

ROAD TRAFFIC AMENDMENT (IMPOUNDING AND CONFISCATION OF VEHICLES) BILL 2004

Committee

Resumed from 2 June. The Chairman of Committees (Hon George Cash) in the Chair; Hon Nick Griffiths (Minister for Housing and Works), in charge of the Bill.

Clause 12: Sections 78A and 78B replaced with Division 4 in Part V -

Progress was reported after Hon Peter Foss had moved the following amendment -

Page 8, lines 10 and 11 - To delete “sergeant” and substitute “inspector”.

Hon NICK GRIFFITHS: After we had finished debating this matter last night, I had a conversation with Hon Peter Foss and Hon Jim Scott. I note a further amendment on the supplementary notice paper. Having considered what was said, the Government proposes to agree with amendments 5/12 and 12/12.

Amendment put and passed.

Hon PETER FOSS: I move -

Page 8, line 11 - To insert after “inspector.” -

If, for an impoundment that takes place outside the Perth Metropolitan Area, it is not reasonably practical for a member of the Police Force to inform a person of the rank of inspector or above for reasons that the member has recorded, then “**senior officer**” includes a member of the Police Force who has attained the substantive rank of sergeant.

Amendment put and passed.

Hon PETER FOSS: I move -

Page 9, lines 16 to 24 - To delete the lines.

This amendment seeks to delete the right of entry to seize keys for driving, towing or otherwise conveying such a vehicle. This legislation is to prevent immediate misbehaviour. Someone will be stopped and his car will be taken away at that time, not afterwards. The idea of entering premises to seize cars is not on. If the person runs away, other offences will apply under the traffic code and the Police Act. If someone zooms off in his vehicle, this legislation will not be necessary to get the keys back - the person will be arrested for a totally different purpose. If the court issues an order, specific provisions give people authority to seize keys and so forth. This clause is unnecessary because it fits in with the idea of receiving advice from a neighbour and then acting on it, and I think we have already removed that concept.

Hon NICK GRIFFITHS: I note what has been said. I draw the committee’s attention to the wording of proposed section 78C(4), which states -

A member of the Police Force may, without warrant, at any time, enter any premises for the purpose of -

- (a) seizing the keys to a vehicle that is the subject of an order . . .

Hon Peter Foss: I see.

Hon NICK GRIFFITHS: It is subject to a court order. The various provisions are referred to, which I will come to in a moment. It continues -

but which is not surrendered to the Commissioner within the surrender period; or

There is a court order to the effect that somebody has to surrender the keys.

Hon Peter Foss: I understand that.

Hon NICK GRIFFITHS: The next bit is consequential. In light of that I suggest that we not proceed.

Hon PETER FOSS: I do not really mind which way it goes. The minister is quite right. Will the minister just confirm that paragraph (a) is consequential upon paragraph (b)?

Hon NICK GRIFFITHS: Yes.

Amendment put and passed.

Hon PETER FOSS: I move -

Page 12, after line 4 - To insert new subsections -

- 7/12
- (2) A senior officer who is informed by a member of the Police Force of a vehicle impoundment pursuant to subsection (1) is to make enquiries so as to satisfy him or herself in respect of the matters mentioned in section 79(a) and (b) or 79(a) to (c) about which a member of the Police Force is required to have a suspicion, that there are reasonable grounds for the member to have that suspicion.
 - (3) If a senior officer is not satisfied as required by subsection (2) the senior officer and the member of the Police Force are to take measures to ensure that the vehicle is released from impoundment and returned to the vehicle's license holder, or if the licence holder is not available, to the driver of the vehicle.

I think the Government is in agreement with this amendment.

Hon Nick Griffiths: We agree.

Hon PETER FOSS: This reverses the effect. It imposes a duty on a senior officer to inquire and satisfy himself about certain matters; and, if he is not satisfied, to ensure that the vehicle is returned. It is essentially the same thing but it reverses the order.

Amendment put and passed.

Hon PETER FOSS: I move -

Page 12, lines 16 to 21 - To delete all words after "satisfied" and substitute instead -
as required by section 79C(2)

Hon DERRICK TOMLINSON: I have some questions about the relevance of clause 12 and how the Bill will affect the offences described in the interpretation of division 4 concerning "impounding offence (driving)", which states -

- (a) an offence against section 59, 59A, 60 or 61 . . .

Section 59 concerns dangerous driving causing death, injury etc for which the penalty, if convicted upon indictment, is 20 years imprisonment if the person has caused the death of another person, or 14 years if the person has caused grievous bodily harm to another person. My question is really one of procedure for police investigation in such a case. If there is a case of dangerous driving causing death, is the vehicle impounded as material evidence or for any purposes of the police investigation; and, if so, when?

Hon NICK GRIFFITHS: That is not an issue as such which is dealt with by the legislation. Such a vehicle could be impounded at any time within the course of the investigation. It would depend on how the investigation developed.

Hon Peter Foss: That is not as a penalty.

Hon NICK GRIFFITHS: No, it is just part of investigating. It is often the case, but not always, that a vehicle involved in the commission of an alleged offence is impounded, if I can use that word, for the purposes of examination to see what happened.

Hon DERRICK TOMLINSON: I thank the minister; he is perfectly correct. This impounding of vehicles as referred to in the Bill is different from the impounding - if I can use that term - of vehicles for the purpose of investigating a charge under section 59A. However, if the vehicle is to be impounded for whatever purposes of investigating a charge under section 59, we are not talking solely about hoons hooning around in Scarborough; it could happen to the minister, me or the Archbishop of Canterbury in a moment of unaccustomed recklessness. It could happen to any of us at any moment. We are really moving beyond what the second reading speech tells us was the ambit of the Bill, to deal with these young people being a nuisance on the roads. If we have the power to impound a vehicle already under the Act, what is the relevance of the Bill before us to that charge?

Hon NICK GRIFFITHS: The honourable member asked a question dealing with what I understand to be longstanding police operational procedures, which stand alone. As such, they do not have anything to do with the Bill.

Hon DERRICK TOMLINSON: My proposition is that the Bill has nothing to do with section 59, which deals with a person who is charged or who may be charged with dangerous driving causing death, injury etc. This Government's proposition is that the Bill before us is about nuisances on the roads - people who have been loosely described as hoons doing burnouts or drag racing or breaking land speed records in their \$50 000 vehicles. My question is the reverse. What is the relevance of this Bill to section 59, when section 59 is already dealt with by the existing Act?

Hon NICK GRIFFITHS: The Bill provides for confiscation. We are dealing with a particular section of the Road Traffic Act. The circumstances of aggravation are set out in proposed new section 78A.

Hon DERRICK TOMLINSON: I understand the circumstances of proposed new section 78A, all of which would be relevant to a person facing a charge of dangerous driving causing death that resulted from that person racing another vehicle or attempting to break speed records etc. The circumstances of aggravation that are relevant to the Bill are also relevant to the Act. I still suggest to the minister that it is relevant.

Hon Nick Griffiths: You are wrong.

Hon DERRICK TOMLINSON: Fine. I will refer to the minister's proposition of applying a penalty for the confiscation of a vehicle under section 59 of the Road Traffic Act. If convicted upon indictment, the person who has caused the death would be imprisoned for up to 20 years. I suggest the offender would probably not need a motor vehicle for some time after that. The proposition of confiscation as a defence of the relevance is entertaining.

Hon Nick Griffiths: I think your speech is entertaining and I am enjoying it.

Hon DERRICK TOMLINSON: The logic of the Bill is entertaining. The minister has thrown out a catch-all to deal with a nuisance and the catch-all has caught matters that are irrelevant because they are already dealt with in the existing legislation. Not only will the offender probably not need a vehicle for some time but also it is highly unlikely that the offender would re-offend within the five-year time frame. Certainly an offender would be unlikely to re-offend three times within the five-year time frame. Therefore, the issue of confiscation would become irrelevant. I put to the minister that the same would apply to section 59A, "Dangerous driving causing bodily harm", because not only does that section provide similar conditions but also it has provision for the first, second and subsequent offences. The first offence could incur a penalty of imprisonment for six months and the loss of a driver's licence for a period of not less than 12 months. For the second and subsequent offences, apart from the fine of 160 penalty units, the offender could be imprisoned for up to 18 months and lose his or her driver's licence for not less than 18 months. The minister has said that my logic is peculiar. I accept that. I would like the minister to demonstrate that the logic of the Bill is not peculiar insofar as the very things the minister claims the Bill tries to address are addressed in other legislation and belong to the whole range of drivers, not just the drivers the Government claims it is pursuing.

Hon NICK GRIFFITHS: I have referred the honourable member to the circumstances of aggravation regarding the issue of dangerous driving causing death or grievous bodily harm. These circumstances of aggravation are not a comprehensive list of the circumstances that may give rise to dangerous driving that causes death.

Hon Derrick Tomlinson: But they are embraced by them, aren't they?

Hon NICK GRIFFITHS: There may be many other circumstances in which a person is guilty of the offence of dangerous driving causing death.

Hon Derrick Tomlinson: Including these.

Hon NICK GRIFFITHS: Including these.

Hon Derrick Tomlinson: Thank you.

Hon NICK GRIFFITHS: However, there are other offences. These offences are specific circumstances of aggravation that may give rise to the confiscation order.

Hon DERRICK TOMLINSON: Regardless of that, the impounding offence (driving) is defined as any offence against sections 59, 59A, 60 or 61.

Hon Nick Griffiths: No, it is not. The Bill goes on to say "that is committed in circumstances of aggravation".

Hon DERRICK TOMLINSON: I will accept that. However, by the minister's own statement, those circumstances of aggravation are a subset of circumstances that may be the basis of the charge under sections 59 or 59A.

Hon JIM SCOTT: The issues raised by Hon Derrick Tomlinson are interesting. In the case of dangerous driving causing death, one would assume that in most of those cases, rather than a whole vehicle, a car that had been wrapped around a tree would be taken and would probably be in evidence to some degree -

Hon Derrick Tomlinson: Why would you want to impound it then? That is what I would like to know.

Hon JIM SCOTT: That is right. It raises a question. On the other hand, if the offender's vehicle is confiscated, the offender's partner might need the vehicle to visit the offender while he is in the penitentiary.

Hon Derrick Tomlinson: Buses would take those people straight to the door.

Hon JIM SCOTT: Is that right? I also have some concerns about the clause and its effect.

Amendment put and passed.

The CHAIRMAN: The question is that clause 12 as amended be agreed to. Does the minister wish to speak?

Hon Nick Griffiths: No.

The CHAIRMAN: I will now move to amendment 13/12 in the name of Hon Peter Foss. Does the member intend that the amendment be a proposed subclause? Should it be subclause (2)?

Hon PETER FOSS: I do not mind it being changed as a Clerk's amendment.

The CHAIRMAN: There is a distinction, and it is up to the member.

Hon PETER FOSS: I thought of that. I am open to suggestions. I do not think it makes a huge difference. It is a matter of drafting.

The CHAIRMAN: The Clerk will not change it unless that has been agreed to.

Hon Nick Griffiths: I suggest through you, Mr Chairman, that I should say why I wish to go down this course of action.

The CHAIRMAN: Before the Minister for Housing and Works does that, I inform members that we will return to amendment 4/12 in a moment to include that definition.

Hon NICK GRIFFITHS: I appreciate that. Yesterday Hon Peter Foss said that he wanted to restrict the relevant amendment on the notice paper regarding confiscation rather than impounding. A new amendment is now on the notice paper relating to that issue. There is room to address the issue but to do that I need more time to draft a form of words that might be acceptable to the committee. In those circumstances, I wonder whether you, Mr Chairman, would mind leaving the Chair until the ringing of the bells.

The CHAIRMAN: Does the minister want the definition of "lent" put in first?

Hon NICK GRIFFITHS: I think we can deal with that issue, and the other issues, in a few moments.

The CHAIRMAN: Having regard to what the minister has just requested, I will leave the Chair until the ringing of the bells.

Sitting suspended from 11.59 am to 12.04 pm

Hon NICK GRIFFITHS: Mr Chairman, we have made use of the time to discuss this issue, and a resolution has been arrived at. The Government proposes to vote for the amendment on the supplementary notice paper in the name of Hon Peter Foss; namely, amendment 4/12. We have also agreed on a new form of words for amendment 13/12.

The CHAIRMAN: If members want to move those amendments in due course, that will be the course of action that we will adopt. In the meantime, I thank the minister. I now move to amendment 4/12 in the name of Hon Peter Foss.

Hon PETER FOSS: Thank you, Mr Chairman. There has been an error in the typing of that amendment. The first "means" should be omitted.

The CHAIRMAN: That is done.

Hon PETER FOSS: I move -

Page 8, after line 3 - To insert a new definition -

"lent" in addition to the ordinary meaning of the word means hired in the ordinary meaning of that word, or subject to a hire purchase agreement within the meaning of that term in the *Hire Purchase Act 1959* or is subject to a goods mortgage in connection with a credit contract within the meaning of the Consumer Credit Code.

Amendment put and passed.

Hon PETER FOSS: I now move amendment 13/12, with the agreed changes -

Page 15, line 10 - To insert after the word "vehicle." -

A court is not to make an order under 80A(1) or 80C(1) if it is satisfied that at the time the offence for which the person is convicted was committed, the vehicle was a lent vehicle and

instead may make an order under section 80 or section 80B for a period not exceeding 6 months.

Hon NICK GRIFFITHS: There is agreement on that amendment, but I will make a couple of observations. Hon Peter Foss made reference to matters being dealt with by way of a Clerk's amendment. With regard to drafting style, it may be appropriate that these words be in a separate subsection, and I understand that will be the case. Also, after looking at the amendment again, I think I have made an error in the drafting style, because I have used the word "section" twice when it should really refer to "section 80 or 80B" so that the wording is consistent, but no doubt that will be picked up by the Clerks.

The CHAIRMAN: The question is that the words proposed to be inserted be inserted, and that will be in the form of a new subclause (2).

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 13 to 15 put and passed.

New clause 11 -

Hon NICK GRIFFITHS: I move -

Page 5, after line 5 - To insert the following new clause -

11. Section 73 amended

Section 73 is amended by inserting after "inclusive," the following -

"but not in section 62A,"

The purpose of this amendment is to restrict the operation of section 73 of the Road Traffic Act so that it does not apply to section 62A, which will become law in the event that the Bill is passed. It flows on from the amendment that I moved yesterday on the same issue.

New clause put and passed.

Title put and passed.

Bill reported, with amendments.