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ECONOMIC POLICY SCRUTINY COMMITTEE

Public Briefing Transcript

Transport Legislation Amendment Bill 2019

1.00 pm, Wednesday, 21 August 2019
Litchfield Room, Level 3, Parliament House

Members:

Mr Lawrence Costa MLA, Member for Arafura
Mrs Kate Worden MLA, Member for Sanderson
Mrs Lia Finocchiaro MLA, Member for Spillett

Witnesses:

Andrew Kirkman, Chief Executive, Department of Infrastructure,
Planning and Logistics
Nick Papandonakis, Executive Director Strategy, Policy and Legislation,
Department of Infrastructure, Planning and Logistics
Paula Timson, Director Legislation and Reform, Department of
Infrastructure, Planning and Logistics
Guy Riley, Legal Policy Officer, Department of Infrastructure, Planning
and Logistics

TRANSPORT LEGISLATION AMENDMENT BILL 2019

Department of Infrastructure, Planning and Logistics

Mr DEPUTY CHAIR: On behalf of the committee, I welcome everyone to this public briefing into the Transport Legislation Amendment Bill 2019. I welcome to the table to give evidence to the committee from the Department of Infrastructure, Planning and Logistics: Andrew Kirkman, Chief Executive; Guy Riley, Legal Adviser; Nick Papandonakis, Executive Director Strategy, Policy and Legislation; and Paula Timson, Director Legislation and Reform.

Thank you for coming before the committee. We appreciate that you have taken the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee apply. This is a public briefing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the hearing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you please each state your name and capacity in which you are appearing. Mr Kirkman, would you like to make an opening statement?

Mr KIRKMAN: Mr Deputy Chair, thank you for the opportunity to talk to the Transport Legislation Amendment Bill 2019. Yes, we would like to make a short opening statement, if that is okay. Then, Nick, Guy and Paula can take us through the details of the legislation for any questions the committee would like to ask.

Over the past few years, my department has undertaken a review of a number of pieces of legislation. Discussions with Parliamentary Counsel resulted in these amendments being progressed through three tranches of work. Tranche one was various amendments to various regulations which commenced on 1 August this year which adopted four packages of Australian road rules into NT law. The vast majority of these road rule amendments were of a technical nature.

Importantly, the regulations also implemented three actions in the Towards Zero road safety action plan—these being introducing a one metre rule for passing cyclists in line with other jurisdictions, introducing lane filtering for motor cyclists, increasing mobile phone offences from \$250 to \$500, and introducing a new visual display unit offence penalty of \$500 in the traffic infringement scheme.

Tranche two, which is before us now with the Transport Legislation Amendment Bill 2019, is the current Bill which amends the following acts and regulations: the *Control of Roads Act 1953*; *Motor Vehicles Act 1949*; *Traffic Act 1987* and *Traffic Regulations 1999*.

The Bill's primary purpose is on road safety, police enforcement and clarifying the statutory obligations. The proposed amendments remedy a number of issues that hinder the effective operations of the law. These amendments were identified through consultation with the NT Police, Fire and Emergency Services, the NT Coroner, the Australian Medical Association and through the very broad consultations we had on the Towards Zero road safety action plan, which was implemented last year.

The key benefits of the Bill will be to improve road safety, reduce risk to the community, enhance NT Police enforcement, provide protection for statutory officers who are personally liable for losses stemming from the exercise of their statutory powers, provide for the sharing of information to meet statutory obligations, reduce red tape and provide certainty where the legislation is currently unclear.

It is intended that these amendments will improve road safety outcomes of road users and the Bill puts forward actions that can create change in driver behaviour and introduce measures to prevent illegal and negligent behaviour.

To round off this broader work, the department is currently working on drafting instructions for tranche three, which will further amend various acts and regulations to improve road and marine safety and the operation of these acts and regulations.

I will now pass over to Nick, Paula and Guy to discuss the specific amendments proposed.

Mr DEPUTY CHAIR: Thank you, Mr Kirkman.

Mr PAPANONAKIS: Mr Deputy Chair, I am more than happy to go very quickly through each of the acts and talk about the amendments we are proposing then, if you have any questions, by all means ask them either at the time or when I am done. It should not take too long.

First, the *Control of Roads Act 1953*. One of the amendments is to clarify police powers to deploy vehicle immobiliser cessation devices. These are the things they throw out on the roads to stop vehicles when they are in pursuit of vehicles. That is the first amendment.

The second amendment is to create a power to prescribe fees for the issue of a licence or permit. Currently, under the *Control of Roads Act 1953*, there is no power to create fees and regulations, so that is what we are doing.

In the *Motor Vehicles Act 1949* we are removing reference to the medical testing officer in the act as there is not an NT medical testing officer who examines licence applicants. So, it is a redundant piece in the legislation.

The Australian Medical Association raised with us their concerns in terms of indemnity for medical practitioners who give information and advice in good faith to the Registrar of Motor Vehicles about the fitness of a person to drive. Whilst we believe that they already had that indemnity, we have included it at their request. It is cementing that.

The other related amendment is that we are going to allow the Registrar of Motor Vehicles to disclose medical information that the registrar has in relation to a licensed driver or applicant for a licence with any registered person assisting the registrar in assessing the applicant's fitness to drive motor vehicles. Again, it is just clarifying that those people that are involved in a process for fitness to drive are able to share information without breaching privacy principles and the like.

We are also providing a process for the transfer of registration of vehicles abandoned on roads and roadsides, just to make it simpler. Another one which is a red tape reduction is that we are removing the need for a person to produce their licence, certificate of registration or permit whenever they change their address and for the Registrar of Motor Vehicles to reissue a new licence certificate. It is just cutting red tape. Now you do not have to produce your licence or certificate of registration to change your address.

In terms of the *Traffic Act 1987*, all of you will be aware that alcohol is the major factor in our crashes and serious injuries, contributing to 40% of our fatalities and 20% of serious injuries over the last 10 years. Recommendation 2.1 of the Towards Zero Road Safety action plan was to implement a blood alcohol concentration limit for supervised drivers. I am sure you are all surprised that there is not one. This is merely putting in place what every appropriate supervised driver would have been doing in any event.

You are required to comply with the level of alcohol allowed with your licence so, for example, if you hold a normal licence and you are supervising your child over the weekend then you have a 0.05 threshold. Mostly it is at that 0.05 level, but if you are a supervising driver that is providing a service and being paid for it, then you are still back at zero, you are not at 0.05. This is formalising what we all expected was in the legislation to begin with.

We are also changing the maximum penalty for failure to pull over to undertake a breath test or saliva test from 200 penalty units or imprisonment for 12 months to the range of penalties consistent with high range drink driving. Our policy position behind that is if you fail to pull over and are making a conscious decision not to pull over then you should cop the consequences and the penalties associated with high range drink driving offences.

Mrs WORDEN: So what are they?

Mr RILEY: That is not an easy one to answer. There are a range of different penalties and fines depending on whether it is a first offence, second offence or what prior offences there are listed. Suffice to say the fines, for example, are minimal compared to the 200 penalty unit for that other one, so it is completely out-of-whack with the fines and penalties that we apply to high range drink driving, refusing to give a blood sample and refusing to give a saliva sample.

Mrs WORDEN: If it was my first offence—let us make it really easy. Is it more or less than the 200?

Mr RILEY: It is different. It is way less in terms of how much of a fine you will pay. High range drink driving, first offence: 10 penalty units, not 200, and 12 months' imprisonment. The penalty regime that is in the *Traffic Act 1987* for these sorts of offences is completely different for other penalties that we have in legislation. It is perhaps because the demographic of the people who are often offending: whether or not they can afford to pay fines; what are the appropriate penalties? A lot of the focus is not just on fines. There is also imprisonment there, unfortunately, as an option which often has to be used. It is more on disqualification of a licence and how long you are going to lose your licence for. That is where it gets complicated in here.

For example, if we go back to your high range one. First offence: 10 penalty units, 12 months' imprisonment is the maximum. If you are found guilty, your licence is automatically cancelled and you are disqualified for a first offence from obtaining a licence for a period which is at least 12 months. Then for a second or subsequent offence, at least 18 months. If the mandatory period of that licence—because it could be more than 18 months—is less than five years, you also get an alcohol interlock period put on top of the disqualification.

Mrs WORDEN: So just to clarify, that 200 did not include any of the licence loss and all those sorts of things.

Mr RILEY: Nothing like that. Justice has a yardstick or a measure of these sorts of things and that is consistent with what they have on there. Where you actually do something which is attempting to avoid the consequences that the legislation is aimed at, that is what the standard penalty is.

Mrs WORDEN: Except that they also ran away.

Mr RILEY: Yes. We looked at this as being consistent with refusing to provide a sample.

Mrs WORDEN: If it was the second time they have run away, then it would be the second high range...

Mr RILEY: Yes. As I say it is hard for me to say.

Mrs WORDEN: Sorry, I digress. If you want to continue. Sorry about that Guy.

Mr PAPANDONAKIS: The next amendment is to provide the police with a power to request that a driver undergo a breath or saliva test, or both, if they are pulled over because the officer suspects that they may have committed an offence against either the *Traffic Act*—which is the speeding type offences—and the *Motor Vehicles Act* which is the defect of vehicle type stuff.

The next amendment is to allow police to require a person to provide a blood sample for analysis when a breath analysis machine malfunctions or fails to provide a result because the person's breath alcohol content is too high to measure. Currently they do not have that power and this is just tying off a loop that says if for any reason the machine malfunctions then we can require you to have a blood test.

The next amendment is to provide police with an exemption from the dangerous driving offence for any form of dangerous driving—and that is only in the course of their duties—not just dangerous speeds. Currently they have an exemption for dangerous speeding but they were a bit concerned that they could be found guilty of dangerous driving whilst they were in pursuit of someone. This is just expanding the exemption to include any form of dangerous driving, so long as it is in the course of their duties, and they have to be driving in a manner that is necessary to prevent a serious risk to the public.

There are changes to exempt power to allow exemptions to be granted to a person or a class of persons in reference to a vehicle being driven by them, rather than grant exemptions to the vehicle. We had the situation where we exempt vehicles but it is in fact the people that drive the vehicles that are causing the offences. We have to be able to exempt the people. Again, it is rectifying silliness in the law.

The next reform is to expand the provision for production of evidence to an electronic file that is either of a type that is unalterable or allows detection of whether the data has been altered or tampered with. This is to keep pace with modern security solutions. The definition of 'unalterable format' will not just be unalterable format, but where the data has not been altered or tampered with. This follows what other jurisdictions have been doing.

Mrs WORDEN: What is that related to?

Mr PAPANONAKIS: That is related to camera-detected offences.

We have expanded some regulation-making powers to remove any doubt as to their validity. The first is to make a person supervising a learner licence holder responsible for traffic offences committed by the learner licensed driver while under their supervision, to overcome lack of the necessary regulation-making power that was identified by a court ruling.

The second is to make a vehicle owner liable for any traffic offence involving the use of their vehicle committed by a driver who cannot be identified. This change will remove any doubt in respect of the validity of Regulation 53.

We will create a power to prescribe fees for the issue of a licence for a permit. We will also allow the Police Commissioner to approve the method for reporting crashes. This is linked to an amendment we are putting in the Traffic Regulations. Currently, all crashes must be reported to a police officer. To reduce red tape, we are allowing the driver involved in a minor crash where no one suffers an injury to report the crash without the need to personally attend a police station.

So, it is really on the phone. It is any method that the Police Commissioner approves. In the fullness of time, they may say, 'Get on this website', but only limiting it to crashes where no one is hurt. Of course, it will depend on your insurance, as to whether you need a PROMIS note, whether you will still report it. But this is just giving the police the power to cut that red tape because currently every crash, however small the dingle, has to be reported.

Mrs WORDEN: Can I take you back to that supervisor of L-plate drivers—the liability there. Could you explain that a little more? I do not fully follow it. It is probably my fault.

Mrs FINOCCHIARO: Is that the one where you ...

Mr RILEY: Yes, there was a court case. There is provision in the regulations which says the supervising driver is responsible for whatever offending the pupil gets up to. There was a court case that said you cannot do that without a very clear regulation-making power. You cannot make a third party liable for somebody else's offending unless it is quite clear that you have that power. So, we are creating the power.

Mrs WORDEN: So, if I am sitting with a learner driver and they accelerate over the speed limit and are pinged, I am liable?

Mr RILEY: At the moment, the way the offence is framed, yes. But the way we will reframe the offence and the regulations, you will have a reasonable excuse defence. So, if he is going over the speed limit and has been going over the speed limit for half-an-hour and you have done nothing about trying to stop him, yes, you are liable. But if you are saying, 'Slow down, slow down, slow down' and they are ignoring you, then you have an excuse.

Mrs WORDEN: Proving that sort of stuff will be crazy.

Mr RILEY: Well ...

Mrs WORDEN: For example, you are going up McMillans Road, get to Lee Point and they suddenly accelerate and head through the lights when you have told them to slow down. They get three metres in and stop the car—this happens with learner drivers—and the lights go off, there is a red light traffic offence. Who is that on? The driver or the supervisor?

Mr RILEY: It is always on the driver, yes. This regulation currently says it is on the supervisor, full stop. The new regulation says it is on the supervisor, but the supervisor has a reasonable excuse defence or reasonable steps defence, to say that you took reasonable steps in order to prevent it from happening ...

Mrs WORDEN: So not shifting it all to that supervisor.

Mr RILEY: No, if it was beyond your control. Unfortunately, the current one is a regulatory offence which effectively—that is what it means. There is no excuse. If it happens, you are liable. You can understand why the courts said if you are going to do something as serious as that and with grave consequences like that, you need a very clear regulation-making power. You can do it in an act but you cannot do it in a regulation.

Mrs WORDEN: I hope it does not prove too onerous.

Mr PAPANONAKIS: One of the amendments is to clarify that we have the power, but we are also amending to say if you are a supervising driver you could only ever be responsible for offences committed against the *Traffic Act*. If they pulled you over and there is a firearm in the back of the car, then the driver is responsible if it is their firearm and not yours. It is only traffic offences that you may be liable for, and then there is a next test, which is have you done everything you possibly could to stop them from doing it, and then you would have that defence.

Mr RILEY: I might clarify. It is actually slightly narrower than that too. It is actually an offence against the traffic regulations. If it was a drink driving offence—which is what gave rise to the court case in the first place. If the pupil had been driving, you cannot be liable for the fact that they are driving while they have alcohol in their blood.

Mrs WORDEN: Certainly if you did not know about it. Teenagers.

Mr RILEY: That is obviously what happened in that *O'Neill v Brumby* case before the Supreme Court. Somebody tried to do the supervisor for the fact that the pupil had been drinking.

Mrs WORDEN: Is it different for a person who is being paid as an instructor versus a parent.

Mr RILEY: They have their own offence with a zero alcohol limit.

Mr PAPANONAKIS: If you are a driving instructor, then you are zero all the time. It is much tougher because you are providing a service and being paid for it. A bit like taxi drivers. All CPV drivers are zero alcohol.

Mr RILEY: In terms of that broader thing for the speeding, no, not different.

Mrs FINOCCHIARO: On the learner's topic you mentioned—in compliance with 2.1 of the Towards Zero report—the supervised driver needs to have the blood alcohol limit that matches their licence. I do not dispute that requirement. I am interested—often when we talk about eliminating risk we can bring in all sorts of laws and different measures which, on the face, sound good, but if they do not actually target the problem in the first place you wonder why you need to do it. Does the department have any data or does this Towards Zero report have any data about how many crashes, incidents, fatalities, whatever it might be that have been caused because a supervised driver was not within the right blood alcohol content limit.

Mr PAPANONAKIS: I do not think we would have that data. I think that all of the data shows that in terms of the learner driver period—and there is a fantastic diagram that I am happy to share with you—you are the safest that you possibly can be and crashes are very low because you are with somebody who is supervising you. As soon as you get your P-plate, it skyrockets and then it decreases over a period of time as you get more experience driving the vehicle. That is why we have graduated driver licensing systems that do not allow for alcohol in year one or year two and that type of stuff.

The issue here though is—we are putting it in so it stops a parent who has had a few beers in them saying 'I cannot drive down to grab a beer...'

Mrs FINOCCHIARO: Using their child as a sober Bob.

Mr PAPANONAKIS: '...I will take you for a drive and you can buy some beer or you can take me somewhere and there are no issues.'

Mrs FINOCCHIARO: Is that Towards Zero report a public document?

Mr PAPANONAKIS: Yes, it was released in March...

Mrs FINOCCHIARO: That is okay. I will find it and have a read out of interest. On police powers, you mentioned something—I am trying to find my note—police exemption for dangerous driving. Is that all the dangerous driving offences—dangerous driving causing death, serious harm, whatever they might be?

Mr RILEY: No, it is just dangerous driving under the *Traffic Act*.

Mrs FINOCCHIARO: Okay, so not dangerous driving causing death?

Mr RILEY: Yes.

Mrs FINOCCHIARO: Okay. And police still have to be driving in—what was the wording you used, sorry, Nick?

Mr PAPANDONAKIS: Necessary to prevent a serious risk to the public.

Mrs FINOCCHIARO: Yes, okay. There are still some ...

Mr PAPANDONAKIS: It is in their duties. And the manner of driving is necessary to prevent a serious risk to the public.

Mrs WORDEN: But not put others in harm either.

Mr PAPANDONAKIS: No.

Mrs FINOCCHIARO: Well, I mean it is ...

Mrs WORDEN: Yes, if you cannot ...

Mrs FINOCCHIARO: Police are pursuing so it is inherently dangerous for themselves. It is a difficult ...

Mr PAPANDONAKIS: Our understanding is that the police—this would only be used by drivers who have been trained to drive in the circumstances ...

Mrs FINOCCHIARO: Oh, of course. Yes,

Mr PAPANDONAKIS: ... that they would need to ...

Mrs FINOCCHIARO: What is the deficiency? Are there currently no protection for police? Is that why this has come up?

Mr PAPANDONAKIS: Currently, it only protects them for dangerous speed ...

Mrs FINOCCHIARO: Right.

Mr PAPANDONAKIS: ... not dangerous driving.

Mrs FINOCCHIARO: Okay. So, changing lanes, red lights —is that ...

Mr RILEY: Their primary concern is technically removing cars from the road, like running them off and that sort of stuff ...

Mrs FINOCCHIARO: Oh, yes, of course.

Mr RILEY: ... where there is a tactical collision. That concerns them.

Mrs FINOCCHIARO: Fair enough. Okay, thank you.

Mrs WORDEN: Can I ask a question on abandoned vehicles? Is that all right.

Mrs FINOCCHIARO: Yes.

Mrs WORDEN: It is well known that it is much easier on a council road to get rid of an abandoned vehicle than on an NT government road. Will this improve that? Is it improving processes of making it easier ...

Mr RILEY: No. The problem is that we have specific processes for transferring vehicles under the *Uncollected Goods Act 2004* where a third party is doing the selling, not the registered owner of the vehicle. We are giving a guarantee through statute of good title to the person who buys it. There is no procedure at all where it has been an abandoned vehicle under the Traffic Regulations.

Mrs WORDEN: Right.

Mr RILEY: There is not a procedure of this form, and there is no ability to be able to pass on good title to whoever buys it.

Mrs FINOCCHIARO: Okay. So, this does not actually address the car on the side of the road, per se?

Mr RILEY: No, there ...

Mrs FINOCCHIARO: For everyday Territorians who are sick and tired of seeing the car with the green sticker, it does not do anything about that?

Mr RILEY: Yes, the process is still there. The same sale process and everything is there. This is just the ...

Mrs WORDEN: It is actually the removal process that is the difficulty.

Mr RILEY: Yes.

Mrs WORDEN: If it is on a council property, it is really easy. You just ring the council, they put a sticker on it and seven days later, they remove it. It is that simple. On Northern Territory government property it is not that easy. It is very difficult and it could be months later that you are still wrangling with an abandoned vehicle. Perhaps that is something to leave with you. It is not easy and when you see one on an NT government road, you go, 'Uh', because when it is on a council road, they are better protected. They have the system that works and NTG does not.

Mr KIRKMAN: The processes are not that dissimilar. The time frames might be slightly different, but if there are issues, then if you could highlight them, it would be great.

Mrs WORDEN: Yes, maybe I will write to you about them.

Mr KIRKMAN: Thank you.

Mr DEPUTY CHAIR: On that because I am conscious of time, we might wrap it up. Once again, I thank you for your time for coming in today and addressing the committee.

Mrs WORDEN: I have a couple of questions, so I might put them in ...

Mrs FINOCCHIARO: Yes. I thought this was going until 2pm.

Mrs WORDEN: No, 1.30pm. Do you have another one, Lia? You shoot, Lia, because I can put mine in writing. I am happy to do that.

Mrs FINOCCHIARO: Yes, I want to ask about the indemnity for health professionals. Could you expand on that? Are you saying if a GP—I do not know the process, I am not familiar with it—provides a health certificate saying 'Yes, this person is fit to drive', does this provision now mean the government indemnifies that health professional if it turns out the person is not fit to drive?

Mr PAPANDONAKIS: I think it is the other way around. If I go to a doctor and the doctor says, 'Actually, I do not think you are fit to drive', he is statutorily required to notify the Registrar of Motor Vehicles. They were a little concerned about them being indemnified. We were certain that they were covered, but because they asked for it, we included it.

Mr RILEY: But you are actually right, because the other changes we are bringing in, in relation to the information sharing, is that the registrar will be talking to other medical professionals and getting opinions as to whether or not someone is fit to drive. So, that is equally valid. Even at the moment, they get their own doctor to come along and give them a report that says, 'Yes, this person is fit to drive'. So long as that is done in good faith, then we are saying there should be no right of action. We are not actually indemnifying them, we are just saying there should be no right of action against them.

Mrs FINOCCHIARO: Oh, okay. So, the government is not providing the indemnification?

Mr RILEY: No, we are basically providing them with protection.

Mrs WORDEN: On the back of that, while we are here, you talked about letting medical information go out—the registrar could do that.

Mr RILEY: Yes.

Mrs WORDEN: I am assuming there is a pretty solid process that will sit underneath that for the release of that information to a third party?

Mr RILEY: Yes, and this is also a result of a Coronial inquiry too, where health had information, police had information and the registrar had information. All that information put together said that person should never have driven a car, but it was not all put together.

Mrs WORDEN: Okay. It is the processes that I would be more concerned about.

Mr RILEY: Yes. He ended up killing somebody.

Mrs WORDEN: Yes, but you already have those processes. You know what they look like?

Mr RILEY: Yes.

Mrs WORDEN: Chair, outside I would like to see what that process is intended to look like, because that is important.

Mr KIRKMAN: Happy to provide that. It is a very tight process.

Mrs WORDEN: Also, in the interest of time, the blood alcohol for supervised drivers. I am interested to know if there have been specific issues that have led to that being a suggestion.

Mr KIRKMAN: It would be difficult to find them, for the simple fact that they have never been able to be tested before. There might be some anecdotal evidence that we could provide but it is a generally accepted principle across all jurisdictions that a supervising driver should be sober or at least able to drive themselves if they are supervising a learner.

Mrs WORDEN: Okay.

Mrs FINOCCHIARO: I have one last question, sorry. I want to ask about the police powers—sorry I did not catch it properly. Now police can pull anyone over and as long as they suspect a traffic offence, they can also conduct a breath and drug test?

Mr RILEY: Yes, this is a fault in the drafting of the existing legislation. The power to test stems from whatever power it was that you exercise to pull them over in the first place. So, you can test them if you pull them over specifically for the purpose of giving them a test, or if you have reasonable cause to suspect that they have been drinking or taking drugs.

Mrs FINOCCHIARO: Okay.

Mr RILEY: So, if you are pulled over for speeding or a faulty tail light, there has been no power to test you.

Mrs FINOCCHIARO: Right. Okay.

Mr RILEY: Mr Maley has taken advantage of that loophole.

Mrs WORDEN: But it can only be 'suspect' too? We might have a discussion about that later because I ...

Mrs FINOCCHIARO: Wait. So this means if you are pulled over for speeding and the police officer would also like to breath test you, they can?

Mr RILEY: Yes, 'By the way, blow into this'. Yes, that is exactly ...

Mrs WORDEN: We might still chat about that one.

Mr DEPUTY CHAIR: Okay? Thank you.

Mr KIRKMAN: Thank you very much.

Mrs FINOCCHIARO: Thank you.