

**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 ONE

Members

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

Hearing commenced at 9.36 am**COOPER, MRS JANET****Consultant, Livestock Transporters and Country Bulk Carriers Association of WA (Inc),
sworn and examined:****ROBINS, MR GRANT****President, Livestock Transporters and Country Bulk Carriers Association of WA,
sworn and examined:**

Hon SIMON O'BRIEN: On behalf of the committee I would like to welcome you to this hearing today. Before we begin, I must ask you to take either the oath or affirmation.

[Witnesses took the oath.]

Hon SIMON O'BRIEN: Thanks very much. I ask you each to state your full name, your contact address and the capacity in which you appear before the committee.

Mrs Cooper: My full name is Janet Frances Cooper and I consult to the Livestock Transporters and Country Bulk Carriers Association. I can be contacted at the association's address.

Mr Robins: Grant Stephen Robins, President of the Livestock Transporters and Country Bulk Carriers Association of WA.

Hon SIMON O'BRIEN: Thank you. I introduce my colleague Ms Sheila Mills and we are appointed by the committee as a subcommittee for the purposes of today's hearing. We are assisted by our advisory legal officer, Mr Paul Grant.

You will have signed a document entitled "Information for Witnesses". Have you both read and understood that document?

The Witnesses: Yes.

Hon SIMON O'BRIEN: Thank you. These proceedings are being recorded by Hansard. A transcript of your evidence will be provided to you. To assist the committee and Hansard, could you please quote the full title of any document you refer to during the course of the hearing for the record. The microphones in front of you are being used for the recording. 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.

We note that you have provided a submission to our committee in connection with this hearing and we thank you for that. The contents of the submission have been noted. Would you like to make any general or opening statement for the record?

Mrs Cooper: Thank you very much, Mr O'Brien. I suppose at the outset, we want to thank the committee for giving us the opportunity because the concerns that we have outlined in our submission are very practical concerns based on, I guess, the fact that livestock transporters and country bulk carriers are practical people. I guess it is in this kind of exchange that a greater understanding of what those concerns are can actually happen. I suppose a couple of the concerns

are based on worst-case scenario situations but being realists, we understand that worst-cases happen and that is the platform where some of our concerns come from. We can go through and provide some additional information on each of our four principal concerns, if that is appropriate.

Hon SIMON O'BRIEN: That would be excellent. If we can proceed to the main points of concern, does the association generally support the thrust and principle of the legislation, apart from having problems with the detail?

Mr Robins: I think in general we do. Certainly, the infringement or fining regime has not been made public as yet, so that sort of leaves a bit of doubt in your mind on how it will be enforced or what sort of infringement or penalties will be attached to the legislation as it comes in.

Hon SIMON O'BRIEN: Thank you for that. I notice that the first of the four areas that you have highlighted is the powers of transport inspectors to enter premises. Would you like to address that in more detail?

Mrs Cooper: I guess this is one of the areas. We have some notes here that we have copied, if you want us to hand them up.

Hon SIMON O'BRIEN: Yes, that would be great, if you have some further information to table. Those papers are tabled.

[9.40 am]

Mrs Cooper: We have just called this document the "Standing Committee on Uniform Legislation and Statutes Review". 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 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.

Hon SIMON O'BRIEN: Yes.

Mrs Cooper: Again, we stress "in the worst case scenario". We are not suggesting that public officers, by their nature, go around behaving in an inappropriate way; however, it does happen. 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.

Hon SIMON O'BRIEN: I think that the point you have made does not require further explanation and is well made. We will note the comments you make and consider them.

I note that proposed clause 54(7) of the Road Traffic (Administration) Bill states —

A police officer must not exercise the power to enter and inspect premises mentioned in subsection 5(b) —

Subsection 5(b) relates to premises where a business is carried on. It continues —

without the consent of the occupier if the premises are, or any part of the premises is, used predominantly for residential purposes.

That would appear to make some concessions to the concerns you raise. However, you have expressed your concern that those provisions be adequate and the committee will explore that matter further.

Mr Robins: I think it is a strengthening of that position.

Mrs Cooper: Yes. I think it is the definition about “predominantly residential purposes” and how that definition will be determined.

Hon SIMON O’BRIEN: I do not know if you have the bill immediately in front of you, but it does say —

... if the premises are, or any part of the premises is, used predominantly for residential purposes.

I would have thought that if any part of the premises at all is used for residential purposes, for example any bedroom, domestic kitchen, living room, then the clause would capture all of that. However, as I have said, the committee notes your comments and will examine the matter further in light of what you have said.

Mr Robins: There were a couple of other points on that statement. When records are obtained from an office, I believe some sort of a receipt needs to be issued for the documents that have been seized. Many of these businesses are built on and rely on one contractor to keep their business alive. I think that it is very important that the documents seized are kept very confidential and that a record of what has been taken is obtained so that—if there are instances further down the track and information has got out to the opposition or to someone else that it perhaps should not have—it is pretty clear what information has left the office.

Hon SIMON O’BRIEN: Okay, your further comments are noted.

If we have finished with that point we can now move on to your next point about the powers of public officers to order a driver to leave a vehicle. Would you like to discuss that today?

Mrs Cooper: I think the provision as it is proposed is reasonably clear. Our concern is that there is no requirement for the public officer to take steps to secure the load or the vehicle. We can envisage situations in which that could have fairly nasty repercussions such as in the case of livestock. Obviously, there is a very short window of opportunity in which livestock can be on a vehicle and I do not suppose that we need to explain the potential for disaster if they are left on a vehicle; it is fairly obvious.

Hon SIMON O’BRIEN: Yes, it is.

Mrs Cooper: There are issues relating to the vehicles. Vehicles are costly equipment to have left on the side of the road for some reason, and the loads are often very valuable. The clients are not going to be very happy if a load of grain or fertiliser is abandoned; even if it is the fault of the driver. I think there are also issues about dangerous goods. People have also mentioned loads of fertiliser and national security issues associated with leaving such a load on the side of the road. I guess, in the normal chain of events, the public officer would probably take some steps to secure the load. However, we think that securing the vehicle should be an obligation and that the legislation must ensure that that is taken care of. As we stated in our submission, we are told frequently that officers will “use their discretion” but we are finding more and more that that “discretion” some times cannot be relied on.

Hon SIMON O’BRIEN: To your knowledge, have there been any cases in which, for example, a truck carrying livestock has been detained or forced to be left by the side of the road for a protracted period of time?

Mr Robins: Not at this stage: on a couple of occasions, I think, a vehicle has been escorted to a place to unload or whatever. It depends on the offence. However, it is more that there is the opportunity for a vehicle to be left on the side of the road if it is not clearly stated in the legislation

that someone needs to be responsible for that vehicle. If public officers have the power to remove the driver, then they need also to find something to do with that vehicle and to look after the interests of the vehicle and the goods carried.

Hon SHEILA MILLS: You said that the police have escorted trucks to another place, even if the driver has had a few too many or he is on a—

Mr Robins: I do not think it has been as a result of intoxication.

Hon SHEILA MILLS: I see.

Mr Robins: It is more likely they found something wrong with the vehicle—it is deemed unsafe or whatever.

Hon SHEILA MILLS: Nowadays, truck drivers on long distance routes are known to take amphetamines and that sort of thing to keep themselves awake. What happens to a vehicle now if it is picked up for an offence?

Mr Robins: I am unaware of anyone not being allowed to continue their journey.

Hon SHEILA MILLS: Okay.

Hon SIMON O'BRIEN: Okay. I think your point is well made and clear. It will be noted.

Insofar as clause 42 of the Road Traffic (Administration) Bill 2007 provides for this power to direct a driver to leave the vehicle: does the association have a problem if that provision is restricted in the sense that the driver has to leave the vehicle, to the extent of getting physically out of the cab, and not to have to actually vacate the whole vicinity and leave the truck by the side of the road?

[9.50 am]

Mrs Cooper: We said in our submission that improvement notices were new and were not contemplated by the model legislation that came from the NTC, but I now understand that it was. We based our information on what an officer from DPI had told us. Notwithstanding that, we 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.

Hon SIMON O'BRIEN: Yes. So far in the experience of the industry the improvement notice regime relates to occupational health and safety matters, but now it might be extended to cover all sorts of matters, including mass, dimension or load requirements. Presumably that is to correct a situation in which somebody is in breach of one of those rules. It might require, for example, somebody to offload part of their load.

Mr Robins: I think it also goes to the pre-offence. One of the examples I was thinking of involving grain carting is that with a fast-flowing auger the driver might have trouble trying to get back in time to switch it off and the vehicles becomes overloaded. That would open the way to an improvement notice being issued against the farmer or the grain auger. It depends on how far it is going and it opens up a fair bit of power to go back to a few instances that are not really a requirement generally. It is open to interpretation in a few different ways.

Hon SIMON O'BRIEN: Yes.

Mrs Cooper: 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 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.

Hon SIMON O'BRIEN: It is one that is given by the government.

Mrs Cooper: Yes.

Hon SIMON O'BRIEN: If one puts one's mind to it, there are probably any number of different hypothetical situations that we could think of.

Mrs Cooper: We acknowledge that perhaps there is some risk associated with more specifics, but specifics do allow you to go back and say, "We don't think that will be the answer to the problem." There would be some element of consultation to get it right and that would be a more practical outcome.

Hon SIMON O'BRIEN: Looking at the further submissions that you just tabled, you suggest an amendment along the lines that an improvement notice "shall" specify the action to be taken. The reasons you have given for that are obvious. Are you also suggesting that there needs to be an intermediate step of negotiation or discussion before that occurs?

Mr Robins: It also depends on the powers under an improvement notice. It does not really elaborate on how far the improvement notice can go and what is attached to it; for example, whether it is an immediate stop of business or a certain amount of time be given to make those improvements. The answer to that question is that it depends upon the other side of it to a fair degree.

Hon SIMON O'BRIEN: Looking at clause 80 one would think that a period of up to seven days must be given from the service of the notice, if the approved officer is satisfied that it is reasonably practicable to comply with a notice by the end of that time. Clause 81 makes it a penalty to fail to comply without reasonable excuse. Does that go a long way to addressing your concern that the business might have to cease operating, Mr Robins?

[10.00 am]

Mr Robins: It does to a degree. It is more about who is determining a reasonable time frame. If that business premises is based remotely, it may take substantially more than seven days if it is a case of calibrating a weighbridge or something that cannot be rectified straight away. Seven days may not be sufficient in that case.

Hon SIMON O'BRIEN: We should really focus on clause 82 which, I think, Mrs Cooper, contains the element that offends in saying that it does not have to specify the action to be taken.

Mrs Cooper: Yes.

Hon SIMON O'BRIEN: Thank you for your submission in that respect. We will move on to the other concern you raised, which relates to breaches and categories of breaches. You have provided a volume of explanatory material—I thank you for that. Would you like to provide an overview of your concerns and what needs to be done to make the bill more workable?

Mrs Cooper: This is probably one of the more significant areas for the association. The bills introduce the minor, substantial and severe risk breach categories, which is a new breach regime. Our principal concern relates to the breakpoint on the minor breach category. Currently, it is set at a five per cent overload. The practice up until now has been 10 per cent. We believe that 10 per cent

is a more reasonable breakpoint for a minor breach. I stress that we are not saying that that should not attract any sanction, because clearly it should. However, the maximum limit should be raised from five to 10 per cent. There are good and practical reasons for seeking that increase in the maximum. We have listed some of them. It gets down to the fact that on a daily basis people in the association find themselves in a situation in which they cannot accurately judge the loads they are carrying for a range of reasons. To be out by five per cent is not that uncommon.

Hon SIMON O'BRIEN: I refer to a cargo of livestock. How does anyone in the chain of responsibility from the farmer in the paddock to the driver or anyone else concerned with loading the vehicle judge the weight of the vehicle?

Mr Robins: It is an estimation of the live weight of the animal. That can vary by a fair bit with regards to whether or not they have been drained or whether or not they have been under curfew. There is a wide range of examples that can change it. If you go to a butcher shop and ask for a kilo of sausages, nine times out of 10 they are more than 10 per cent out on a finished product without being the live weight and without all the variables attached to it. It is very hard to pinpoint it accurately.

Hon SIMON O'BRIEN: With regards to sheep, what is the difference between the average weight of a shorn sheep and an unshorn sheep? Is it significant?

Mr Robins: With shorn and unshorn sheep it is more visual. It is more the stomach fill and what it has been on. Sheep can vary by 10 per cent of live weight depending on whether or not they have been drained. You cannot clearly see that just by looking at an animal.

Hon SIMON O'BRIEN: What would be a payload typically for a truck coming off a farm with live sheep?

Mr Robins: On average it would be a 40-tonne payload.

Hon SIMON O'BRIEN: How many sheep is that? How would you work out that there is 40 tonne?

Mr Robins: On average that is around 600 to 660 sheep. You do not need to be much out on a head basis to severely affect the total load on the vehicle.

Hon SIMON O'BRIEN: How does it work currently when a driver is stopped for an inspection on the side of the road? Is there often a discrepancy?

Mr Robins: Currently, with regards to livestock, there is a concessional loading scheme available to operators. I cannot remember the percentage off the top of my head. It is suitable on that side of it. That concession or tolerance is not available on other products, such as grain. With all the concessional schemes, once you step over that concession you are penalised all the way back. It is a loading tolerance; you try to load to the set weight and there is a tolerance over and above it. They give you leeway when you are not sure if the stock have been drained.

Hon SHEILA MILLS: How often do truckies get stopped for compliance purposes?

Mr Robins: There are definite times when they blockade a road for up to a week and stop every vehicle that comes through. A lot of the time it is up to the enforcement officers if a vehicle looks to be overloaded.

Hon SHEILA MILLS: How would they visually judge that a truck is overloaded by five or 10 per cent, especially when the truck is moving?

Mr Robins: The majority of the enforcement is done in a controlled environment. They will set up on the side of the road and pull every vehicle in and put it through a weighing system. If that shows that there is a weight breach, it is taken around and furthered weighed with more accurate equipment.

Hon SIMON O'BRIEN: We thank you for the information you have provided in a written form; it will assist us greatly. To get to the bottom line, the provision proposed for beach of mass is zero per cent under the proposed law. What is the association's view about that? Should there be some tolerance?

Mrs Cooper: It think it is zero to five per cent.

Hon SIMON O'BRIEN: Yes, indeed.

Mrs Cooper: We are saying it should be zero to 10 per cent for the minor breach category. That would enable the industry to accommodate those indeterminate things.

[10.10 am]

Hon SIMON O'BRIEN: You have actually also answered my second question, which was about the width band of the minor category.

Mr Robins: As far as supporting that minor category, it comes back to the fining regime that is attached to this legislation.

Hon SIMON O'BRIEN: Yes.

Mr Robins: For a minor of, say, five per cent, it depends on how the fines are applied from zero to five per cent and zero to 10 per cent.

Hon SIMON O'BRIEN: There is an indication of that range given in the table on page 34 of the bill. Would you see there being just one range for zero to 10 per cent, if the bill were to be amended?

Mr Robins: Up until recently we have had 10 per cent and there has not been an infringement. It has been, I suppose, classed as a weighing tolerance, and now it has been addressed that the weighing is more accurate than previously. However, that it is only taking in one side of the problem—the actual loading side of it. With the examples of the livestock, and that, it is very hard to lift that to the same level or tolerance.

Hon SIMON O'BRIEN: I just want to clarify this point, because this is probably the main point: Mrs Cooper, you have indicated that you would prefer to see a single band of minor breach from zero right through to 10 per cent. What would you see, though, as the penalty that applies for that form of minor breach?

Mrs Cooper: I suppose as Mr Robins has indicated, currently we are operating without a penalty, but we accept that this regime introduces a penalty and I think there are penalty units applied to each category.

Hon SIMON O'BRIEN: Yes.

Mrs Cooper: We do not know what monetary value will be attached to each penalty unit. I am not sure what our view would be in relation to whether there are different penalty units along that continuum between zero to 10. That would seem to make sense to me, but I am not sure whether that is a practical application.

Mr Robins: I think ideally it would need to be on a strike sort of system from zero to 10, because if it is a one off, or you get done a certain amount of times, then that has got to have a different level of enforcement than if for every time you are intercepted on the side of the road and you are up in that zero 0 to 10 per cent, then obviously you are using that for a different purpose than what it actually is in place for. If it is every couple, or, say one out of 10 times you are stopped and you are actually in that zero to 10 per cent range, then it demonstrates that you are trying to comply with the weight but it is the unknown of the products that you are putting on there that varies your payload.

Hon SIMON O'BRIEN: Do you think there should be a tolerance which allows for a minor breach, that attracts no penalty?

Mr Robins: I think so, yes. It would stop—I think as we referred to in the notes, in New South Wales, for instance, this legislation has been introduced over there, with the grain warehouses it is a six to seven per cent underload of vehicles going into there, which dramatically increases the number of vehicle movements required on the road.

Hon SIMON O'BRIEN: Yes.

Mr Robins: Just on some simple figures out of that, the increased number of truck movements in relation to that six to seven per cent unload would add almost 400 000 tonne of tare weight to the road, plus the 22 000 truck movements to shift the same amount of grain in, in that time. I think for what the legislation is trying to do, as far as safety and that, it is sort of counteracting itself by being too tight a tolerance on it, or not providing a tolerance on there.

Hon SIMON O'BRIEN: Thank you for drawing our attention to that. We will examine all of those points during our deliberations. Are there any further matters you wish to add?

Mrs Cooper: There are several things still relating to that issue we have been discussing of road damage, because the association remains to be convinced of the figures that are used to prove that going from five to 10 per cent on a minor breach category will have the road damage impact that there is a view it will have. We have not seen any evidence to suggest that is the case, particularly when you bear in mind that—as Mr Robins has said—in most cases drivers will be attempting to load to the legal limit, not to the additional 10 per cent. If they are and they have a practice of doing that, then I think there is a penalty regime that will take care of that. The road damage, we are finding it very hard to accept in the absence of any evidence to prove it, particularly when you take the other side of the argument, that the underloading will lead to the additional truck movements. The road damage has to be factored in on that other side of the argument, and we do not feel confident that that actually has been looked at objectively.

I guess the only other thing is that given that this legislation has been in place for several years in other parts of Australia, and there probably is some experience that would inform our decision making, we also, I guess, would like some assurance that that has been considered. It does not seem to make sense to the association to introduce something here, based on a model that may be receiving some finetuning already in other parts of the country.

Hon SIMON O'BRIEN: Thank you for drawing attention to that. Are there any other points you wanted to raise?

On behalf of the committee, I would like to thank you for your submissions—the one provided in advance and the further information provided today—together with your assistance by way of our discussion this morning. It is very much appreciated and we will deliberate again on all of those matters. For now, thanks again, and we bid you a good morning.

Hearing concluded at 10.17 am