livestock Transporters and Country Bulk Carriers Association (Inc) was concerned that improvement notices may lack specificity, and that business owners may waste time and money attempting to second guess what action is required to satisfy the requirements of the improvement notice. The Association indicated that they had experienced similar problems in the past with improvement notices currently in use in the area of occupational health and safety laws.[65] Mrs Cooper gave evidence that:

> [W]*e are concerned that there is no requirement for a level of specific detail to go into the improvement notices and we have had experience with the improvement notice regime under the occupational health and safety legislation. Whilst this legislation states that the officer "may" provide specifics, we think that should be more definitive and should be "shall" provide specifics. We have had experiences, and been told of others, under the occupational health and safety legislation whereby an improvement notice is issued, but the person receiving the improvement notice does not have sufficient detail to know what action needs to be taken in order to get the improvement notice removed. I have had personal experience whereby we have had to go back several times; we have taken some action thinking that action would fix it and the officer has said, "No, that's not what I had in mind. This is what I had in mind", and even then he is not specific. As we said in our submission, time spent trying to second guess is time not spent earning a living.*
>
> …
>
> *I will refer to the explanatory memorandum for the Road Traffic (Vehicles) Bill 2007. The example that was used in the explanatory memorandum was that a police officer may detect that a company has issued its staff with a document that sets out the operating instructions*

[65] Submission No 2 from Mr G. Robins, President, Livestock Transporters and Country Bulk Carriers Association, received 8 April 2008, p3.

> *relating to the loading of vehicles and the instructions are likely to result in an offence being committed. The officer may issue the company with an improvement notice that directs the company to amend the document in question. Hypothetically that could be simply to amend that document to fix it. The business owner could make some amendments to the document that still do not get to the heart of the problem and would have to go back and have a second attempt to get it right. That is probably a small example.*[66]

8.32 DPI and MRWA were of the view that making improvement notices subject to a requirement of specificity, may be counter-productive:

> ***Mr Tamigi****: … The legislation is designed to say, that there is an issue; there are vehicles being used on a road, leaving your premises or premises that you are in control of, that are over mass or over a dimension limit, and you need to correct that. It is not always the case that inspectors will be able to know what the problem is. There may be a raft of processes in loading vehicles before they hit the road. Unless the inspectors have access to those steps, it is difficult to identify what the weakest link is. Ultimately, the vehicle is leaving your premises, and the problem may be the weighbridge, the loader driver or the packer who is packing the goods on the truck. I do not know. He needs to make sure that these vehicles are compliant and that the improvement notice is used to rectify the process, whatever that may be.*
>
> …
>
> ***Mr Morgan****: There are various ways depending on the severity. If it is fundamentally dangerous—if it is a severe breach—we would have to say, "Pull over to somewhere safe, suitably restrain the load before you go forward, or whatever needs to be done, put it on a proper vehicle." If it is a minor issue such as not having a tarp on the load of sand and the sand is blowing out all the time, we would not seek to have the vehicle parked there, we would say, "How about you roll out your tarpaulin and do what is right. If you haven't got one, then we will have to issue an infringement." If, for example, it was the third vehicle that week that we intercepted with the same problem coming from the same yard, then we would say that there is a systematic problem with this operator. We would go to the person sending the trucks out and say, "We have stopped three of your trucks. You have*

[66] Mrs Janet Cooper, Consultant, Livestock Transporters and Country Bulk Carriers Association of WA (Inc), *Transcript of Evidence*, 16 April 2008, pp4-5.

> *got a problem here, what are you going to do about it?" As Mr Tamigi said, it could be in the training of his staff, it could be in the physical gear they use to restrain the load; it could be in the equipment they are using or maybe a misunderstanding of the manufacturer's securing requirements. There are a whole raft of things. I do not think it would be practical in those circumstances for us to try and second-guess what they can do.*
>
> *My personal view is that there may have been have a little bit of confusion with existing powers such as vehicle defect notices, which are obviously about a specific problem. Certainly, if a vehicle's brakes are not working, we will say, "Here is the defect notice; fix the brakes." In this case we are talking about more general, systematic issues that need to be dealt with in a more high-level manner.*[67]

Finding:

The Committee finds that Part 6, Division 4, of the Road Traffic (Vehicles) Bill 2007 Improvement Notices (as opposed to vehicle defect notices), are to deal with general systemic issues and that it would not be practical to require specificity in them.

Clause 114

Reasonable steps defence

8.33 Clause 114 introduces a new defence for certain offences where the person had taken all reasonable steps to prevent the commission of the offence. Although a defence, and therefore of benefit to a person charged with a relevant offence, clause 114 also effectively amounts to a reversal of the prosecution's onus of proof.

8.34 In its submission the Livestock Transporters and Country Bulk Carriers Association (Inc) expressed concern at the effective reversal of the onus of proof involved in the new reasonable steps defence:

> *The "reasonable steps defence" proposed under these laws are said to provide the opportunity for a transporter to prove they took reasonable steps to determine the weight of the load or ensure equal distribution of a load. This is a departure from the normal onus of proof where the prosecution is required to prove that a person did not*

[67] Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure; Mr Douglas Morgan, Director, Heavy Vehicle Operations, Main Roads Western Australia, *Transcript of Evidence*, 7 May 2008, pp7-8.

> *take "reasonable steps". Our members have no desire to be occupied in costly legal defence trying to prove this point. Time spent defending actions of this nature will be time spent away from their business activities.*[68]

8.35 DPI provided the following evidence:

> *One further thing that is very important, and I think has been lost in the debate, is the "reasonable steps defence". As explained, under the Road Traffic Act, there is no defence. Under the new regime, the operators, farmers, drivers and companies have reasonable steps defence available to them. If they can demonstrate they have systems in place now, notwithstanding an offence has been committed, they have an additional defence. We think it is reasonable in the context of these new laws. As I said, without harping on, it is important to bear that in mind. Yes, there is a zero tolerance in this process, as illustrated. In the gathering of evidence process Main Roads can apply some deductions. They are not tolerances; they are deductions for the purpose of gathering a weight or measurement for the purpose of court proceedings or an infringement or whatever the case may be.*[69]

Finding:

The Committee finds that clause 114 of the Road Traffic (Vehicles) Bill 2007 provides an avenue for a defence against certain offences. The Committee does not believe that this clause represents a true reversal of the prosecution's onus of proof. Whilst it is up to the prosecution to prove the elements of an offence, it has always been up to an accused person to prove a defence (if they wish to raise one), ie, the defences set out in the *Criminal Code* are currently available to any person charged with a statutory offence.

9 ROAD TRAFFIC (AUTHORISATION TO DRIVE) BILL 2007

9.1 The Bill proposes to make provision for the authorisation of persons to drive motor vehicles.

9.2 The Explanatory Memorandum for the Bill states that:

> *This Bill does not contain any provisions from the* [Model Bill]*, but simply incorporates existing "driver licensing" (includes Demerit*

---

[68] Submission No 2 from Mr G. Robins, President, Livestock Transporters and Country Bulk Carriers Association, received 8 April 2008, p4.

[69] Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure, *Transcript of Evidence*, 7 May 2008, p20.

> *Point scheme and extraordinary drivers licences) provisions that have been transferred from the Road Traffic Act 1974, as part of the restructure of WA's Road Traffic legislation.*[70]

9.3 The Committee notes that although the Government advises that no substantive changes are introduced by the Bill, a simple cut and paste of the current law has not occurred. The wording of some provisions has been significantly altered, so that the many of the Bill's provisions only *"reflect"* or *"replicate the substance"* of the existing provisions of the *Road Traffic Act 1974*. The Committee was advised that:

> *Nothing has changed in this provision. In the course of Parliamentary Counsel's re-visit of this provision, it has effectively broken up the provisions into more clauses to make it a more useable document. If one looks at this clause and looks at section 76 of the Road Traffic Act, on first glance, one would say that these two provisions are completely different. If one looks closer, the policy and provisions have not changed. Parliamentary Counsel has restructured the clause and made it a separate division. It has done so to improve the legislation. There have been no changes. That concept applies in other parts of the legislation. As I reiterate, the policy has not changed. The clauses may look different but whatever is in the current Road Traffic Act has simply been replicated. PCO is part of the general process. There is an obligation on them to make sure the legislation is current and it is appropriate for the time that it has been put forward.*[71]

9.4 Mr Maughan added:

> *We have been very careful to not change the bill in any substantive form. One of the major concerns that we had when we looked at this was the vast amount of case law that has been developed in Western Australian courts and nationally over a long period. We did not want to bring in new provisions that would interfere with that case law situation and maybe adversely affect the police service. We were very careful to make sure the substance of the provisions and, wherever possible, that consistency was maintained.*[72]

---

70 Road Traffic (Authorisation to Drive) Bill, *Explanatory Memorandum*, undated, p1.

71 Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure, *Transcript of Evidence*, 9 April 2008, pp4-5.

72 Mr Trevor Maughan, Manager, Strategy and Policy, Department for Planning and Infrastructure, *Transcript of Evidence*, 9 April 2008, p5.

Clause 4

9.5 Clause 4 sets out a driver licensing scheme that is for the most part to be set out in regulations. The extent to which the matters to be contained in regulations is specified differs significantly from the current equivalent provision in s 42 of the *Road Traffic Act 1974*. Matters dealing with the age on which a person may be issued a driver's licence and any medical requirements are no longer specified in the Bill, but are to be set out in regulations. Clause 4(6) of the Bill also provides that:

> *The regulations may relieve any driver described in the regulations from the requirement to comply with this Part, or a specified provision of this Part or the regulations.*

10 ROAD TRAFFIC (CONSEQUENTIAL AMENDMENTS) BILL 2007

10.1 The Bill proposes amendments to the *Road Traffic Act 1974* and various other Acts as a consequence of the four other Bills. The amendments will come into effect on a day fixed by proclamation.

10.2 According to the Parliamentary Secretary's Second Reading speech:

> *This bill does not introduce any new legislative provisions into Western Australian law, but simply facilitates the proposed new road traffic legislative structure.*[73]

11 ROAD TRAFFIC (VEHICLE) (TAXING) BILL 2007

11.1 This is the shortest of the Bills. It consists of three clauses. Clause 3 states:

> ***3. Imposition of tax***
>
> *To the extent that any charge that the regulations prescribe under the Road Traffic (Vehicles) Act 2007 section 7(3) may be a tax, this Act imposes the charge.*

11.2 Clause 7(3) of the Road Traffic (Vehicles) Bill 2007 states that:

> *Subject to any reduction, waiver, refund or deferral provided for in the regulations, the appropriate prescribed charge is to be paid to the CEO for granting, renewing or varying any licence for a vehicle.*

11.3 The purpose of the provision is to provide:

---

[73] Hon Adele Farina MLC, Parliamentary Secretary to the Minister for Planning and Infrastructure, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 20 March 2008, p1312.

> *… the legal mechanism for vehicle licence fees to be imposed in excess of the administrative costs associated with granting vehicle licences. These additional charges go towards the provisions of road infrastructure—roads, bridges etc—for the use of vehicles in Western Australia.*[74]

11.4 A similar provision currently exists in s 3 of the *Road Traffic Amendment (Vehicle Licensing) (Taxing) Act 2001* - although a significant change to the current position is the addition of a charge for the *"varying"* of a vehicle licence amongst the charges that may be imposed as a tax. Currently, only a charge for the grant or renewal of a licence may be a tax.

11.5 The following justification for the inclusion of charges for the variation of a licence within the matters that may be a tax was provided to the Committee:

> *The word "varying" has been put in place for completeness. Under the current regime, the director general can grant vehicles, renew and vary. Varying comes into the equation when we are talking about, predominantly, heavy vehicles. At the moment, with the fee structure, we can licence a prime mover to tow one, two or three trailers. Quite commonly in the industry, operators may choose to tow only one vehicle for which they get a fee. If they choose to tow three vehicles, the fee goes up. It is a user-pays system. Throughout the licensing period, there are variations whereby operators come to us and say they want to increase their fee so that they can tow larger vehicles. The vehicle licence must then be varied. The concept of variation is there because the increase in licence fee incorporates moneys that fall under this act. It is a tax effectively. It simply qualifies current practice. As you may know, the concept of variation does not appear in the existing Vehicle (Taxing) Act 2001. It has been included, on the advice of parliamentary counsel to provide clarity because it happens on a day-to-day basis. There was a view that, if it is incorporated it is harder to grant, but that word has been included for clarification; it does not change the status quo.*[75]

12 PROPOSED GOVERNMENT AMENDMENTS TO THE BILLS

12.1 The Committee was advised of the following proposed Government amendments to the Bills:

---

74 Hon Adele Farina MLC, Parliamentary Secretary to the Minister for Planning and Infrastructure, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 20 March 2008, p1312.

75 Mr Vince Tamigi, Project Manager, Compliance and Enforcement Legislation, Department for Planning and Infrastructure, *Transcript of Evidence*, 7 May 2008, p6.

> *I believe that two amendments were proposed in committee. One is in response to a matter that was raised by the member for Leschenault I believe, particularly clause 15 of the Road Traffic (Vehicles) Bill, effectively dealing with the requirement for registration stickers to be issued to vehicles. An amendment is to be moved in response to that matter that was raised and discussed in the Legislative Assembly.*
>
> *There is one other amendment to the consequential provisions bill, which is simply an amendment to take into account a recent bill that has been introduced into Parliament. I believe it is the Road Traffic Amendment Bill 2008, which brings some changes to some hoon amendments and so forth. Effectively, that bill amends the Road Traffic Act. Consequential provisions need to be adjusted to accommodate that bill. Other than those two, I am not aware of any other proposed amendments.*[76]

13 OTHER ISSUES RAISED

Traffic Management Plans

13.1 The Chamber of Commerce and Industry of Western Australia raised a concern regarding traffic management plans, and whether the Bills would impact on current arrangements:

> *Currently, traffic management plans are requested and put in place when there will be substantial impacts upon traffic movement as a result of trucking activity. We are finding that trucks—brick deliveries provide a useful example—are going into residential areas. Due to the nature of the streets and configurations and so on, often they pull up on the side of a street and offload the bricks from the truck. That does not present a problem when there is very little traffic and so on. However, the industry is concerned that the proposed changes in these bills would constitute the need for them to enact the traffic management plan each time they were to access a residential area to unload a truck. Obviously, that would put a large impost on not only the industry participants but also the government agencies that have the task of reviewing and approving the traffic management plans.*[77]

13.2 The Committee pursued this issue with a witness from MRWA:

---

[76] Ibid, pp14-15.

[77] Mr Andrew Canion, Senior Adviser, Industry Policy, Chamber of Commerce and Industry of Western Australia, *Transcript of Evidence*, 16 April 2008, p4.

***The CHAIRMAN**: We will probably come to that separately shortly. Another matter also raised by industry is traffic management plans. It was put to us by way of background that, currently, traffic management plans are requested and put in place when there will be substantial impacts on traffic movement as a result of trucking activity. Are such traffic management plans now going to be required for all sorts of jobs where trucks simply park and unload, typically, in a small street in a suburban area? Can you comment on that generally?*

***Mr Morgan**: To put it in context—bear with me it is a bit of a tangled web—the first point is that C and E has no impact on this process; it is unrelated to the bill before us. Under the current road traffic code; that is, the instrument that tells you how you can drive on the road—the road rules—the Commissioner of Main Roads has powers, and the ability to delegate powers, to erect traffic management signs. Because of those powers, Main Roads has put together a code of practice for traffic management for road works. It is a generic document. If you are working on the road, digging it up or blocking it off, here is a code of practice that you should follow. Under the Occupational Safety and Health Act, employers have an obligation to make a safe workplace for their employees and the public. As a consequence, insurers and perhaps WorkSafe on occasion, if you are working on the road—you have stopped your truck and are unloading it—may well ask what you have in place to manage a safe operation to meet your obligations under the OSH act for duty of care. People will then point to the Main Roads code of practice for traffic management for works and roads. It is really about obligations relating to duty of care under OSH, and the way of meeting that. One of the ways to meet that is by following this code of practice. As I say, it is unrelated to C and E; it is about general duty of care. It is a workplace, so they need to take note of the general provisions. Other ways it could be done would be by getting approval to close the road, and it would no longer be a roadway—those sorts of things. It does not mean, for example if you want to unload bricks, that you must employ five traffic managers with "Stop" or "Go Slow" signs and those sorts of things.*

***The CHAIRMAN**: In what sort of situation is a traffic management plan required?*

***Mr Morgan**: As I say, from a Main Roads point of view, it would be required only if you were conducting works on our roads that were required to close all or part of the road.*

> ***The CHAIRMAN****: Let us say a furniture truck pulls up at the kerb, in a residential street outside a house. Clearly, that will be blocking a portion of the carriageway for a period in the sense that it is parked there. Clearly, a traffic management plan would not be required in that situation.*
>
> ***Mr Morgan****: As I say, the only time the road authority will ask for traffic management is if work is being done on the road itself. We are not insisting on a traffic management plan. Main Roads is not local government. However, if you make no provision for the safe operation of your employees and someone gets run over, the first thing WorkSafe, and perhaps your insurers, will ask is what you did to ensure that they were in a safe workplace? It might be as simple as putting out three cones in front of the house.*
>
> ***The CHAIRMAN****: That was my next question. We often see a truck being unloaded. It might have building materials, pipes, whatever being parked adjacent to the site where the goods are to be delivered. There might be one of those forklifts we were talking about earlier toing and froing in and out and we might see, as you say, a series of cones along the street to guide traffic away from the stationary vehicle. We might even have a fellow with a "Stop" or "Go Slow" lollypop sign to facilitate the safe access of the forklift going in and out temporarily blocking the roadway for a minute every now and then as it picks up loads. Someone going past that scene, as we do every day, might say that seems to be a very professional way of going about it. Will they be able to continue to go about it in that professional way?*
>
> ***Mr Morgan****: Nothing will change that. This will have no impact whatsoever. It is unrelated to the bill before the house.*[78]

14 ARE THE BILLS CONSISTENT WITH THE INTER-GOVERNMENTAL AGREEMENT?

14.1 In light of the foregoing, the Committee makes the following finding:

Finding:

The Committee finds that the Road Traffic (Administration) Bill 2007, Road Traffic (Vehicles) Bill 2007, Road Traffic (Authorisation to Drive) Bill 2007, Road Traffic (Consequential Provisions) Bill 2007, and Road Traffic (Vehicles) (Taxing) Bill 2007 are consistent with the *Inter-Governmental Agreement for Regulatory and Operational Reform in Road, Rail and Intermodal Transport*.

---

[78] Mr Douglas Morgan, Director, Heavy Vehicle Operations, Main Roads Western Australia, *Transcript of Evidence*, 7 May 2008, pp9-10.

14.2 The Committee commends its report to the House for consideration.

Hon Simon O'Brien MLC
Chairman

29 May 2008

APPENDIX 1

IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION

APPENDIX 1

IDENTIFIED STRUCTURES FOR UNIFORM LEGISLATION

The former Legislative Assembly Standing Committee on Uniform Legislation and Intergovernmental Agreements identified and classified nine legislative structures relevant to the issue of uniformity in legislation which were endorsed by the 1996 Position Paper entitled *Scrutiny of National Schemes of Legislation*. A brief description of each is provided below.

Structure 1: *Complementary Commonwealth-State or Co-operative Legislation*. The Commonwealth passes legislation, and each State or Territory passes legislation which interlocks with it and which is restricted in its operation to matters not falling within the Commonwealth's constitutional powers.

Structure 2: *Complementary* or *Mirror Legislation*. For matters which involve dual, overlapping, or uncertain division of constitutional powers, essentially identical legislation is passed in each jurisdiction.

Structure 3: *Template, Co-operative, Applied* or *Adopted Complementary Legislation*. Here a jurisdiction enacts the main piece of legislation, with the other jurisdictions passing Acts which do not replicate, but merely adopt that Act and subsequent amendments as their own.

Structure 4: *Referral of Power*. The Commonwealth enacts national legislation following a referral of relevant State power to it under section 51 (xxxvii) of the Australian Constitution.

Structure 5: *Alternative Consistent Legislation*. Host legislation in one jurisdiction is utilised by other jurisdictions which pass legislation stating that certain matters will be lawful in their own jurisdictions if they would be lawful in the host jurisdiction. The non-host jurisdictions cleanse their own statute books of provisions inconsistent with the pertinent host legislation.

Structure 6: *Mutual Recognition*. Recognises the rules and regulations of other jurisdictions. Mutual recognition of regulations enables goods or services to be traded across jurisdictions. For example, if goods or services to be traded comply with the legislation in their jurisdiction of origin they need not comply with inconsistent requirements otherwise operable in a second jurisdiction, into which they are imported or sold.

Structure 7: *Unilateralism*. Each jurisdiction goes its own way. In effect, this is the antithesis of uniformity.

Structure 8: *Non-Binding National Standards Model*. Each jurisdiction passes its own legislation but a national authority is appointed to make decisions under that legislation. Such decisions are, however, variable by the respective State or Territory Ministers.

Structure 9: *Adoptive Recognition*. A jurisdiction may choose to recognise the decision making process of another jurisdiction as meeting the requirements of its own legislation regardless of whether this recognition is mutual.

APPENDIX 2

FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

APPENDIX 2

FUNDAMENTAL LEGISLATIVE SCRUTINY PRINCIPLES

Does the legislation have sufficient regard to the rights and liberties of individuals?

1. **Are rights, freedoms or obligations, dependent on administrative power only if sufficiently defined and subject to appropriate review?**
2. **Is the Bill consistent with principles of natural justice?**
3. **Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons**? Sections 44(8)(c) and (d) of the *Interpretation Act 1984*. The matters to be dealt with by regulation should not contain matters that should be in the Act not subsidiary legislation.
4. **Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?**
5. **Does the Bill confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?**
6. **Does the Bill provide appropriate protection against self-incrimination?**
7. **Does the Bill adversely affect rights and liberties, or impose obligations, retrospectively?**
8. **Does the Bill confer immunity from proceeding or prosecution without adequate justification?**
9. **Does the Bill provide for the compulsory acquisition of property only with fair compensation?**
10. **Does the Bill have sufficient regard to Aboriginal tradition and Island custom?**
11. **Is the Bill unambiguous and drafted in a sufficiently clear and precise way?**

Does the Bill have sufficient regard to the institution of Parliament?

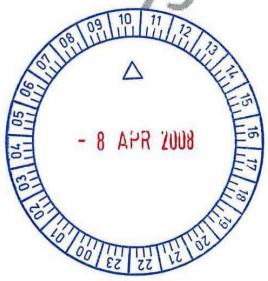
12. **Does the Bill allow the delegation of legislative power only in appropriate cases and to appropriate persons?**
13. **Does the Bill sufficiently subject the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Council?**
14. **Does the Bill allow or authorise the amendment of an Act only by another Act?**
15. Does the Bill affect parliamentary privilege in any manner?
16. In relation to uniform legislation where the interaction between state and federal powers is concerned: Does the scheme provide for the conduct of Commonwealth and State reviews and, if so, are they tabled in State Parliament?

APPENDIX 3

JOINT SUBMISSION FROM PASTORALISTS & GRAZIERS ASSOC OF WA, WA FARMERS (INC) AND CBH GROUP

APPENDIX 3

JOINT SUBMISSION FROM PASTORALISTS & GRAZIERS ASSOC OF WA, WA FARMERS (INC) AND CBH GROUP



Submission to:

Standing Committee on Uniform Legislation and Statutes Review
Attention: Hon Simon O'Brien MLC

Road Traffic (Vehicles) Bill 2007

From:

Pastoralists & Graziers Association of WA
1st Floor, Pastoral House
277 Great Eastern Highway
Belmont
WA 6104

The Western Australian Farmers Federation (Inc.)
Ground Floor 28 Thorogood Street,
Burswood
WA 6100

CBH GROUP
Gayfer House
30 Delhi Street
West Perth
WA 6005

Dated: 7 April 2008

Introduction

The following are submissions presented for consideration by West Australian Farmers Federation **(WAFF)**, Pastoralist and Graziers Association **(PGA)** and Co-operative Bulk Handling Limited (**CBH**) collectively **(the Parties)** in response to the request for public comments on the Road Traffic (Vehicles) Bill 2007 **(the Bill)**

A. General Comments

Part 4 Division 2 - Mass, dimension and loading offences and modification of mass or dimension requirements

Breach of Mass Requirement

Section 30(3) and (4) of the Road Traffic (Vehicles) Bill 2007 sets out the criteria for breach of mass requirements for both light and heavy vehicles. This section tables the "in excess mass" (%) for which penalties are allocated.

It is the view of the Parties that the criteria for breach of mass requirement between 0-5% and 5-10% adversely affects the Grain Industry, rural communities, road safety, transport industry and the environment.

The West Australian Grain Industry's position is detailed below.

Executive Summary

CBH with the support of the West Australian Grain Industry has implemented a Harvest Mass Management Scheme **(HMMS)** for the past two harvests. The HMMS has proven to be effective in reducing the incidents of grain transport vehicles over loading. The Scheme has been widely supported by growers and transporters because it allows for a level of flexibility whilst deterring participants from over loading. The Scheme has demonstrated how the Grain Industry can act responsibly to self-regulate the issue of over loading.

Whilst supportive of the results achieved in its first year, neither Main Roads WA **(MRWA)** or the West Australian Government are supportive of HMMS's rules, which allow up to a maximum of 10% flexibility to participants of the Scheme. The Grain Industry argues there is a need for flexibility to account for the difficulties of estimating tonnages whilst loading grain on-farm. The evidence of the difficulty in loading on farm has been presented to MRWA and The Minister for Planning and Infrastructure.

This submission aims to present economic, financial, road safety and social arguments that support a mass flexibility for the Grain Industry during harvest. These arguments have been formed by examining the impacts if zero flexibility is implemented as per the Bill's current model.

Current Situation in the West Australian Grain Industry

1. Two years ago, the HMMS was introduced for the 2006/07 harvest in preparation for the introduction of Chain of Responsibility and Enforcement model legislation. It was hoped that the Grain Industry could continue with this Scheme for 2008/09, with modifications based on the Bill's enactment and MRWA policies.
2. HMMS has been effective in reducing incidences of severe overloading during the last two harvests, with most deliveries aiming for standard mass limits. (These statistics are provided later in the submission under the heading Harvest Overloading Statistics.)
3. HMMS provides a flexibility of up to 10% above the MRWA permitted total mass of a vehicle. Flexibility is only applied in cases where it is safe to do so i.e. the legal safe working limit of a vehicle is not exceeded (GCM or class 2/3 permit limit).

4. HMMS provides two overload remedies: (i) Grain Forfeiture Option (ii) Load Rejection Option
5. To date the Grain Industry and the WA Government have not been able to reach a mutually agreeable solution to the overloading of grain transport vehicles.
6. The Minister for Planning and Infrastructure has recently written to WAFF and recommended a framework for HMMS for 2008/09 harvest. This framework is only a recommendation and is not an approved scheme under MRWA.
7. The Participants of the HMMS have a set number of "overload strikes" before being barred from the Scheme. Under HMMS participants are stuck off once they have accrued eight strikes and under the Minister's scheme after five strikes you are out.
8. Below is a table outlining the strike system under both the current HMMS and the Minister's proposed "transitional scheme".

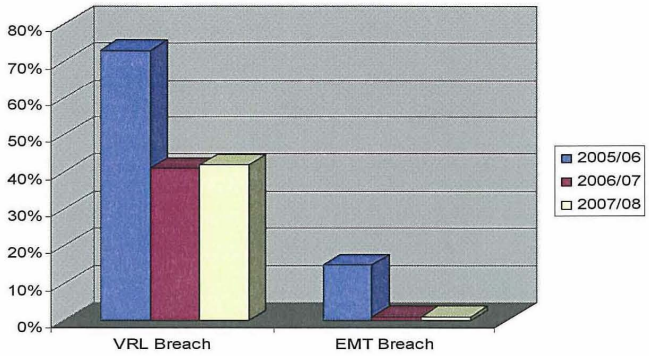
Breach	Category	CBH Penalty	Minister's Penalty 08/09
Up to (and including) 5% above AVM	Minor	1 strike	1 strike
Between 5% and 10% above the AVM	Substantial	4 strikes	5 strikes
More than 10% above the AVM	Severe	8 strikes	5 strikes

AVM= Acceptable Vehicle Mass

B. Key Grain Industry Concerns with the Bill

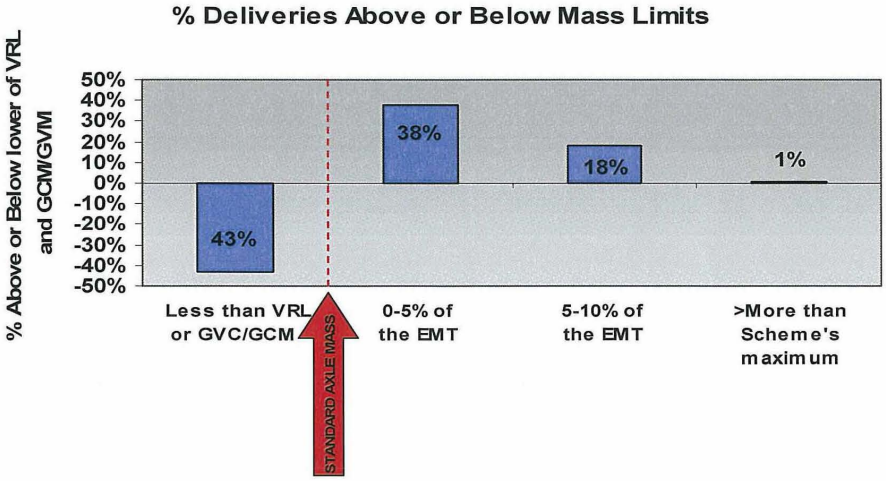
1. The Grain Industry requires a level of flexibility because of the difficulties associated with on-farm loading. Hectolitre variances, commodity density variances, paddock loading conditions and machinery speeds all impact on a farmer's or transporter's ability to accurately ascertain the total mass of a vehicle until reaching a certified weighbridge. This issue is exacerbated when farmers or transporters move to new paddocks or change the type of grain they are loading.
2. The Bill allows for forfeiture of grain or rejection of a vehicle by the storage facility if the vehicle is found to be overloaded. Both these options are commercially unviable if there is no flexibility for farmers as it could force under loading of grain vehicles. Farmers could choose to under load because the value of grain potentially forfeited would be a significant amount for the farmer to forgo and the cost of making double trips for one load is too expensive to be viable. The effects of under loading are presented below in the arguments section.
3. The Grain Industry believes the effect of under loading will increase the likelihood of road accidents, lost value of grain due to weather damage, financial strain on the Grain and Transport industries and increased pollution.
4. The Grain Industry's production levels vary greatly every year due to rainfall patterns. There are no other industries which have the same variance in production levels from year to year in Western Australia. Furthermore there are no other commodity industries which have the same number of loading points. It is estimated that there are over 55,000 loading points during harvest (5,500 growers x minimum of 10 paddocks) compared to some 600 for the mining industry. Accordingly, the Bill should take the industry's special conditions into account.
5. Mass Concessions already exist today under schemes administered by MRWA (Concessional Loading Scheme and Certified Weighbridge Mass Management Scheme), often with higher flexibilities than 10%; for many of the same trucks delivering at harvest.

HMMS Overload Statistics



Interpreting HMMS Statistics

1. In 2005/06 15% of deliveries would have been above HMMS flexibility limits if HMMS was operating; this was reduced to less than 1% upon the introduction of HMMS in 2006/07.
2. In 2005/06, 71% of deliveries were above the standard axle mass Vehicle Regulation Limits (VRL). Following the introduction of the HMMS, this reduced to 41%.
3. 81% of all loads were either below the VRL or less than 5% above in 2006/07. This demonstrates that farmers were aiming for the standard axle mass and not the maximum flexibility threshold.
4. Farmers and transporters were benefiting from the flexibility, but not abusing it with only 1% above the Scheme limits.



C. Arguments in favour of a 10% Flexibility

1. Economic Value of the Grain Industry to Western Australia

- The West Australian Grain Industry was worth $2,296 million in exports alone to the West Australian economy over the 2006/2007 financial year (ABS). Three seasons previous, the

industry was worth $2,923 million; which is some $627 million dollars more (ABS). This difference illustrates the variance of industry value depending on growing conditions. This is not an issue that faces any other commodity market in Western Australia.

- Western Australia's exports were worth $19,145 million for the 2006/2007 year, with the Grain Industry making up 12% of West Australia's export value. (ABS)

- West Australia's Gross State Demand was $28,418 million, of which grain makes up 8.08% of that total amount.

- The above figures demonstrate the size and importance of the West Australian Grain Industry to the State's economy. Given the seasonal issues the industry faces it should be assisted and facilitated by the West Australian Government to ensure that it continues to substantially contribute to the economy.

2. Increasing Transport Costs

- Based on the 2005/2006 harvest, the estimated road transport costs for West Australian farmers over an average harvest is $127,841,628.

- The figures above are based on average farm gate to bin transport expense, with an average distance travelled from farm to storage facility being 80km, with an average load of 31.2mt and an average NTK rate of 13 cents.

- CBH had 394,053 loads delivered to its bins in 2005/06 season, which represents a moderate year. Of these loads, 73% of them were over legal VRL limits. Under the Bill these deliveries would be turned away and thus 287,659 extra round trips would be made by transporters and farmers.

- This is not only an extraordinary waste of labour time, fuel costs, wear and tear on the roads but an extraordinary cost to farmers. If the same number of loads were to be turned away to make a second round trip it would conservatively cost some $72,869,728 in farmers' freight alone.

- Transport costs are increasing at a rate above the State's CPI index due to oil prices, labour wage rates and scarcity of resources because of the mining industry's requirements. The Grain Industry (like many other industries) can not afford to keep incurring upward spiralling transport costs.

3. Effect of Zero Flexibility Approach

- If zero flexibility remains in the Bill, it will result in growers being forced to under load to ensure compliance and reduce the risk of unnecessarily forfeiting grain or being rejected and having to make a second trip. It is estimated that farmers and transporters will have to under load by 10-15% to ensure legal levels.

- The minimum cost of under loading to the industry is estimated to be $12,975,925, conservatively.

- Based on 0% flexibility and 10% under-loading, farmers will have to make approximately 43,784 more round trips; at an average round trip distance of 160km; there will be 7,005,387 extra kilometres travelled by trucks over harvest. This has four major outcomes:

    1. Safety:
        - Approx 40,000 more round trips on country roads during Harvest
        - Increase probability accidents on country roads

    2. Cause freight prices to rise to compensate for
        - dead freight
        - increased fuel consumption
        - extra maintenance on vehicles

- driver travelling time increased
- increased farm labour hours through lengthened harvesting period

3. Environmental impact with increased pollution
    - To introduce legislation that directly increases pollution is contrary to the State Government's current position on sustainable practices

4. Grain Damage risk due to:
    - The longer harvest period will cause grain to be exposed to weather events longer than normal. This will inturn increase the risk of quality deterioration and therefore reduction in grain value

4. Safety on WA Roads

- Extra round trips on country roads during Harvest increase the probability of accidents.
- MRWA does not capture data on the volume of heavy vehicles travelling on rural roads, nor the frequency of heavy vehicle traffic on specific roads.
- According to Monash University's Accident Research Centre, The Bureau of Transport and Regional Economics and The Department of Transport's figures, there will be 5.2 extra Heavy Vehicle accidents during the harvest period if the extra number of trips made by transporters and farmers are close in number to the estimates.
- A major concern to rural communities is that Heavy Vehicles are involved in approximately 10% of all fatal crashes on Western Australian roads. This issue is compounded by the fact that 50% of all heavy vehicle accidents involve another vehicle or pedestrian, which increases the likelihood of a fatality.
- Providing for flexibility in the Bill does not create unsafe roads. It will minimise the number of heavy vehicle trips during the harvest period which has a direct correlation to road safety.

5. Under-loading Effects if Grain is Forfeited

- Farmers may want to reduce the burden of having another 287,659 extra trips on country roads, and choose to forfeit all excess grain. Based on HMMS figures last harvest 45% of overloaded vehicles chose to forfeit their grain at an average of 0.4292 tonnes per truck. This equals 123,463 tonnes of grain forfeited; at an average price of $400 per tonne this totals a loss of $49,385,297 to the farming industry over a 3 month window.
- Dramatically rising grain prices since the 2006/07 harvest will result in fewer forfeits in the future, with growers deciding it is more economic to 'reject' and return to their farms to rectify the load.

D. Submissions

(1) That the Bill be amended to make provision for mass management schemes or mass management concessions that is Grain Industry specific for harvest deliveries.

(2) That section 30(3) of the Bill be amended to remove any penalties for 0-5% and 5-10% for vehicles transporting grain from farm to receival points during the months of October, November, December and January.