

**ROAD TRAFFIC AMENDMENT (IMPOUNDING AND CONFISCATION OF VEHICLES) BILL 2016**

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Michael Mischin (Attorney General)**, read a first time.

*Second Reading*

**HON MICHAEL MISCHIN (North Metropolitan — Attorney General)** [3.22 pm]: I move —

That the bill be now read a second time.

The Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016 contains measures to address the reckless use of motor vehicles on our roads. Broadly, this bill amends the Road Traffic Act 1974 and associated legislation to provide additional powers for a court to confiscate a vehicle used to commit an “impounding offence, driving” or, as these are colloquially known, a “hoon offence”; to provide police with powers to seize, pending confiscation, any unlicensed motorcycle that has been ridden on a road if the motorcycle has been unlicensed for two years or more; and to enable the early disposal of uncollected impounded vehicles to reduce storage costs currently being incurred by WA Police when a vehicle owner decides not to collect their vehicle once the impounding period has ended.

In relation to the additional powers for a court to confiscate a vehicle used to commit a hoon offence, a hoon offence is an offence under section 60, “Reckless driving”, or section 62A, “Causing excessive noise or smoke from vehicle’s tyres”, of the Road Traffic Act. Currently, a vehicle can be confiscated only if the driver has committed two previous hoon offences within the preceding five years. It is considered that the current powers for a court to confiscate a vehicle should be extended to include instances in which the hoon driving is of a nature or in a place at which the act is inherently dangerous, damages property or causes fear, harassment or distress to other members of our community. To deter and punish this type of behaviour, the bill will create two new powers of confiscation.

First, following a conviction of a first hoon offence, a court will be empowered to order the confiscation of a vehicle used to commit the offence if the offence was committed in an active school zone; or the person drove the motor vehicle on a road at 90 kilometres an hour or more above the speed limit; or the offence occurred in a speed zone of 50 kilometres an hour or less and resulted in, or was likely to result in, a member of the public experiencing harassment, fear or alarm or damage to any property including the road.

Secondly, following a conviction of a second hoon offence, a court will be empowered to order the confiscation of a vehicle used to commit the offence if the offence was committed in a confiscation zone and the driver had been convicted of the same offence within the preceding five years. A confiscation zone is a road that has a speed limit of 50 kilometres an hour or less or an active school zone.

The establishment of these additional confiscation powers has required restructuring of the hoon offences contained in the Road Traffic Act. Essentially, new offences have been created for instances in which the offences of reckless driving or causing excessive noise or smoke from vehicles’ tyres are committed in a confiscation zone. This is needed to enable the prosecution and courts to easily identify that the charge they are dealing with can result in the confiscation of a vehicle and that the driver of the vehicle needs to be afforded all the considerations and rights provided by the Road Traffic Act in such instances.

As I stated in the introduction, this bill also contains a new power for police to seize, pending confiscation, unlicensed motorcycles. This power is needed 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, unroadworthy, motorcycles being used for recreational purposes on our roads and in public open spaces. It is a disturbing trend that between 2012 and 2015, complaints to WA Police about this type of behaviour increased by 90 per cent to approximately 3 900 complaints. To address this issue, the bill inserts a new subdivision into the Road Traffic Act 1974 that relates specifically to the use of these unlicensed motorcycles on our roads. The new powers will enable a police officer to seize a motorcycle, pending confiscation, when the officer reasonably suspects that the motorcycle is being used on a road and its use would constitute an offence of using an unlicensed vehicle on a road and the motorcycle had not been licensed or subject to a road-use permit in the preceding two years. When a motorcycle is seized, the responsible person for the motorcycle will be given a notice specifying the time and date the vehicle was impounded, the place where the motorcycle is to be stored, the motorcycle’s identifying details and the name of the driver of the motorcycle.

The responsible person for the motorcycle will be able to request the Commissioner of Police to review the decision to confiscate the motorcycle. The motorcycle will be returned when the commissioner is satisfied that the responsible person was not riding the motorcycle at the time of the offence, is not a member of the rider’s immediate family and the use of the motorcycle was without their consent. When no claim is lodged within 14 days of the motorcycle being impounded or an application for review is rejected, the motorcycle is confiscated.

Finally, this bill deals with another significant issue, the financial impact caused by WA Police having to pay the storage costs for impounded vehicles when the vehicle's owner abandons their claim to the vehicle on completion of the impounding period. Last year, WA Police impounded over 11 000 vehicles and currently has over 1 700 vehicles awaiting collection. The current legislation prohibits the commissioner from disposing of an uncollected vehicle until there has been a court outcome and the statutory notifications and disposal requirements have been met. Due to these requirements, the earliest the Commissioner of Police is able to dispose of an uncollected impounded vehicle is 70 days from the impounding date. It is worth noting that 1 100 of the over 1 700 vehicles awaiting collection are not able to be disposed of as there has been no court determination of the relevant offence. In around 200 of these cases, there has been no court outcome because the alleged offender has failed to appear at the hearing of the charge and is the subject of a bench warrant authorising the person's arrest.

To reduce the financial cost associated with the storage of uncollected impounded vehicles, this bill amends the Road Traffic Act to remove some of the requirements that limit the commissioner's ability to dispose of these vehicles. Specifically, the bill redefines the term "uncollected vehicle" to be a vehicle uncollected seven days after the impounding has ceased, rather than the current 28 days. It removes the requirement for a court outcome prior to the Commissioner of Police disposing of an uncollected vehicle. It provides that compensation will be available when the vehicle is sold prior to conviction and the driver is subsequently acquitted or otherwise not convicted of the impounding offence. It also removes the requirement for the Commissioner of Police to publish a notice of the intended sale or disposal of an uncollected vehicle in a newspaper.

In addition, the bill makes other amendments to the Road Traffic Act that will assist the Commissioner of Police in the management of impounded and confiscated vehicles and to pursue the recovery of expenses. These amendments will provide the ability for the person responsible for an impounded vehicle to consent to the Commissioner of Police to sell or otherwise dispose of their impounded vehicle in order to limit the storage costs that they are likely to incur. It will remove the requirement that the Commissioner of Police refund moneys paid by a person for any impounding and storage costs when the person collected the impounded vehicle if the case was not heard within 12 months and will replace it with a requirement that the Commissioner of Police refund moneys paid if the person was subsequently acquitted or the charge was withdrawn or dismissed. It will provide that a person convicted of an impounding offence is liable to pay post-impoundment expenses if they fail to collect their vehicle and will empower the Commissioner of Police to pursue those expenses in a court of competent jurisdiction. It will empower the Commissioner of Police to enter into contracts for services relating to the sale or disposal of vehicles. It will provide for an offence if a person sells or devalues a vehicle following the making of the order granting the impounding or confiscation of that vehicle. It will provide that when a person is initially charged with a particular impounding offence (driving) and the court makes an alternative verdict and convicts them of another of the impounding offences, the person is deemed to have been charged and convicted of an impounding offence (driving). The bill will also create offences for instances in which a person fails to comply with a surrender notice or when they take any action that devalues a vehicle that is subject to a surrender notice.

Further, the bill amends schedule 1 of the Young Offenders Act 1994 and the Criminal Code to reflect the proposed changes to the offences of reckless driving and reckless driving speeding made under the Road Traffic Act.

The bill will also amend the Road Safety Council Act 2002 to require that the balance of money received from the sale of an unlicensed motorcycle be credited to the road trauma trust account, and section 42 of the Road Traffic Legislation Amendment Act 2016, if that section has not been proclaimed prior to the commencement of this bill.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill by reason of its subject matter introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 4852.]

Debate adjourned, pursuant to standing orders.