

ROAD TRAFFIC LEGISLATION AMENDMENT (INFORMATION) BILL 2010

Consideration in Detail

Clause 1: Short title —

Mr M. McGOWAN: I am very interested in the vibe of this legislation. While we await the return to the chamber of the member with responsibility for this bill, I want to ask the Minister for Transport a question. I understand that this legislation deals with the transmission of photographs from drivers' licences from the Department of Transport to the estates of people who might have died, because the family might not have a photo of the individual. I am interested in the genesis of this provision. It seems unusual to me that someone would want the photograph from a person's driver's licence. I would have thought that most families—in fact, nearly all families—would have a better photograph than the tiny photograph on a driver's licence as a memento of the person who might have died. I wonder whether I have got that right. Is that the reason behind this legislation? Was there a specific case that brought this issue to the government's attention?

Mr T.R. BUSWELL: Member for Midland, there was no problem for us. I got caught out a while ago.

Mrs M.H. Roberts: I will tell you what occurred. I asked whether this legislation was coming on today and the Leader of the House said that he did not think so and that, if it was, he would let me know. He let other people on my side know, but he did not fulfil his personal undertaking to me. I am not particularly perturbed and it is no particular issue. I just think it is poor form on behalf of the Leader of the House to give that undertaking.

Mr T.R. BUSWELL: The Leader of the House did let me know.

Member for Rockingham, I have been advised that there have been a couple of instances, dating back possibly to 2006. In one case of sad and tragic circumstances, a mother requested a photograph of her teenage son. I am not sure of the reason that he became deceased, but obviously she did not have a recent photo of him. They were tragic circumstances. That is why the provision for the transmission to the estate effectively is in the bill.

Mr M. McGowan: Was the mother unable to get the photograph from the government?

Mr T.R. BUSWELL: I think there were other reasons for her wanting the photograph from the driver's licence.

Mr M. McGowan: My question is not about the reasons why she might have wanted it. My question is: was she unable to get the photograph without this legislation?

Mr T.R. BUSWELL: Yes; the legislation effectively prohibits it at the moment.

Mr M. McGowan: So she hasn't got the photograph yet, but once this legislation is passed she will be able to get it?

Mr T.R. BUSWELL: Yes, but I do not think it applies to that case. She will probably still want the photo. My understanding is that her memory of her son was that the day he got his licence was one of the happiest days of his life and she wanted that as a memento to remember him by. And who would not if they had lost a child? She will be able to apply for that photo, although I understand that the application was some time ago.

Mr M. McGowan: So, at present, she doesn't have it?

Mr T.R. BUSWELL: No.

Mr M. McGowan: That's terrible.

Clause put and passed.

Clauses 2 to 5 put and passed.

Clause 6: Section 8 replaced —

Mr T.R. BUSWELL: I move —

Page 10, after line 29 — To insert —

- (3) A person —
- (a) to whom information is disclosed under subsection (2); or
 - (b) who is employed or engaged by a person to whom information is disclosed under subsection (2),

must not use the information for a purpose other than the authorised purpose for which it was disclosed.

Penalty: a fine of 100 PU or imprisonment for 12 months.

There are a couple of other amendments on the notice paper that have similar wording to this amendment. This amendment flows from a commitment given during debate on this bill in the other place. Prescribed persons to whom information is disclosed under proposed section 12 will be subject to various prohibitions under the Criminal Code and, in the case of public servants, the Public Sector Management Act. In addition, the Director General of Transport will put in place a range of appropriate measures when disclosing information that will serve to ensure proper handling of the information by prescribed persons. Effectively, this amendment will insert an offence provision that will apply specifically in the case of information disclosed under proposed section 12. It will provide that a prescribed person, or a person who is employed or engaged by a person to whom information is disclosed, will commit an offence if that person uses information that has been disclosed under proposed section 12 for a purpose other than the authorised purpose for which it was disclosed. It will pick up an issue that was raised in the other place and fulfil the commitment given.

Mrs M.H. ROBERTS: The opposition supports this amendment moved by the minister, and also the similar amendments. There is a pretty good reason that a whole range of persons and organisations should have appropriate access to information that is held by the Director General of Transport. One of our concerns, obviously, is that once that information is passed on to another party, that party should have the same obligations to protect that personal information. An amendment of this nature will strengthen that position. If the information is passed on to the police or to another entity—for example, a local government authority—that entity must have very strict conditions attached to it and, indeed, penalties should apply if that information is then passed on inappropriately or used for an inappropriate purpose. The information passed on to local government, for example, or any other entity, would be passed on for a particular purpose to meet a particular need. I think this amendment reassures us that the information will be used for only that purpose and not any other purpose, and that it will not be passed on to other parties who would not be entitled to receive the information or with whom the Director General of Transport would not share the information. These are very sensible amendments that have emerged from the debate in the upper house.

Amendment put and passed.

Mr T.R. BUSWELL: I move —

Page 11, after line 16 — To insert —

- (3) A person —
- (a) to whom information is disclosed under subsection (2); or
 - (b) who is employed or engaged by a person to whom information is disclosed under subsection (2),

must not use the information for a purpose other than the road safety purpose for which it was disclosed.

Penalty: a fine of 100 PU or imprisonment for 12 months.

Effectively, this amendment creates the same requirements to ensure that information is passed on, but this time it is for the purpose of road safety.

Mrs M.H. ROBERTS: Likewise, the opposition supports this amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 7 and 8 put and passed.

Clause 9: Section 43A inserted —

Dr A.D. BUTI: Proposed section 43A(1) states in part —

photograph includes a negative or an image stored electronically.

One of the concerns I have about the bill is that photographic technology has improved significantly since the legislation was established in 1974. This bill will capture further advancements in digitised photographs. Has the government taken into consideration the advancements that have taken place since the original legislation was enacted and the advances that will take place in the future? Will that have any bearing on issues regarding the physical identity of the photograph?

Mr T.R. BUSWELL: I understand the member's point. Our view is that the term "image stored electronically" deals with the issue the member has raised. That terminology has been included specifically to cover digital images. We will extend this discussion when we consider the member for Midland's amendment. Make no mistake that one of the outcomes of the bill will be to enable the instantaneous transfer of electronically stored

images to police officers in the field. This amendment was put in the bill to cover that. It is our view that the use of the words “image stored electronically” covers digital images. Although I am no great futurist, I think that for as long as I am around, this provision will cover us for whatever advancements in photography are developed in the future. It is difficult to conceive a new technology that would not be covered by the use of the word “electronically”.

Clause put and passed.

Clause 10: Part IVA Division 4A inserted —

Leave granted for the following amendments to be considered together.

Mrs M.H. ROBERTS: I move —

Page 15, lines 12 and 16 — To delete “must” and insert —
may

Page 15, after line 15 — To insert after “written law” —

, if the Director General is satisfied that there is compelling reason in the public interest for disclosure of the photographs

If my first amendment is passed, proposed section 44AB, “Disclosure to police, ASIO and law enforcement officials”, will state —

- (1) The Director General may disclose photographs to a police official for the purposes of the performance of the police official’s functions under this Act or another written law.
- (2) The Director General may disclose photographs to an ASIO official for the purposes of the performance of the ASIO official’s functions under the ASIO Act or another law of the Commonwealth.

Similarly, my second amendment would add at proposed section 44AB(1) after “written law” —

, if the Director General is satisfied that there is compelling reason in the public interest for disclosure of the photographs

The second amendment further qualifies “may” so that it is not at the director general’s will to decide whether to disclose the photographs. He would have to satisfy himself that there is a compelling reason in the public interest for the disclosure of the photographs. This has already been the subject of debate in the upper house. Before I debate it any further, I would be interested to hear the minister’s response to these amendments. Does he find them acceptable; and, if not, why not?

Mr T.R. BUSWELL: We do not find the amendments acceptable. I suspect that the reasons I will give will be similar to the reasons that were provided in the upper house. I will focus on the requirement by the police service to access the photographs in Western Australia. It is our view that the police service, if required, should have unencumbered access to photographs. As I outlined to the member for Armadale, ultimately, that would be to the point at which those photographs could be transmitted to the police officers in a very short time. The technology now exists to receive digital images in police cars and via the handheld tasking and data information system units. We believe this will be a positive step to assisting police officers deal with the range of crimes that set off the misuse of motor vehicle licence offences. If the director general is not obliged to provide information through the use of the word “must”, we believe that is a significant watering down of the ability of the police to access digitised photographic images. That is further diminished by the member’s second amendment whereby the director general must be satisfied that there is a compelling reason to disclose the photographs. Our view is that the Commissioner of Police would be seeking these for purposes of performance of police functions, so there will be more —

Mrs M.H. Roberts: It does not say that the police commissioner would have to seek them, though.

Mr T.R. BUSWELL: I am just using him as an example.

Mrs M.H. Roberts: It can be any member of the force, can it; anyone authorised by the commissioner?

Mr T.R. BUSWELL: My understanding is the practical application will be that the Commissioner of Police will be entitled, and that the access to any other officer would be by authorisation through the Commissioner of Police. That is how it is anticipated the process will work. I have had a discussion with Reece Waldoock, the Director General of Transport, about this. It is our view, and certainly the view of police, that allowing time in some cases for the director general to be satisfied that there is a compelling reason in the public interest leaves this whole thing too open.

For the purposes of the house, I will describe a circumstance which is really at the genesis of a lot of this. In 2006, there was a double murder in Mandurah. The police sought access to the driver's licence photograph of the suspect. That person was subsequently arrested and convicted. Because of the legislation, police could not get access to the driver's licence photograph of the person suspected of perpetrating the crime. As a result, police were unable to either warn the public or provide a photographic image to assist in the apprehension of the suspect. It has a much broader application than that, given the extent of the misuse, either through false names, forged or altered motor vehicle drivers' licences, and possession of motor vehicle drivers' licences for the purpose of deception. I will not go into all that detail now, but I am happy to if the member wants to extend the debate.

In 2009, there were 3 390 charges for those offences alone. When we consider those are only the ones detected, I suspect the inappropriate use of motor vehicle drivers' licences, which are an undervalued yet very powerful document for an individual to carry, would definitely be significantly higher than 3 390. The government's view is that the member for Midland's proposed amendments will diminish the capacity of this legislation to deliver on the law and order outcomes we seek.

Mrs M.H. ROBERTS: I can well understand why the minister has put the case he has. The minister talked about a very serious circumstance to illustrate the point. I put to the minister that most circumstances would not be quite so serious or so urgent. In that serious and/or urgent circumstance, the word "may" and the qualification I have put on it would certainly see the Director General of Transport accede to that request very quickly. Under the chain of command within the police service, the Commissioner of Police would delegate this function down the line, maybe to an assistant commissioner or maybe to a superintendent or inspector. In most instances I expect that the commissioner will be quite unaware personally of the request being made. Maybe the minister thinks that is appropriate, maybe he does not, but I think people should not be under an illusion that the Commissioner of Police himself is actually going to make the application, or will necessarily even be aware of it.

Amendments put and negatived.

Clause put and passed.

Clauses 11 to 20 put and passed.

Clause 21: Sections 14 and 15 replaced —

Mr T.R. BUSWELL: I move —

Page 26, after line 1 — To insert —

- (3) A person —
 - (a) to whom information is disclosed under subsection (2); or
 - (b) who is employed or engaged by a person to whom information is disclosed under subsection (2),

must not use the information for a purpose other than the authorised purpose for which it was disclosed.

Penalty: a fine of 100 PU or imprisonment for 12 months.

The amendment inserts the same provisions discussed earlier; that is, it provides a penalty when people do not appropriately use information provided to them.

Mrs M.H. ROBERTS: I note that the other proposed amendment to this section is also very similar to the earlier ones. On that basis, I think this provides further protections. On that basis, the opposition supports this amendment.

Mr T.R. Buswell: Thank you.

Amendment put and passed.

Mr T.R. BUSWELL: I move the second amendment in relation to clause 21 —

Page 26, after line 16 — To insert —

- (3) A person —
 - (a) to whom information is disclosed under subsection (2); or
 - (b) who is employed or engaged by a person to whom information is disclosed under subsection (2),

must not use the information for a purpose other than the road safety purpose for which it was disclosed.

Penalty: a fine of 100 PU or imprisonment for 12 months.

I move the proposed amendment for the same reasons I moved the other three.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 22 to 25 put and passed.

Clause 26: Part 2 Division 3A inserted —

Dr A.D. BUTI: The receipt of information by the Australian Security Intelligence Organisation was dealt with in a previous part of the legislation. ASIO has incredibly powerful investigatory powers. There may be justification for the Department of Transport, which is the authority charged with collecting photographic identity for drivers' licences, providing photographs to ASIO. My concern is what control does the minister's Department of Transport have over how that photograph is utilised by ASIO? Also, is that the beginning of the slippery slope; that is, will other organisations seek information, such as Centrelink or the Australian Secret Intelligence Service? The opposition supports the purpose of this amending bill, but I am still concerned about why an organisation with powerful investigatory powers, such as ASIO, needs to receive this photograph. What guarantees are there that photographs will not be misused or will not be passed on to other agencies?

Mr T.R. BUSWELL: The member is talking about a high authority, about which I get very nervous when I rise! Having tackled an alternative high authority in this state once, which had three initials that sound like a pack of crispy things that people like to eat occasionally, I am reluctant to comment on this! I am getting very nervous here. I understand the point the member has made. I do not think I can give him a lot of comfort, though, other than to say the act specifies that "the CEO must disclose photographs to an ASIO official for the purposes of the performance of the ASIO official's functions." Who knows what that could be. I am not going to pretend to be an expert on ASIO.

Mrs M.H. Roberts: I can tell you that ASIO does not share much with anyone!

Mr T.R. BUSWELL: Nor does the other body I am talking about; except if it is on telly!

I really cannot offer a broader explanation than that. I acknowledge that the member has raised a potential concern. I hope that photographs do not end up in Mossad-issued passports in some assassination bid in some hotel, but who would know. I am not trying to be flippant about it. The issue of identity is a very important issue, but I can offer no other assurances other than "will be used for ASIO's official functions".

Clause put and passed.

Clause 27 put and passed.

Title put and passed.