

MOTOR VEHICLES (THIRD PARTY INSURANCE) AMENDMENT BILL – 9 November 2010

Adjourned debate on second reading.

(Continued from 15 September 2010.)

Mr PEDERICK (Hammond) (12:04): Certainly, I acknowledge the extensive contribution of the member for Davenport on this bill, as well as the member for Schubert's contribution. I would just like to make some comments about a couple of the proposals that the Liberal Party is opposed to in this Motor Vehicles (Third Party Insurance) Amendment Bill.

The first one I want to discuss is the chain of responsibility in heavy road transport. As the member for Davenport rightly said, we have had this legislation in for a little while; and, if it is passed, you only need to have uncompleted paperwork and you could be breaking the law and fall under this legislation. The point of this amendment is to make it easier for the Motor Accident Commission to recover claim costs from people higher up the chain liable for putting pressure on truckies to breach driver fatigue related laws in the heavy vehicle industry.

There is some comment that currently there is limited opportunity to recover against persons within the chain of responsibility who are not otherwise insured under the compulsory third-party policy. It is envisaged that the persons who will fall within the chain of responsibility as specified in the regulations will include the employer, the prime contractor, the operator, the scheduler, the consigner, the consignee, the loading manager, the loader, and the unloader.

What we could have here is quite a list of people who may do something very small, such as even forgetting to do a bit of paperwork halfway through that chain, and, on a technicality, breach the new amendment. If this amendment does go through, it will include a right to recover from those persons or anyone who has had anything to do with the chain of responsibility. As the bill states, it can recover from those persons who have aided, abetted, counselled, procured, induced or been knowingly concerned in, or a party to, the commission of an offence against the Road Traffic (Heavy Vehicle Driver Fatigue) Regulations 2008, for example, driving whilst fatigued and failing to comply with the driving hours.

As I indicated earlier in my contribution, the amendment intends to encapsulate anyone who has placed pressure on a driver to undertake illegal activities and who is about control, not necessarily the employment relationship. The right of recovery is linked to the heavy vehicle driver fatigue regulations that were enacted in South Australia in 2008. The trigger point for recovery is the commission of an offence pursuant to the Road Traffic (Heavy Vehicle Driver Fatigue) Regulations. Regulation 6 creates an offence to drive a regulated heavy vehicle if the driver is impaired by fatigue.

However, the regulations also create offences for the parties in the chain of responsibility in relation to a regulated heavy vehicle if they do not take all reasonable steps to ensure that a driver of the vehicle does not contravene regulation 6. I note that the introduction of a right of recovery in this scheme is intended not only to recoup costs but also to create a further deterrent to the commission of these offences.

The right of recovery proposed for these parties is limited to the amount a court thinks is just and equitable as a stopgap measure to ensure fairness in relation to the imposition of any liability. I note that we will be monitoring this through the committee stage to see where we are going with this, but I think that it is correct that the Liberal Party (and it is the right move) will not support this amendment.

The other amendment I want to discuss is amendment No. 9, the meaning of the expression 'caused by or arising out of the use of' a motor vehicle. The Motor Vehicles Act is to be amended to maintain the parameters which define the scope of the compulsory third-party cover in so far as deciding what injuries or death were caused by or arose out of the use of a motor vehicle. This will exclude bodily injury or death being caused by the displacement of goods while a motor vehicle is being loaded or unloaded, or as a result of the unintended movement of a vehicle whilst being serviced, displayed, restored or equipped.

This amendment could impact on not just hundreds but many thousands of South Australians who will not even know of its existence (if it is passed) before they get a notice in the mail that they could be up for significant costs if they do not have the appropriate extra insurance cover. I note that we oppose this amendment as well on this side of the house and will be investigating it through committee. With those few words, they are my comments on the bill.