ROAD TRAFFIC AMENDMENT (HOONS) BILL 2009

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Peter Collier (Minister for Energy)**, read a first time.

Second Reading

HON PETER COLLIER (North Metropolitan — Minister for Energy) [5.01 pm]: I move —

That the bill be now read a second time.

I am pleased to introduce legislation to the house to give effect to the government's election commitment to address antisocial or hoon behaviour on the roads. The Road Traffic Amendment (Hoons) Bill 2009 makes a number of changes to hoon provisions contained in the Road Traffic Act 1974 to emphasise that the Western Australian community does not and will not tolerate such behaviour on our roads. I will now outline the key provisions contained in the bill.

Impounding periods: Firstly, the bill will extend the period a vehicle can be impounded for a hoon offence from seven days to 28 days for a first offence and from 28 days to three months for a second or subsequent offence. To balance out these increased impoundment periods, the existing provisions that enable a senior police officer to release an impounded vehicle on hardship grounds will be retained.

General impoundment provisions: Currently, the Road Traffic Act 1974 provides that for a vehicle to be impounded for a second hoon offence the driver must have been previously convicted of such an offence. Over recent times, there has been an increased incidence of drivers who have been charged with a hoon offence and have committed a further hoon offence before the first offence has been determined by a court. The bill will now permit a police officer to impound a vehicle for a second hoon offence when a person has been charged with a previous hoon offence that is still outstanding.

To further strengthen the impounding provisions of the act, the bill will require that a vehicle be impounded unless in the circumstances it is impractical to do so. It is proposed to amend the notice of impoundment issued in accordance with sections 79(1) or 79A so that it includes the following additional information: that the vehicle is to be impounded for three months because the driver is a "previous offender"; sufficient detail to identify the vehicle used; the time and place where the offence occurred; details of the offence that resulted in the impounding; and the details of the driver who was suspected of committing the offence.

Impounding offences: One of the offences that trigger police impoundment of a motor vehicle is reckless driving whereby the offence is committed in "circumstances of aggravation"—that is, racing, excessive noise or burnouts. These circumstances have to be proven in court in order to trigger the confiscation proceedings being taken in respect of a vehicle. These circumstances of aggravation create significant logistical problems as it is often difficult to establish whether these circumstances were proven in court because they are not elements of the actual offence of reckless driving. In addition, behaviour such as being involved in a pursuit with police or doing wheelies on a motorcycle does not fall within the current definition of circumstances of aggravation and therefore would not trigger the impoundment or confiscation of a vehicle.

To overcome these issues, the bill removes the circumstances of aggravation in respect of reckless driving offences. The effect of this will be that all reckless driving offences will now trigger the impoundment or confiscation of a vehicle. The bill will also provide the power for police to arrest for reckless driving, similar to the provision for arrest without warrant that currently exists for the offence of driving under the influence. This will allow police to bring the person before the court in a timelier manner. In addition, the other trigger offences committed in circumstances of aggravation were examined. Presently, the offence of dangerous driving committed in circumstances of aggravation can trigger the impoundment or confiscation of a vehicle. The essential difference between reckless driving and dangerous driving is that reckless driving is a wilful act and dangerous driving is not. Currently, dangerous driving offences are captured by only the hoon offence if they are committed in circumstances of aggravation—for example, racing, excessive noise and burnouts. As all of these circumstances are wilful acts, a person's vehicle is more likely to be impounded for the commission of a reckless driving offence than for a dangerous driving offence. This is proven by the fact that since the enactment of the hoon laws, very few people have had their vehicles impounded for having committed a dangerous driving offence. As a consequence, the bill removes the offence of dangerous driving from the hoon provisions.

Surrender notices: When a police officer is not able to impound the vehicle at the roadside—for example, circumstances may dictate that it will take two hours before a tow truck arrives at the scene—a surrender notice can be issued to the driver to surrender the vehicle. The effect of this notice is that the responsible person has seven days to surrender the vehicle to police. Should the responsible person fail to comply with the surrender notice, police will be authorised to enter the premises without a warrant to seize the vehicle. If the responsible

person has hidden the vehicle, the Commissioner of Police can request the director general to suspend the vehicle licence until the vehicle is surrendered to police. To further strengthen these provisions, a person will not be able to dispose of a vehicle that is subject to a surrender notice. If he does, he commits an offence and will be liable to be fined up to $2 500.

Confiscation of vehicles by courts: It is considered that the current provisions, when a court is considering an application for the confiscation of a vehicle for either a hoon driving, hoon driver licence or road rage offence, are too broad. Presently, a court can take into account a range of issues, including hardship, when determining whether to order the confiscation of a vehicle following the third conviction for a hoon offence. To tighten up these aspects, the bill will amend the act to provide that a court must order the vehicle's confiscation unless it is satisfied that the order would cause severe financial or physical hardship to a person, other than the driver of the vehicle, who has an interest in the vehicle or is the usual driver of the vehicle.

If a person uses his own vehicle to commit a third hoon driving offence and action is taken to confiscate the vehicle, there will not be any capacity for the offender to raise hardship provisions before a court. However, if the vehicle to be confiscated belongs to a third party, or if another person is the usual driver of the vehicle, he or she will be given the opportunity to have a court decide whether hardship would apply.

Devaluing vehicles: Section 80G(6) of the act makes it an offence for a person to dispose of his or her interest in a vehicle when he or she has been served with a notice of intention to make application to impound or confiscate a vehicle. The bill will extend this offence provision to include stripping or devaluing the vehicle. This will cover situations in which a person decides to strip or damage his or her vehicle knowing that it is about to be impounded or confiscated. The penalty for this offence is a fine of up to $2 500.

Disposal of vehicles: The remaining provisions of the Road Traffic Amendment Act 2008, which provide for impoundment of vehicles when a person drives under court-imposed disqualification, were due to be proclaimed on 1 July 2009. It is anticipated that, as a result of this, the number of vehicles that are uncollected after the impounding period has ended will increase significantly. Should this occur, it will place an additional strain on police resources in disposing of these vehicles.

Although section 78D of the Road Traffic Act provides that a contractor can assist the Commissioner of Police or a police officer in the performance of his respective functions under part V, division 4 of the act, there is some ambiguity as to whether the Commissioner of Police can engage a contractor to sell or dispose of a confiscated or uncollected vehicle on his behalf. In order to clarify this situation and remove any possible ambiguity, the bill extends the provisions of section 78D of the act to allow the commissioner to enter into a contract under which the contractor performs the duties of section 80J of the act on his behalf; that is, the contractor will be able to sell or dispose of confiscated or uncollected vehicles.

Proceeds from sale of confiscated vehicles: Presently, the net proceeds of the sale of a confiscated vehicle are paid into the consolidated fund. The bill proposes to amend the act and the Road Safety Council Act so that the net proceeds are instead paid into the road trauma trust fund. This will enable the funding of campaigns and strategies statewide to assist in the reduction of the road toll.

Outstanding debts from sale of uncollected vehicles: Currently, the act provides that when a confiscated vehicle is sold, if the proceeds from the sale are insufficient to meet the costs incurred in confiscating and selling the vehicle, then the person who committed the offence that triggered the confiscation owes a debt to the Commissioner of Police. However, the act does not contain a similar provision in respect of uncollected vehicles that have been sold. The bill addresses this anomaly and will allow such a debt to be recovered by the Commissioner of Police in a court of competent jurisdiction.

Delegation by Commissioner of Police: Currently, when the Commissioner of Police makes an application to a court for the impoundment or confiscation of a vehicle, the application has to be made personally by the Commissioner of Police. It is anticipated that in the 2009-10 financial year, the Commissioner of Police will be signing in excess of 1 000 applications for vehicles to be impounded or confiscated. This is largely because the remaining provisions of the Road Traffic Amendment Act 2008, which come into effect on 1 July 2009, provide for the impoundment of vehicles for 28 days when a person drives under a court-imposed disqualification. While the Road Traffic (Administration) Act 2008 contains a general delegation power for the Commissioner of Police, that legislation is unlikely to be proclaimed before the end of 2010. Therefore, the bill inserts an interim measure that will allow the Commissioner of Police to delegate this function and thus alleviate the need to personally sign each impoundment or confiscation application.

Reckless and dangerous driving—alternative verdict: Section 62A of the Road Traffic Act creates an offence when a person uses a vehicle for burnouts and creating excessive noise. On most occasions, the person is also driving in a reckless or dangerous manner. In these circumstances, police will charge the person with either

reckless or dangerous driving. However, there may be occasions on which the elements of reckless or dangerous driving are not proven, but it is acknowledged that the person carried out a burnout or emitted excessive noise from the vehicle. When this occurs, a court cannot currently convict a person of an offence under section 62A, because such offences are not alternative verdicts in respect of charges for offences of reckless or dangerous driving. The bill addresses this anomaly so that a court can convict a person of the lesser offence under section 62A if the elements of reckless or dangerous driving are not proven.

Minor amendments: Finally, the bill contains a number of minor housekeeping amendments designed to clarify some terminology used in the Road Traffic Act. For example, it is proposed to make a minor amendment to section 80G(2)(b)(ii) of the act, which deals with the making of applications to a court to impound or confiscate a vehicle, to remove the word "brought" and insert "commenced". This will remove any confusion as to the intent of this provision, as currently magistrates are interpreting the term "brought" to mean the matter actually being heard by the court and not simply an application being lodged. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.