



14 November 2016

Hon Michael Mischin
PO Box 3044
JOONDALUP WA 6027

Dear Minister

Re: Order of the Day No. 28: Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016

Scheduled for Wednesday November 16

I am writing to you seeking your urgent intervention to prevent the passing of the above Bill in the Legislative Council in its current form.

The Recreational Trailbike Riders' Association of WA Inc represents the interests of an estimated 50,000 trail and quad bike riders and their families in Western Australia.

We do not condone the riding of unregistered motor vehicles on suburban roads.

We do, however, have serious concerns about judicial fairness and proportionality of Sections 80O and 80T of the proposed legislation which we have articulated below.

1. Confiscation Manifestly Excessive in Some Circumstances

The proposed legislation is effectively a 'one strike' system whereby a person's property (which in many cases would be valued in the thousands of dollars) can be permanently confiscated on first offence. This is too harsh a penalty for many circumstances which could best be described as 'victimless crimes' – for example a family enjoying an afternoon's ride on quiet bush trails in state forest away from residential areas.

Legislation with harsh penalties should target behaviour that has obvious and serious public safety risks. Unregistered motorcycles may be illegal on all public roads, but the real nuisance and danger lies in the *manner* in which they are being ridden.

Elsewhere in the proposed legislation, the term 'hooning' is associated with reckless driving and riding. We submit that this is equally relevant in the confiscation provisions of unregistered trail bikes.

To cover the offence of illegal riding where an element of recklessness is *not* present the current offences of riding without a licence – the Road Traffic Act 1974 S49 - and riding an unregistered vehicle – Road Traffic (Vehicles) Act 2012 S4(2) would continue to apply.

Additionally, the intent of the legislation is “*to address the increasing number of complaints police are receiving about the danger, noise and disruption caused by unlicensed and in the majority of instances, un-roadworthy motor cycles being used for recreational purposes on our roads and public open spaces.*” (Second Reading Speech).

We submit that the legislation should be constrained broadly to those locations that are subject to such complaints – namely suburban or residential areas. It may be convenient to rely on the definition of ‘Confiscation Zones’ as defined in the new legislation at S49AA. A more relevant definition may be considered in the alternative.

Accordingly we seek amendments to Section 80O of this legislation, as set out below (proposed amendments shown in **bold type**).

Amendments to Section 80O

80O. Police power to impound unlicensed motor cycle used on road

- (1) This section applies if a police officer reasonably suspects that –
 - (a) a motor cycle is being used on a road within a ‘confiscation zone’ as defined under the Road Traffic Act 1974 (as amended) Section 49AA¹; and
 - (b) The use constitutes an offence under the Road Traffic (Vehicles) Act 2012 section 4(2); and
 - (c) the motor cycle was not, at any time during the period of 2 years immediately before the day of the use –
 - (i) licensed under the Road Traffic (Vehicles) Act 2012; or
 - (ii) the subject of a permit, or number plates, issued under the Road Traffic (Vehicles) Act 2012 section 13.
 - (d) **The motor cycle is being ridden in a reckless manner as defined in the Road Traffic Act 1974 S60(1) or 61(1)**

2. Judicial Process

The proposed Bill involves automatic forfeiture, on first offence, on the ‘reasonable suspicions’ of a police officer. The law as it is proposed would reverse the WA Government’s burden of proof of guilt and be vulnerable to abuse. Magistrates or judges should decide legal claims, not the police commissioner.

Accordingly we seek amendments to Section 80T of this legislation, as set out below (proposed amendments shown in **bold type**).

¹ Or other definition that is consistent with the intent of the legislation

Amendments to Section 80T

80T. Confiscation

(1) A motor cycle impounded under this law is formally 'confiscated' only after a hearing before a magistrate, who must find guilt, confirm the confiscation and order the motor cycle to become the property of the state only after a 28-day period for appeal of the magistrate's decision expires:

DELETE 2 and 3

(2)

(3) on the later of the following –

- (a) if the Commissioner does not receive a claim under section 80S – the 14th day after the motor cycle is impounded; or
- (b) if the Commissioner receives one or more claims under section 80S but rejects all of them – the day after the last of those claims is rejected.

(4) If a motor cycle is confiscated under subsection (1), the property in the motor cycle vests absolutely in the State, free from all interests, rights, titles or claims in or to the ownership or possession of the motor cycle

The RTRA submits that the proposed amendments restore some judicial fairness and proportionality, without detracting from the Bill's intended purpose of significantly reducing incidents of illegal riding that cause public nuisance and danger.

We urge you to support our position and to send the Bill back for amending or reconsideration of the issues raised. Please don't hesitate to contact me on 0412 921 221 or via steve@rtra.asn.au for any further information.

Sincerely



Steve Pretzel

President