

**SUBCOMMITTEE OF THE 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
Road Traffic (Vehicles) (Taxing) Bill 2007**

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 16 APRIL 2008**

SESSION TWO

Members

**Hon Simon O'Brien (Convenor)
Hon Sheila Mills**

Hearing commenced at 10.23 am**CANION, MR ANDREW****Senior Adviser, Industry Policy, Chamber of Commerce and Industry of Western Australia, sworn and examined:****Hon SIMON O'BRIEN:** On behalf of the committee, I would like to welcome you to our hearing. Before we begin, I must ask you to take either the oath or affirmation.

[Witness took the oath.]

Hon SIMON O'BRIEN: You will have signed a document entitled "Information for Witnesses". Have you read and understood that document?**Mr Canion:** Yes.**Hon SIMON O'BRIEN:** These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, please quote the full title of any document you refer to during the course of this hearing. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today's proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

I would like to introduce my colleague Hon Sheila Mills. Together we are a subcommittee appointed by the standing committee for the purpose of receiving your submission and evidence, together with our advisory legal officer, Mr Paul Grant. Mr Canion, is there any opening statement you would like to make to the committee?

Mr Canion: Yes. Firstly, thank you for the opportunity to speak today. The Chamber of Commerce and Industry has four major concerns about this series of legislation, and they predominantly revolve around the Road Traffic (Vehicles) Bill. Those four areas, broadly, are the MDLR violations, the penalties associated with them, the capital equipment and impost upon industry as a result of the proposed legislation, and potential operating impacts that revolve around traffic management plans for industry participants. Are you happy for me to go into a bit more detail on those at the moment?**Hon SIMON O'BRIEN:** Possibly, given that summary, it might be best if you proceed to address each of those in turn and, in turn, we will ask any questions.**Mr Canion:** Certainly.**Hon SIMON O'BRIEN:** Please proceed.**Mr Canion:** Thank you. With the mass, dimension and loading requirement violations, CCI notes that there is no margin for error at all within the bill. Essentially, as soon as a driver exceeds the prescribed regulations, he is in violation of the act. While that makes sense and we can understand it, particularly from a container loading point of view whereby there are declared weights and it is very clear what the driver is carrying on the back of his truck and so on, it becomes more difficult for products with variable consistencies. Broadly speaking, you would look at minerals and also grains as having difficulty in determining an exact weight when loading a truck. If I can focus on the grain aspect for a moment, grain, as a commodity, can change hourly in its consistency, as

moisture content will vary and that directly impacts upon the weight of the product. Exacerbating that is the fact that often they are loading these trucks in back blocks in a paddock where they do not have access to weighing facilities and so forth. While a driver and a farmer could load a truck nine times out of 10 within the prescribed limits, it could be that tenth time that they do exactly the same thing, but due to the variabilities of the products, that changes and immediately we will have a breach situation. The chamber is concerned that that makes it very difficult for the driver to mitigate his liability in that case. The question revolves around whether the reasonable steps defence applies in that instance.

Hon SIMON O'BRIEN: The government will probably argue that if we had a penalty-free threshold of, for example, five or 10 per cent over the prescribed maximum mass, drivers would simply load up to that threshold and then we would have the same argument again when we get to that level. What is your response to that?

Mr Canion: I appreciate the argument there, but at the same time I think an element of good faith needs to be introduced and perhaps methods such as a warning system or a "three strikes and you're out" policy to perhaps mitigate that immediate penalty, because, really, we are trying to promote the industry and encourage businesses to remain involved in the trucking industry. As it stands at the moment, the penalties associated with it are so immediate and if they occur over and over again, that could eventually force players out of the industry. That is not what we are looking for. I think there needs to be recognition that there needs to be a balance.

Hon SIMON O'BRIEN: I think there has been some debate of this subject in the public domain among various practitioners in the industry, and some of those concerns are reflected by your submission. It is generally known that this is a point of contention in the bill, and I think it has received some debate already in another place. This is a matter that we will deliberate on, but was there anything further that you wanted to add on that point?

[10.30 am]

Mr Canion: On that point, not directly, no. I may touch on it in another aspect later but, on the whole, I am happy with that.

Hon SIMON O'BRIEN: It also occurs to me that grain hauliers, for example, are subject to weight inspection of their loads every single time, because by definition, of course, the load is weighed at a receival point, whereas perhaps for a haulier of limestone or some mineral ore, that would not necessarily be the case, would it?

Mr Canion: No, not as specifically as you would find with grain.

Hon SIMON O'BRIEN: Let us move on to your next point, Mr Canion.

Mr Canion: Thank you. I have already touched on this slightly in terms of the penalties. I notice in proposed section 30 of the bill —

Hon SIMON O'BRIEN: This is the vehicles bill?

Mr Canion: Yes, that is correct. As we have discussed, the penalties kick in immediately. Furthermore to that, in proposed section 124, it could eventually result in a loss of licence for the operator. I would argue that perhaps consideration needs to be given in the context that it could actually destroy a business. If you lose a licence for up to five years, then your business is essentially over if you are an owner/operator with nobody else to fall back upon. The CCI would just like to highlight the fact that there are significant repercussions from this and, tying back to the MDLR violations, if these are imposed excessively perhaps, it could have significant impacts down the track.

Hon SIMON O'BRIEN: For the purpose of the transcript, we note that proposed section 124 relates to MDLR offences that are a severe breach, not minor or substantial. In the case of mass, it would be a breach that is a severe risk; a severe risk being a load excess ratio to maximum mass of

20 per cent or more. Is it the CCI's view that there should not be a provision for a severe offender to have a sanction against his licence or, conversely, are you suggesting that maybe that threshold sets in too early or too severely?

Mr Canion: Obviously, the CCI does not condone obvious overloading practices or anything like that. We accept the fact that there needs to be sufficient penalty to dissuade people from doing that. We are certainly not arguing that point. We are just bringing to your attention that there are significant penalties noted, and we just raise that as a potential issue, given the fact that these breaches are an issue of contention.

Hon SIMON O'BRIEN: Thank you for highlighting that. Would you like to go on to your next point?

Mr Canion: Yes, thank you. Regarding the impact now on industry that may result from these bills, if I can focus on the brick industry for a moment as an example of this, a lot of the time residential deliveries are undertaken with a truck carrying bricks and also a forklift or bobcat style piece of equipment. That is well and good on the way to the delivery, but what we have been advised is that once that brick load has come off the truck, putting the forklift back on the truck in its position could potentially result in a breach of the loading regulations as a result of the position of the bobcat versus the axle position on the truck. The only way to overcome that problem would be for the operator to basically buy new equipment. Obviously, his existing equipment has a specific place for the forklift to go. If he were to try to move that and put it in a different position on the truck, he may then be in breach of the loading regulations. The impact potentially on the industry is obviously one of expense. If his current equipment is not fully depreciated and he has to buy new equipment to fall in line with these regulations, then it is either going to be a significant impost on him and that industry sector or it may ultimately force him out of the industry entirely.

Hon SHEILA MILLS: If I may just clarify it, I see brick trucks going up and down past my house all the time because it is on the South West Highway. Where he puts the bobcat on the truck, he obviously has equipment to attach that bobcat to his truck so that it does not move around. To comply with this piece of legislation he has to buy another piece of equipment—I am not a mechanically minded person—to secure the bobcat on other part of his truck. Is that what it is all about?

[10.40 am]

Mr Canion: Yes, essentially. It would mean having to buy a new trailer set to ensure that the bobcat or forklift could be positioned in a different place and secured differently.

Hon SHEILA MILLS: Is it dangerous the way it stands at the moment with the bobcat once the truck is unloaded?

Mr Canion: We suggest that it is not, given that it is common practice now. I am unaware of any issues ever arising from that. However, based on the proposed changes, irrespective of whether it is safe or not, the changes propose that it will not be a legal practice to undertake.

Hon SIMON O'BRIEN: Whereabouts are those changes proposed, Mr Canion?

Mr Canion: I am sorry, but I cannot point to the exact clause. My understanding is that it is to do with the loading and the axle weight provisions.

Hon SIMON O'BRIEN: Again, I do not have an immediate provision in front of me to refer to but I think we might find that those matters are dealt with under regulation rather than under the principal act, in which case the answer is not physically in front of us and therefore we cannot determine it here. Certainly this committee will inquire further into this matter with government to determine whether any changes will be made in this area. I must admit that I would be surprised if there was not already a regulation that covered these types of vehicles that have a forklift hitched off to the very rear of a truck. I guess it is a question of whether or not there has been any change in

the regulations about axle separation that comes with these bills. There might also be some changes by regulation independent of these bills at this time, which complicates matters a little further. Either way, you have raised the matter and put it before this committee and we will inquire further into it as a matter of concern.

Mr Canion: Thank you.

Hon SIMON O'BRIEN: In your submission and in your opening remarks you referred to the potential impacts of traffic management plans. Could you elucidate on that, please?

Mr Canion: 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.

Hon SIMON O'BRIEN: Which government agencies would review and approve those plans?

Mr Canion: I understand it is Main Roads, and DPI may also have a role to an extent. Our concern is that it would create a large overhead on industry, which would add to the cost of the service. It would inconvenience the receiver of the goods because there would be a delay in the approval of a traffic management plan. Is it a reasonable change to make?

Hon SIMON O'BRIEN: Normally Main Roads has responsibility for Main Roads' roads and local government has responsibility for local government roads. Main Roads also is responsible for all aspects of licensing and permits for heavy vehicles, regardless of which roads they are on. I do not know whether any of the bills before us directly allude to possible traffic management plans.

Mr Canion: Not directly. We are concerned that this matter will arise as a consequence of the legislation. If something were to happen and an operator wanted to fall back on the reasonable steps defence, would that defence fall over as a result of the operator not instituting a traffic management plan to mitigate the potential risk? That is the concern of the industry.

Hon SIMON O'BRIEN: That makes the point clear and it is a matter for the committee to consider further. Do you have another matter you want to raise on that point?

Mr Canion: No. Essentially that is the argument.

Hon SIMON O'BRIEN: That probably covers the four major concerns that you have indicated.

Mr Canion: Correct.

Hon SIMON O'BRIEN: Do you have a final point you want to raise?

Mr Canion: No. I have essentially covered the areas I wanted to raise and I thank you for the opportunity to do so.

Hon SIMON O'BRIEN: On behalf of the committee, we thank you and your colleagues at the CCI for your submission and for your general assistance to the committee. That concludes the hearing and I wish you a good morning.

Hearing concluded at 10.45 am
