

Transport Legislation Amendment Bill 2019 (Serial 98)

It gets a lot of legislation. We are a government that is putting through a lot of legislation and they do a great job looking at it very carefully. The final report was tabled in parliament on 15 October 2019.

Before I talk to the committee's recommendations I would like to respond to the Member for Nelson's question regarding the interaction of the *Traffic Act 1987* with the *Cross-border Justice Act 2009*. I can confirm that there are no additional amendments needed for the *Cross-border Justice Act 2009* to continue to have effect.

The dangerous driving exemption in the bill enables the NT police to drive in a manner that might be considered dangerous on NT roads. It is a protection against prosecution under the *Traffic Act 1987*, which regulates conduct on NT roads and in public places within the NT.

The *Cross-border Justice Act 2009* does not operate to protect Northern Territory police from the equivalent dangerous driving offences, or any other driving offences, in South Australia or Western Australia.

The purpose of the *Cross-border Justice Act 2009* is to enable police from the Northern Territory, South Australia and Western Australia to cross the border into another participating jurisdiction to investigate breaches of the law committed in their jurisdiction, and to arrest offenders without the need to go through an extradition process. I hope this clarifies this matter for you, Member for Nelson.

The committee received one submission to its inquiry from the Australian Medical Association Northern Territory Inc, which supported the recommended changes. In reviewing the bill, the committee identified a number of potential issues with several of the proposed amendments, and sought legal advice to clarify whether these amendments have sufficient regard to the rights and liberties of individuals and are unambiguous and drafted in a sufficiently clear and precise way.

Importantly, the first recommendation of the scrutiny committee is for the Legislative Assembly to pass the *Transport Legislation Amendment Bill 2019* with the proposed amendments set out in its recommendations 2 to 7.

I will now speak to the recommendations of the scrutiny committee and the resulting Assembly amendments that I intend to bring before this Assembly.

Let me say at the start, that I accepted all the recommendations of the Economic Scrutiny Committee. Two of the six recommendations are proposed to be dealt with a later time. The remaining four are contained in the Assembly amendments before members today.

Recommendations 2 and 3 of the scrutiny committee report relate to the proposed amendment to section 19 of the *Traffic Act 1987* by adding a new subsection (7) which deems a person, other than a driving instructor within the meaning of section 19(1) of the *Traffic Act 1987*, occupying the front passenger seat of a vehicle being driven by a learner driver, to be driving the vehicle for the purposes of the offences under part 5 of the *Traffic Act 1987* (Driving with alcohol in breath or blood or drug in blood). This means that they can be required to undergo testing for alcohol and drugs and prosecuted for any offences they commit under part 5 as if they were in the driver's seat.

As I mentioned when I introduced the bill in August this year, members may be surprised to find out that in the Northern Territory, there is currently no requirement for a supervising driver, who is not a professional driving instructor, to be sober when supervising a learner licence holder. For anyone that has helped teach their child, partner or friend to drive, you know you need to be switched on and ready to respond and instruct that learner driver. They need your support to develop good driving practices, and being under the influence of alcohol or drugs is not only a threat to their learning, but also people's lives.

Recommendation 2 of the scrutiny committee report proposes to amend the bill to provide for driving instructors who occupy a front passenger seat in a vehicle being driven by a learner driver to be tested for alcohol and prohibited drugs.

The term 'driving instructors' is used to differentiate between professional instructors and non-professional instructors, such as family or friends. The rationale for differentiating between driving instructors and others in regard to penalties for drink and drug driving is due to the higher duty of care placed on a driving instructor, with their breath alcohol level prescribed as zero.

The Department of Infrastructure, Planning and Logistics is of the view that the scrutiny committee's recommendation appears to be outside the scope of the Transport Legislation Amendment Bill 2019.

Accordingly, an amendment to provide for driving instructors who occupy a front passenger seat in a vehicle being driven by a learner driver to be randomly tested for alcohol and prohibited drugs will require government approval, as this is a policy change. The Office of the Parliamentary Counsel has advised that it supports this position.

The issue of the inability to randomly test a driving instructor for alcohol or drugs is not an issue created by the Transport Legislation Amendment Bill 2019. The proposed amendment at clause 14 of the bill has highlighted an existing issue by deeming a person—other than a driving instructor who occupies the front passenger seat while a learner licence holder is driving—to be a driver.

In contrast, there is no such deeming provision in the professional driving instructor alcohol and drug offences in sections 26, 28 and 29AAA, which means that if a learner driver is pulled over for a roadside breath test, whilst there are offences for a professional driving instructor there is no ability to randomly test the driving instructor occupying the front passenger seat because the instructor is not deemed to be a driver.

However, I appreciate the scrutiny committee raising its concerns and make an undertaking to bring a future proposed amendment to government for consideration.

Recommendation 3 of the scrutiny committee report is included in the proposed Assembly amendments at clause 1. The scrutiny committee recommended that proposed section 19(7) be amended so that it only applies to a person who is over 18 years of age and is the holder of a licence—not being a learner licence under section 9 or a licence that is provisional under section 10A of the *Motor Vehicles Act 1949*—to drive the type of vehicle. This recommendation is in response to legal advice received by the scrutiny committee that while the holder of a learner or provisional licence cannot supervise a learner driver, and a learner driver cannot drive without the supervision of the holder of an open licence, there may be occasions where the holder of a learner or provisional licence unwittingly sits in the front seat with a learner driver.

In response to the scrutiny committee's recommendation, proposed section 19(7) in clause 14 of the Transport Legislation Amendment Bill 2019 is omitted and replaced by a new section 19B which deems a licence holder—other than a learner or provisional licence holder—who occupies the front passenger seat of a vehicle being driven by a learner driver, to be driving the vehicle for the purposes of the offences under Part 5 of the *Traffic Act 1987*—Driving with alcohol in breath or blood or drug in blood.

Driving instructors are excluded under proposed section 19B(2) because they are subject to specific drug and alcohol offences in sections 26(1), 28(1)(b) and 29AAA(1)(b) of the *Traffic Act 1987*.

Persons under 18 have not been excluded in proposed section 19B because it is not possible for a person to obtain a licence that is not a learner or provisional licence before they are 18 years and six months of age.

Recommendation 4 relates to a matter of inconsistency in language in the *Traffic Act 1987* in relation to offence provisions for driving instructors who supervise learner drivers while affected by alcohol or drugs. The inconsistency reflects different drafting styles between when the driving instructor offence came in to force in June 1998 and sections were rewritten or inserted in to the act in 2008.

The scrutiny committee concluded that it is satisfied with the department's advice and recommended that through either an amendment of the bill or a later amendment of the *Traffic Act 1987*, the language used be amended to ensure consistency across these three sections. It is proposed to make these amendments at a later time.

Recommendation 5, which is clause 2 of the Assembly amendment, and recommendation 6, which is clause 3 of the Assembly amendment, are minor or administrative in nature. Recommendation 5 is to remove the reference to a breath test where the proposed amendment in the bill is to address circumstances where a breath 'analysis' machine, not a 'breath testing instrument', has malfunctioned. Recommendation 6 is to confine provisions dealing with exemptions granted by the Registrar of Motor Vehicles to a person in relation to a particular motor vehicle or class of motor vehicle—for example, Segways, golf buggies and quad bikes or similar vehicles.

The scrutiny committee noted in its report that the proposed amendment in the bill to provide a new exemption power for the Registrar directed at people rather than vehicles could have been construed as having a much broader ambit.

Recommendation 7 is the final recommendation of the scrutiny committee report. The bill proposed to amend the regulation-making power in section 53 of the *Traffic Act 1987* to allow regulations to be made to make a

person supervising a learner driver responsible for traffic offences committed by the learner while under their supervision.

The scrutiny committee recommends that the proposed section in the bill be amended so that it only refers to licence holders—not being a learner or provisional licence—who are over 18 years of age.

The scrutiny committee raised the same difficulty as I discussed earlier in regard to a learner or provisional licence holder who would not see themselves as supervising the learner driver when occupying the front seat of a vehicle with a learner driver.

Recommendation 7, which is Assembly amendment 4 limits the power to make regulations making a licence holder occupying the front passenger seat of a vehicle driven by a learner driver, liable for offences committed by the learner driver, by excluding its application to any learner or provisional licence holder occupying the front passenger seat.

As we move to consider this bill in detail, I would like to point out that the Assembly amendment being tabled today includes only minor amendments to the bill as recommended by the scrutiny committee's report. I make this point to the Assembly because it demonstrates that the bill has shown itself to be a measured and necessary piece of legislation.

In closing I would again like to thank everyone who has been involved in the development of this bill from the officers in my department to the individuals who took the time to participate in the scrutiny committee process.

Motion agreed to; bill read a second time.

Consideration in Detail

Clauses 1 to 13, by leave, taken together and agreed to.

Clause 14:

Ms LAWLER: Mr Deputy Speaker, I move Assembly amendment 1 to Clause 14. Clause 14 creates a new subsection 19(7) that makes licence holders—other than driving instructors—occupying the front passenger seat of a motor vehicle being driven by a learner licence holder, drivers for the purpose of the alcohol and prohibited drug provision in Part 5 of the *Traffic Act 1987*.

Assembly amendment 1 omits and replaces Clause 14 to insert a new section 19B into the *Traffic Act 1987*. The new section makes a licence holder occupying the front passenger seat of a motor vehicle being driven by a learner licence holder a driver for the purposes of the alcohol and prohibited drug provisions in Part 5 but in addition to excluding driver instructors.

It also excludes learner and provisional licence holders as recommended by the Economic Policy Scrutiny Committee in recommendation 3 in the report on its inquiry into the Transport Legislation Amendment Bill 2019.

Amendment agreed to.

Clause 14, as amended, agreed to.

Clauses 15 to 27, by leave, taken together and agreed to.

Clause 28:

Ms LAWLER: Mr Deputy Speaker, I move amendment 2 to Clause 28 to amend proposed section 29AAG(1)(ab) of the *Traffic Act 1987* in Clause 28 to remove the words 'breath test or.' The purpose of section 29AAG(1)(ab) is to allow police to require a person to submit to a blood test if they have undertaken a breath analysis and the analysis advice has failed to provide a reason either because it has malfunctioned or the person's breath alcohol level is too high to measure.

The power can only be exercised after a breath analysis has been conducted so the words 'breath test or' are superfluous. Assembly Amendment 2 has been made in response to recommendation 5 of the Economic Policy Scrutiny Committee in its report on its inquiry into the Transport Legislation Amendment Bill 2019.