



**Full Day Hansard Transcript (Legislative Council, 1 December 2010, Proof)**  
Proof

Extract from NSW Legislative Council Hansard and Papers Wednesday, 1 December 2010 (Proof).

**ROAD TRANSPORT (DRIVER LICENSING) AMENDMENT BILL 2010**  
**In Committee**

**Clauses 1 and 2 agreed to.**

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [11.49 a.m.]: I move Government No. 1 on sheet C2010-163:

No. 1 Page 3, schedule 1. Insert after line 2:

**[1] Section 14 Demerit points register**

Omit "convicted, or found guilty, of an offence" from section 14 (2) (a). Insert instead "convicted of an offence".

**[2] Section 14 (3A)**

Insert after section 14 (3):

(3A) To avoid doubt, the Authority is not to record demerit points against a person under this Division in respect of an offence if the court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of the offence.

I understand from the Opposition spokesperson that the Opposition will not be opposing this amendment, and I thank it for that. This amendment deals with issues to do with section 10. Under the Crimes (Sentencing Procedure) Act 1999 a section 10 is a sentencing option available to the court that allows it to find a person guilty of an offence but not proceed to a conviction, and the penalties that rely on a conviction are therefore not imposed. In the case of road transport law these penalties include fines, jail terms and periods of disqualification from driving.

There is a current anomaly in road transport law that stipulates that the Roads and Traffic Authority must deduct demerit points following a finding of guilt: this is a requirement under section 14 of the Road Transport (Driver Licensing) Act 1999. The application of section 10 by a court currently does not stop the application of demerit points. Applying demerit points in the circumstances is inconsistent with the no punishment principles intended when a magistrate dismisses a matter under section 10. This is not a gift to dangerous drivers; a magistrate may still choose not to grant a section 10. Current legislation already provides safeguards against reckless misuse of section 10 availability. In deciding whether to apply the provisions of section 10 the court takes into account the person's character, age, health and mental condition; the trivial nature of the offence; the extenuating circumstances in which the offence was committed; and any other matter that the court thinks proper to consider. This issue was considered by Cabinet in a package of measures regarding this major change to demerit points and was referred to the working party to allow for considered and inclusive consultation. However, given the Opposition support for this measure, the Government seeks to have it included in this legislation. I commend the amendment to the Committee.

**The Hon. TREVOR KHAN** [11.50 a.m.]: While I hear what the Parliamentary Secretary has to say, one would have to say this borders on the grossest of hypocrisy by the Government that one can imagine. Since the Act came into effect in 1999 the issue of section 10 and demerit points has been a constant source of representation by various members of the Opposition, including the Leader of The Nationals, Andrew Stoner. It has been the subject of a private member's bill. Back in 2004 the Law Society of New South Wales made a series of representations about the inequities caused by the application of demerit points where the provisions of section 10 are applied. This amendment that the Government brings on at the death of this Parliament only arises because once again the Liberals and Nationals have been prepared to force the issue by seeking to bring on their own amendment. Only after that did the Government come forth with its amendment.

When the Premier, Kristina Keneally, made her announcement on 22 November with regard to the package of measures she brought on in panic because of the mobile speed cameras she failed to make any reference to this amendment. The simple reason was that it was not on the agenda of this Government. Time and again we have seen the Local Court apply section 10 for legitimate reasons—people caught through mobile speed cameras—and waive the penalty. Yet time and again those people have lost demerit points, notwithstanding, in many cases, direct representations from magistrates themselves to the Roads and Traffic Authority. It has been a shameful exercise in delay and procrastination by this Government in amending the legislation. It is a blessed relief that finally the Government has listened to the community. Finally it has listened to the Liberals and Nationals. Finally it has listened to the Law Society of New South Wales, which has campaigned so long on this matter. The Liberals and Nationals will not oppose this amendment.

**Ms CATE FAEHRMANN** [11.53 a.m.]: The Greens are slightly concerned about what seems to be a message being sent by both the Opposition and the Government that some misdemeanours—disobeying traffic signs and speeding over the limit—are okay in some circumstances. The Greens believe the Government needs to be sending a strong message when it comes to road safety, and the more the message is sent by the Opposition and the Government that disobeying traffic signals and speed limits is a good thing the more dangerous our roads will become. We also have concerns that this amendment may lead to more convictions so the magistrate can send a message to those people who may have disobeyed traffic signals or gone too fast in some zones. However, we will not oppose the amendment.

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [11.55 a.m.]: I am glad there is clear support across the Chamber for this amendment.

**Question—That Government amendment No. 1 on sheet C2010-163 be agreed to—put and resolved in the affirmative.**

**Amendment agreed to.**

**Schedule 1 as amended agreed to.**

**Title agreed to.**

**Bill reported from Committee with an amendment.**

#### **Adoption of Report**

**Motion by the Hon. Penny Sharpe agreed to:**

That the report be adopted.

**Report adopted.**

#### **Third Reading**

**Motion by the Hon. Penny Sharpe agreed to:**

That this bill be now read a third time.

**Bill read a third time and returned to the Legislative Assembly with an amendment.**